

**IN THE FAIR WORK COMMISSION
AT SYDNEY**

MATTER: AM2014/263; 2014/266

**REVIEW OF MODERN AWARDS – STAGE 4
EDUCATIONAL SERVICES (TEACHERS) AWARD 2010
CHILDREN’S SERVICES AWARD 2010**

IEU SUBMISSIONS IN REPLY

Introduction

1. These are the IEU’s submissions in reply to the submissions and evidence filed on behalf of ACA, ABI, NSWBC, NOSHSA and JAG (the **ACA submissions**) and the AFEI submissions in respect of the IEU’s application to vary:
 - a. the Children’s Services and Teachers Award to clarify that persons with teaching qualifications, engaged as teachers, should if promoted to Director continue to be paid in accordance with the Teachers Award; and
 - b. the Teachers Award to clarify minimum engagement payments for casual workers.

Coverage

2. Both AFEI and ACA misstate the nature of the IEU’s claim. It is not a change in the coverage of either award; it is a clarification of the current coverage scheme to avoid confusion and potential misapplication of the Teachers Award. Neither employer party bothers to grapple with the current coverage of either award.
3. That the Teachers Award, in its current terms, applies to teachers in ECEC services who are appointed as Directors is made obvious by cl.15.1, which prescribes an allowance applicable to ‘*early childhood/preschool teacher[s] who [are] appointed as a Director*’. Director is defined at cl.3.1 as:

'the employee appointed by the employer to be responsible for the overall management and administration of a service in which an early childhood/preschool teacher is employed'.

4. This clause is otiose if teachers working in ECEC sectors cease to be covered by the Teachers Award if they are appointed as directors. It is apparent from the presence of a Director's allowance that the Commission intended, when making the Teacher's Award, for the coverage to be as per the IEU's claim.
5. This is unsurprising. As the ACA set out in their primary submissions (albeit in the context of complaining about it) the inclusion of teachers working in ECEC services within the Teachers Award, rather than the Children's Services Award, was a deliberate and reasoned decision, made in part because of the differences in their qualifications, work and classification structure.¹
6. To the extent that the ACA witnesses criticize this decision – i.e. by claiming, based on their own unqualified opinion, that teachers do not add additional value and should not be paid more than educators – this should be disregarded. In any event, these broad assertions miss the point. At their highest, they indicate that non-teacher ECEC workers acting as Directors may well be paid less than their worth is worth.
7. Neither ACA nor AFEI explain why this reasoning suddenly does not apply where a teacher is appointed to a senior position, in most circumstances continues to count as a teacher for the purposes of legal compliance and, as the evidence demonstrates, continues to have and use these qualifications. It is counterintuitive for what is, in effect, a promotion, to sound in a reduction in minimum wages.

¹ [2009] AIRCFB 865 at [61].

8. The fact that the ACA, and its witnesses, appear to take a different (if unexplained) unexplained position points only to the need for clarification, as urged by the IEU.
9. As to the proposition that the claim involves unjustified increased costs to employers, the only employers who will be required to pay more are those who are not currently complying with the Teachers Award, which not only is not a proper reason to refuse the variation but emphasizes the need for clarification.
10. It is significant that, of ACA's 11 witnesses, only three in fact claim to employ directors with teaching qualifications. Of the three, one (Kristel Smylie) currently appears to pay these directors in accordance with the Teaching Award. As to the remaining two, Garry Carroll and Pamela MacLean's evidence in this regard depends on the assumption that they are currently permitted to paying teachers employed in their services under the *Children's Services Award*, which is for reasons set out above incorrect. Accordingly, the proper cost impact is nil, in that it is consistent with what is required under the current Award.

Minimum engagement/payment claim

11. AFEI appear to object to the IEU's clarification of cl.14.5 on the basis that, where an employee works for more than a quarter of a day but less than half a day and is paid for half a day, they have been paid for time not worked.
12. AFEI does not explain how it is said to be fair for an employee to be required to work for free. Nor, more tellingly, does it put forward any alternative interpretation of the current clause.
13. ACA's opposition to the claim is even weaker. It simply states:
 - a. that the current clause is '*self-explanatory*' in its terms, which is manifestly untrue; and
 - b. that there is insufficient evidence of this being an issue to warrant adjustment.

14. In circumstances where:

- a. there is no apparent dispute that the correct interpretation of the clause is in accordance with the IEU's proposed drafting;
- b. the IEU – the major union in the sector – states that it is from time to time causing uncertainty and disputation, and has filed evidence in support of this; and
- c. there is no suggestion that there will be any adverse impact on any employer (aside from those who are not currently complying with the Award),

the variation should be made.

LUCY SAUNDERS

GREENWAY CHAMBERS

29 APRIL 2019

IN THE FAIR WORK COMMISSION

Matter Number: AM2014/263, AM2014/266, AM2018/18 and AM2018/20

Fair Work Act 2009 - Part 2-3, Div 4 –s.156 - 4 yearly review of modern awards

Group 4A awards: Children’s Services Award 2010 [MA000120]; Educational Services (Teachers) Award 2010 [MA000077]

STATEMENT IN REPLY OF ANA MRAVUNAC

I, Ana Mravunac of [REDACTED], in the State of New South Wales, say:

1. I have worked in the following roles in the early childhood education section:

2000 – 2001	Trained Child Care Worker – Coogee Bear Day Care, Kogarah
2002 – 2003	Trained Child Care Worker – Lorikeet Child Care Center, Kogarah
2003 – 2006.	Early Childhood teacher / Team Leader 3-5 year old - Lorikeet Child Care Center, Kogarah
2006 – 2016	Director / Manager – Fairfield Hospital Child Care Centre, Prairiewood
2017 – Current	Centre Manager– San Marino World of Learning, Prestons

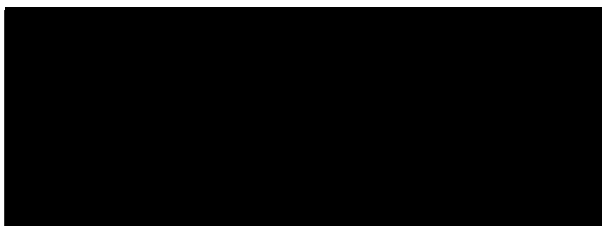
2. In relation to paragraph 5 of my original Statement, my employer agreed to reclassify my pay as of 25 February 2019, and paid me backpay to 1 January 2018.
3. In relation to paragraph 9 of my original Statement, I started doing the additional hours of teaching in the Centre from approximately January or February this year.
4. When I first applied for my current role, I did so only because of my understanding that the Centre was looking for an Early Childhood Teacher (**ECT**) to fill the role. The then 2nd in charge of the centre told me about the position because of my teaching qualifications. In addition, in the interview my tertiary teaching qualifications were

Lodged by: Applicant	Telephone:	(02) 8202 8900
Address for Service: GPO Box 116, Sydney NSW 2001	Fax:	(02) 9211 2455
	Email:	michael@ieu.asn.au

discussed as to how they would help me fulfil the role. I never would have applied or taken the job if they weren't looking for an ECT.

Reply to Kristel Smylie Statement, dated 12 April 2019

5. In paragraph 7 of her Statement, Ms Smylie disagreed with the exact amount I am now paid after my pay review. I can now confirm I am paid at \$38.84 an hour.
6. In paragraph 8 of her Statement, Ms Smylie disagreed that a teaching degree allows me to fulfil my duties to a higher degree of competency. I would in response ask why the Centre was specifically looking for an ECT to fill the role if they do not create a higher level of competency. My staff look to me because of my qualifications and the experience built on them.
7. In paragraph 10 of her Statement, Ms Smylie stated that she is not aware of me collaborating with other ECTs. There is a common culture in the company for ECTs to collaborate. While there are not formal meetings, I communicate with them regarding practice and strategies for the Centre. Ms Smylie also said she did not know why I suggests there is an expectation amongst staff that I have a tertiary qualification. Once again, the Centre was looking for an ECT specifically to fill this role, and as such there was an expectation for me to have my qualifications.
8. In paragraph 11 of her Statement, Ms Smylie states that G8 does not require centre managers to hold a tertiary qualification. While I agree that this is their general practice, again, for my specific role, the Centre was looking for an ECT.
9. In paragraph 12 of her Statement, Ms Smylie says she does not see how my teaching degree is an essential part of my role when dealing with children with additional needs. While I agree other Directors may not have these qualifications, my tertiary degree assists me and is an essential part of my practice in regards to children with additional needs. My staff specifically turn to me in these situations because of my training.



Signature of Ana Mravunac

29 April 2019
