

**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 RESPONSE TO QUESTIONS IN BACKGROUND DOCUMENT 2

INTRODUCTION

1. These are the IEU’s responses to the questions posed in the second background document issued by the Full Bench on 5 July 2019 (**the Second Background Document**).
2. Many of the matters raised are canvassed in the IEU’s four sets of submissions already filed in the proceedings. The submissions below endeavour to expand on the points identified without repeating what has already been set out.

SECOND BACKGROUND DOCUMENT

Question 4

3. The following findings are contested:
 - a. 1, for the reasons set out in the IEU’s response to the First Background Document filed 10 July 2019;
 - b. 2, to the extent it is said that current available opening hours of ECEC services are actually restricting working hours of parents;
 - c. 3, as it ignores the fact that many parents work part time or not at all, and many children attend ECEC services for reasons other than ‘childcare while their parents are working’ – for example, during school hours – and is otherwise a gross oversimplification;

- d. 6, for the reasons set out above and in the IEU's response to the First Background Document filed 10 July 2019; in particular, there is no actual evidence as to working patterns of working parents who use ECEC services;
- e. 7, in that unplanned overtime is a feature of all industries, including that incurred through unexpected late finishes outside the employer's control;
- f. 8, to the extent that this is said to be an overwhelmingly common occurrence;
- g. 9, in that there is no evidence that any ECEC witness *would in fact* extend their centre hours, or that it is overtime costs preventing them from currently doing so (noting that none bar two had bothered to perform any calculations, and those that had had done so in only a rudimentary way without exploring actual affordability);
- h. 10, as there is not so much 'relatively little' as 'no actual' evidence supporting a suggestion that there is any real demand for ECEC services to operate later, or that this will permit parents to work longer/later hours (or indeed that this is itself desirable);
- i. 11, as requiring a 7.30pm finish would make the prospect of secondary employment practically impossible rather than merely very difficult;
- j. 12(a), as Ms James' evidence – on which she was not cross-examined – consists of a reliable survey of workers in the sector and their views on the proposed change.

Question 6

- 4. The IEU notes that the ECEC Employers have, to date, not:
 - a. provided the text of their proposed variation; or
 - b. explained why it should also apply to teachers,

and resists any application at this late stage for it to amend its claim (e.g. to reduce the scope of the power sought).

5. The IEU contests the following findings set out at [11]:
 - a. 1, in that it is unclear what is meant by 'roster changes';
 - b. 3, in that maintaining staff ratios is not in fact complex and is only difficult if services are staffing to ratio – i.e. not taking ordinary incidents of employment like personal leave into account – rather than at appropriate levels;
 - c. 4, in that there is extensive evidence before the Full Bench that this is a sector in which employers:
 - i. use any flexibility granted by the Award to the hilt;
 - ii. regularly exceed what is permissible – for example, like Ms Viknarasah rostering on less than a week's notice, or a number of employer using highly questionable 'minimum hours contracts' for part time workers'; and
 - iii. staff to a minimum, and will further reduce numbers if it is made possible (i.e. if less of a buffer is required).

In reality the evidence cited by the ECEC employers in this respect demonstrates a lack of need or support for the claim amongst their own witnesses.

- d. 5, in that the suggestion that requiring staff to remain permanently on-call is the only solution to rostering issues is entirely baseless.

Question 21

6. The IEU contests the following findings set out at [45]:
 - a. 1, in that the evidence is clear that a teaching degree provides a higher level of pedagogical skill, vital to the educational role of a Director in an ECEC service;

- b. 2, in that it misses the point – the issue is whether a teacher director is employed as a teacher for the purposes of the award, not whether they are ‘more valuable’ than someone with a business degree;
- c. 3, in that it demonstrates that there is from time to time a dispute;
- d. 4, in that the witnesses give credible opinion evidence properly based on their experiences;
- e. 5, in that AFEI misunderstands what it means to be ‘employed as a teacher’ – neither the Teachers Award nor the National Law limit it to hands-on teaching, and its submission at (c) are matters of interpretation rather than evidence.

Question 22

- 7. As to the findings sought by the ECEC employers at [48]:
 - a. (a) and (b) are irrelevant;
 - b. AFEI’s proposition at (c) is too bare to be sensibly responded to.

LUCY SAUNDERS

GREENWAY CHAMBERS

19 JULY 2019