

Creating Sustainable Value



# 4 Yearly Review of Modern Awards

Submission

Tranche 2 Exposure  
Drafts

7 November 2019

Federation of Parents & Citizens  
Associations of NSW



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## 1. Background

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- 1.1. This submission is filed in response to the directions issued by the Fair Work Commission (**FWC**) in its decision of the same date<sup>1</sup> (the **Submission**).
- 1.2. The Submission is made on behalf of the Federation of Parents and Citizens Associations of NSW (**P&C Federation**).
- 1.3. The P&C Federation was established in 1922 and is a not-for-profit incorporated industry association representing the interests of students, and parents of students, at government schools, and is charged with the duty to empower Parents and Citizens Associations (**P&C Associations**) in their communities throughout the state of New South Wales.<sup>2</sup> At the close of the 2018-2019 year, the P&C Federation has over 1,800 members.
- 1.4. Of the 1,800 members of the P&C Federation, who employ staff, approximately:
  - (a) 18% only operate canteens;
  - (b) 18% only operate uniform shops;
  - (c) 1% only provide band program coaching or tutelage to students;
  - (d) 28% operate both canteen and uniform shops; and
  - (e) 5% operate both canteen and uniform shops, and provide band program coaching or tutelage to student.
- 1.5. P&C Associations operate as entirely separate entities to the NSW government schools they support.
- 1.6. P&C Associations operate by committees which are comprised of volunteers, who are primarily parents, or legal guardians, of students attending the relevant government school. Volunteer committee members:
  - (a) are usually appointed for short terms, usually of up to one year;
  - (b) are held by individuals:
    - (i) with little to no experience in running businesses;
    - (ii) with limited experience with, and awareness of, applicable employment legislation and award applicability;
    - (iii) from lower socio-economic backgrounds;
    - (iv) where English is a second language; and

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<sup>1</sup> 4 yearly review of modern awards [2019] FWCFB 6077 [35].

<sup>2</sup> *Parents and Citizens Associations Incorporation Act 1976* (NSW) s 6.

(v) by default in the absence of anyone else volunteering for the position.

1.7. In many areas, it is often challenging for P&C Associations to fill the respective committee roles. Challenges faced by P&C Associations in filling Committee roles include:

- (a) lack of community support for participation;
- (b) lack of support and understanding by the School Principal as to the importance of the role of the P&C Association;
- (c) difficulty for volunteers to understand the ambiguity and complexity of the legal requirements and frameworks affecting P&C Associations;
- (d) committee members fear of being found to be held liable under the accessorial liability provisions of the *Fair Work Act 2009* (Cth).<sup>3</sup>

As such, it is critical for P&C Associations to have clarity as to award applicability.

## 2. Introduction

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- 2.1. The P&C Federation files the Submission in relation to the *Educational Services (Schools) General Staff Award 2010* [MA000076] (the **Education Services Award**), as part of the second tranche of exposure drafts published by the FWC on 2 September 2019.
- 2.2. The P&C Federation welcomes the opportunity to make a submission to the FWC. The P&C Federation's Submission is focussed on issues relevant to New South Wales in particular, however we seek to highlight issues and points of view that relate to national Parents and Citizens Associations where we are able to.

## 3. Education Services Award

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3.1. The P&C Federation makes the following submissions in relation to the exposure draft of the Educational Services Award.

### 3.2. Clause 4: Coverage

- (a) The P&C Federation submits that the Educational Services Award is ambiguous in its coverage and requires clarity. As such, currently employees of Parents and Citizens Associations:
  - (i) engaged in roles within canteens are covered by the provisions of the *Fast Food Industry Award 2010* [MA000003] (the **FF Award**);
  - (ii) engaged in roles within uniform and book shops are covered by the provisions of the *General Retail Industry Award 2010* [MA000004] (the **Retail Award**); and

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<sup>3</sup> *Fair Work Act 2009* (Cth) s 550.

- (iii) that provide coaching or tutelage to students are not covered by a modern award.
- (b) Clause 4 of the Educational Services Award states that it:
- '... covers **employers in the school education industry** throughout Australia and their employees **employed in the classifications contained in Schedule B** to the exclusion of any other modern award.'*
- The P&C Federation submits that pursuant to section 116 of the *Education Act 1990* (NSW), and other corresponding State based legislation,<sup>4</sup> Parents and Citizens Associations are employers in the school education industry.
- (c) The P&C Federation submits that Schedule B of the Educational Services Award clearly contemplates the inclusion of Parents and Citizens Associations' employees as having coverage, in particular, with respect to the following clauses:
- (i) clause B.2.1(e)(iv): *'Assisting in a school retail facility, such as a canteen, uniform shop or book shop'*;
  - (ii) clause B.2.3(e)(vi): *'Responsibility for operating the school canteen, uniform shop or book shop, including supervision of employees and volunteers'*;
  - (iii) clause B.2.3(e)(vii): *'Providing assistance to individuals and/or sporting teams/squads under the supervision of a teacher or an instructional services employee'*;
  - (iv) clause B.2.4(e)(vii): *'Instructing individual students as part of an extra-curricular instrumental music program'*;
  - (v) clause B.2.4(e)(vii): *'Note: An instrumental music tutor will not be employed at a Level lower than Level 4'*;
  - (vi) clause B.2.4(e)(vii): *'Coaching, including developing sports training sessions and programs, for individuals and/or teams/squads in various sporting disciplines'*;
  - (vii) clause B.2.5(e)(vi): *'Preparing instrumental music students for external examination in their discipline as part of an extra-curricular program'*;
  - (viii) clause B.2.5(e)(vi): *'Coaching individuals and/or sporting teams/squads, including developing and implementing individual and/or team specific training sessions and programs'*; and
  - (ix) clause B.2.5(e)(vi): *'Occupational equivalent: music tutor, sports coach, senior sports coach'*.

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<sup>4</sup> An example of other relevant State legislation can be seen in the Queensland Act, *Education (General Provisions) Act 2006* (Qld) s121.

- (d) The Educational Services Award provides coverage for ‘*school operational services*’ employees,<sup>5</sup> which includes the following positions engaged by Parents and Citizens Associations:
- (i) Book Shop Assistants;
  - (ii) Book Shop Managers;
  - (iii) Canteen Assistants;
  - (iv) Canteen Managers;
  - (v) Uniform Shop Assistants; and
  - (vi) Uniform Shop Managers.
- (e) The Educational Services Award provides coverage for ‘*instructional services*’ employees,<sup>6</sup> which includes the following positions engaged by Parents and Citizens Associations:
- (i) Assistant Coaches;
  - (ii) Coaches; and
  - (iii) Tutors.
- (f) Clause 14 of the Educational Services Award states:
- ‘All **employees** must be classified according to the structure set out in Schedule B - Classifications ...’.*
- Pursuant to clause 3 of the Educational Services Award an employee is defined as a ‘*national system employee within the meaning of the Act*’, with Schedule B, at each level, the level definition starts with: ‘*An employee at this level...*’.
- (g) Accordingly, the P&C Federation submits that:
- (i) Parents and Citizens Associations **are employers in the school education industry**; and
  - (ii) **employees** of Parents and Citizens **Associations are engaged in positions which meet the classification structure set out in Schedule B**;

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<sup>5</sup> *Educational Services (Schools) General Staff Award 2010* [MA000076], cl B.2.1(e)(iv) and B.2.3(e)(vi).

<sup>6</sup> *Ibid* cl B.2.3(e)(vii), B.2.4(e)(vii), and B.2.5(e)(vi).

and as such, the Educational Services Award is the most '*appropriate to the work performed by [Parents and Citizens Associations'] employee[s] and to the environment in which ... employee[s] normally perform the work.*'<sup>7</sup>

- (h) The Educational Services Award already extends coverage to labour hire companies,<sup>8</sup> as such, the P&C Federation submits that the extension of coverage of the Educational Services Award to Parents and Citizens Associations' employers, whilst significantly important to Parents and Citizens Associations and their employees, is unsubstantiated in nature and operation.
- (i) The P&C Federation contends that the unsubstantiated variation proposed to be made to the Educational Services Award would be appropriate and in line with the intention of the original drafters of the Award and merely provides clarity to an ambiguous coverage clause.
- (j) The P&C Federation submits that if an amendment could be made to clause 4 of the Educational Services Award, it would provide Parents and Citizens Associations and their employees:
  - (i) clarity in knowing which award applies, and who it applies to;
  - (ii) guidance and detail of role classifications and appropriate grading and payment of minimum prescribed rates of pay;
  - (iii) an opportunity for employees to elect for an adjusted annual salary, allowing employees to be paid an "averaged" salary across all weeks in the year, not just to be paid during school terms,<sup>9</sup> reflecting how Parents and Citizens Associations operate (ie not during school holidays);
  - (iv) minimum prescribed rates for employees providing coaching or tutelage to students, who are not currently covered by a modern award; and
  - (v) an opportunity to reduce the need for the adoption of individual enterprise agreements.
- (k) The clause, if amended as proposed, would read as follows:

'4.1 Subject to clauses 4.2, 4.3 and, 4.4 this award covers employers **and Parents and Citizens Association employers** in the school education industry throughout Australia and their employees employed in the classifications contained in Schedule B to the exclusion of any other modern award.'

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<sup>7</sup> *Educational Services (Schools) General Staff Award 2010* [MA000076], cl 4.8.

<sup>8</sup> *Ibid* cl 4.5.

<sup>9</sup> *Ibid* cl 11.

### 3.3. **Clause 3: Definitions**

- (a) The P&C Federation submits that should the FWC accept our submission per clause 3.2(k) of the Submission, we suggest the definition of 'Parents and Citizens Association employers' would read as follows:

**'Parents and Citizens Association employer** means an incorporated or not incorporated, not-for-profit, school-based organisation consisting of parents, teachers and interested parties, established under the requisite State Education Act, for the purpose of supporting a school for the benefit of the school's students.'



## **Contacts**

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