

Form F1 Amended Application (No specific form provided)

(Subrule 6.3, Fair Work Australia Rules 2010)

FAIR WORK COMMISSION

FWA use only

FWA Matter No.:

APPLICATION (NO SPECIFIC FORM PROVIDED)

Applicant

Name:	Independent Education Union of Australia		
	Title [if applicable] Mr [] Mrs [] Ms [] Other [] specify:		
Address:	GPO Box 116		
Suburb:	Sydney 2001	State:	Postcode: 2001
		NSW	
If the Applicant is a company or organisation:			
Contact person:	Carol Matthews	ABN:	
Contact details for the Applicant or contact person (if one is specified):			
Telephone:	02 82028900	Mobile:	0418272902
Fax:	02 9211 1455	Email:	<u>carol@ieu.asn.au</u> industrial@ieu.asn.au

Applicant's representative (if any)

Name:		ABN: [if applicable]
Address:		
Suburb:		State: Postcode:
Contact person:		
Telephone:		Mobile:
Fax:		Email:

Other Parties

Name:	United Voice		
	ABN: [if known]		
Address:	303 Cleveland Street		
Suburb:	Redfern	State:	NSW Postcode: 2016
Contact person:	Mr Will Ash		
[if known]			
Telephone:	02 8204 3000	Mobile:	
Fax:	02 9821 4480	Email:	will.ash@unitedvoice.org.au

Name: Australian Education Union
ABN: *[If known]*
Address: PO Box 1158
Suburb: South Melbourne **State:** VIC **Postcode:** 3205
Contact person: David Colley
[If known]
Telephone: 03 9693 1800 **Mobile:**
Fax: 03 9693 1805 **Email:** aeu@aeufederal.org.au

Respondents

Name: Commonwealth Government, Department of Education,
Employment and Workplace Relations
ABN: *[If known]*
Address: GPO BOX 9880
Suburb: Canberra **State:** ACT **Postcode:** 2601
Contact person: Jody Anderson
[If known]
Telephone: 02 6121 5470 **Mobile:**
Fax: 02 6272 9259 **Email:**

Name: Australian Chamber of Commerce and Industry
ABN: *[If known]*
Address: Commerce House, Level 3, 24 Brisbane Avenue
Suburb: Barton **State:** ACT **Postcode:** 2600
Contact person:
[If known]
Telephone: 02 6273 2311 **Mobile:**
Fax: 02 6273 3286 **Email:** info@acci.asn.au

Name: Australian Childcare Centres Association
ABN: *[If known]*
Address: Suite 6, 539 Highett Road
Suburb: Highett **State:** VIC **Postcode:** 3190
Contact person:
[If known]
Telephone: 03 9532 2017 **Mobile:**
Fax: 03 9532 3336 **Email:**

Name: Australian Community Children's Services
ABN: *[If known]*
Address: C/- PO Box 1730
Suburb: Preston South **State:** VIC **Postcode:** 3072
Contact person:
[If known]
Telephone: 03 9486 3455 **Mobile:**
Fax: 03 9486 3336 **Email:** ausccs@cccinc.org.au

Name: Australian Community Services Employers Association, Union of Employers
ABN: *[If known]*
Address: Unit 11, 39 Jeays Street
Suburb: Bowen Hill **State:** QLD **Postcode:** 4006
Contact person: Kim Teague
[If known]
Telephone: 07 3852 5177 **Mobile:**
Fax: 07 3852 5188 **Email:** info@acsea.org
info@cmsolutions.org.au

Name: Australian Federation of Employers and Industries
ABN: *[If known]*
Address: PO Box A233
Suburb: Sydney South **State:** NSW **Postcode:** 1235
Contact person:
[If known]
Telephone: 02 9264 2000 **Mobile:**
Fax: 02 9264 5699 **Email:**

Name: Association of Independent Schools of South Australia
ABN: [If known]
Address: 301 Unley Road
Suburb: Malvern **State:** SA **Postcode:** 5061
Contact person:
[If known]
Telephone: 08 8179 1400 **Mobile:**
Fax: 08 8373 1116 **Email:** office@ais.sa.edu.au

Name: Association of Independent Schools of Tasmania
ABN: [If known]
Address: PO Box 616
Suburb: Sandy Bay **State:** TAS **Postcode:** 7005
Contact person:
[If known]
Telephone: 03 6224 0125 **Mobile:**
Fax: 03 6224 0174 **Email:**

Name: Association of Independent Schools of Western Australia (Inc)
ABN: [If known]
Address: Suite 3, 41 Walters Drive, Herdsman Business Park
Suburb: Osborne Park **State:** WA **Postcode:** 6017
Contact person:
[If known]
Telephone: **Mobile:**
Fax: **Email:**

Name: Association of Quality Child Care Centres of NSW (Inc)
ABN: [If known]
Address: 19 Fennell Street
Suburb: Parramatta **State:** NSW **Postcode:** 2150
Contact person: Joe Russo
[If known]
Telephone: 1300 556 330 **Mobile:**
Fax: 1300 557 228 **Email:** admin@childcarensw.com.au

Name: Child Care Centres Association of Victoria
ABN: [If known]
Address: Suite 6, 539 Highett Road
Suburb: Highett **State:** VIC **Postcode:** 3190
Contact person:
[If known]
Telephone: 03 9532 2017 **Mobile:**
Fax: 03 9532 3336 **Email:**

Name: Childcare Queensland
ABN: [If known]
Address: 11/6 Vanessa Boulevard
Suburb: Springwood **State:** QLD **Postcode:** 4127
Contact person:
[If known]
Telephone: 07 3808 2366 **Mobile:**
Fax: 07 3808 2466 **Email:** info@childcarequeensland.com.au

Name: Childcare South Australia
ABN: [If known]
Address: PO Box 406
Suburb: Hindmarsh **State:** SA **Postcode:** 5001
Contact person:
[If known]
Telephone: **Mobile:** 0407 580 645
Fax: **Email:** info@childcaresa.com.au

Name: Child Care Association of Western Australia
ABN: [If known]
Address: Level 1, 9 Bowman Street
Suburb: South Perth **State:** WA **Postcode:** 5001
Contact person:
[If known]
Telephone: 1300 062 645 **Mobile:**
08 9368 5037
Fax: **Email:** info@childcarewa.com.au

Name: Community Connections Solutions Australia
ABN: [If known]
Address: Floor 1, 77 Parke Street
Suburb: Katoomba **State:** NSW **Postcode:** 2780
Contact person: John Gunn
[If known]
Telephone: **Mobile:**
Fax: 02 4782 4425 **Email:**

Name: New South Wales Business Chamber Ltd
ABN: [If known]
Address: Level 15, 140 Arthur Street
Suburb: North Sydney **State:** NSW **Postcode:** 2060
Contact person: Aivars Berzins
[If known]
Telephone: 02 9458 7481 **Mobile:**
Fax: 02 9922 1305 **Email:**

Name: Association of Independent Schools of NSW
ABN: [If known]
Address: Level 12/99 York Street
Suburb: Sydney **State:** NSW **Postcode:** 2000
Contact person: Lyndon Burke
[If known]
Telephone: 02 9299 2845 **Mobile:**
Fax: 9290 2274 **Email:** LBurke@aisnsw.edu.au

Name: Independent Schools Victoria
ABN: [If known]
Address: PO Box 119
Suburb: North Melbourne **State:** Vic **Postcode:** 3051
Contact person:
[If known]
Telephone: 03 9285 7200 **Mobile:**
Fax: 03 9826 6066 **Email:** enquiries@is.vic.edu.au

Name: Independent Schools Queensland
Address: PO Box 957
Suburb: Spring Hill **State:** Qld **Postcode:** 4004
ABN: *[If known]*
Contact person: *[If known]*
Telephone: 07 3228 1515 **Mobile:**
Fax: 07 3228 1575 **Email:** enquiries@isq.qld.edu.au

Name: Catholic Commission for Employment Relations
Address: Level 14, 133 Liverpool Street
Suburb: Sydney **State:** NSW **Postcode:** 2000
ABN: *[If known]*
Contact person: *[If known]*
Telephone: 02 9390 5255 **Mobile:**
Fax: 02 9267 4559 **Email:** enquiries@ccer.catholic.org.au

Name: The Creche and Kindergarten Association Limited t/a C&K
Address: 14 Edmondstone Street
Suburb: Newmarket **State:** Queensland **Postcode:** 4051
ABN: *[If known]*
Contact person: *[If known]*
Telephone: **Mobile:**
Fax: **Email:** info@candk.asn.au

The Applicant applies, pursuant to the provision(s) in part 1, for the order or relief set out in part 2 on the grounds specified in part 5.

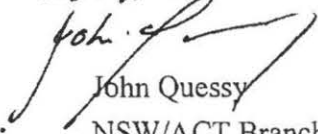
1. **Provision(s) under which application is made:**
s 302 Fair Work Act 2009

2. **Order or relief sought:**
See Annexure A

3. **What is the industry of the employer?**
Children's services and early childhood education industry

4. **Relevant industrial instrument(s) (if any):**
Educational Services (Teachers) Award 2010

5. **Grounds:**
See Annexure B

Date:	<i>28. 11. 13</i>
Signature:	
Name:	John Quessy
Capacity/Position:	NSW/ACT Branch Secretary
<i>[If not signed by the Applicant.]</i>	

Service requirements

This application must be served on the named Respondent(s) as soon as practicable after the application is lodged with FWA.

This application must also be served on other persons as directed by FWA if and when such direction(s) are given.

Note: Rules 9 and 10 deal with service.

ANNEXURE A

FAIR WORK AUSTRALIA

DRAFT ORDER

Fair Work Act 2009

s 302 – Equal remuneration order

Equal Remuneration Case

Independent Education Union of Australia

EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

[MA000077]

1. Title

This Order is the Early Childhood Teachers in Long Day Care Centres and Preschools Equal Remuneration Order 2014.

2. Commencement and obligations

- 2.1 This Order shall commence on **[insert date]** and shall continue in force and effect until further order of the Fair Work Commission.
- 2.2 The monetary obligations imposed on employers by this Order may be absorbed into overaward payments. Nothing in this Order requires an employer to maintain or increase any overaward payment.
- 2.3 Where agreed between the employer and a full-time or part-time employee, an employer may introduce remuneration packaging in respect of the monetary obligations imposed by this Order. The terms and conditions of such a package must not, when viewed objectively, be less favourable than the entitlements otherwise available under the Award and this Order.

3. Definitions and interpretation

In this Order, unless the contrary intention appears:

Act means the *Fair Work Act 2009* (Cth)

Award means the *Educational Services (Teachers) Award 2010*

award-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

Employee means a person employed as a teacher, including a teacher employed as director, in a long day care centre or preschool

long day care centre means a children’s service or early childhood service that usually provides services over a period of at least eight hours per day and for 48 weeks or more during the year

on-hire means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client.

preschool means a service in the children’s services and early childhood education industry which usually operates during days and terms which approximate those of a recognised school, and includes a kindergarten, day school or nursery school

4. Coverage and application

- 4.1 This Order covers Employees employed in
(a) long day care centres and
(b) preschools
in Australia, other than those employed by a State or Territory government,
and covers the employers of those Employees.
- 4.2 This Order covers any employer that supplies labour on an on-hire basis to long day care centres or preschools in respect of on-hire Employees, and those on-hire Employees, while engaged in the performance of work for the long day care centre or preschool.

5. Equal Remuneration Payment

- 5.1 The payments in clause 5.2 of this Order shall be referred to as the “Equal Remuneration Payment”.
- 5.2 From the first full pay period on or after [insert date], the employer must pay an Employee an Equal Remuneration Payment as follows:

Level (as determined in accordance with clause 13 of the Award)	Equal Remuneration Payment	Equal Remuneration Payment
	Per Year (Preschools)	Per Year (Long Day Care)
	\$	\$
1	<u>55,186</u>	57,394
2	<u>58,045</u>	60,366
3	<u>61,199</u>	63,646
4	<u>64,346</u>	66,920

Level (as determined in accordance with clause 13 of the Award)	<u>Equal Remuneration</u>	<u>Equal Remuneration</u>
	<u>Payment</u>	<u>Payment</u>
	<u>Per Year</u>	<u>Per Year</u>
	<u>(Preschools)</u>	<u>(Long Day Care)</u>
	\$	\$
5	<u>67,503</u>	70,203
6	<u>70,658</u>	73,484
7	<u>73,810</u>	76,762
8	<u>76,964</u>	80,042
9	<u>80,114</u>	83,318
10	<u>83,273</u>	86,604
11	<u>91,276</u>	94,927
12	<u>91,276</u>	94,927

5.3 In addition an employer shall pay an Employee appointed as Director an Equal Remuneration Allowance of

Level	% of Equal Remuneration Payment for Level 12 Per Year
1	12.25
2	15.00
3	18.05

5.4 The payments in clauses 5.2 and 5.3 of this Order shall be regarded as part of the ordinary rate of pay for all purposes.

5.5 The employer must apply any increase in minimum wages in the Award to the amounts in clause 5.2 and clause 5.3 of this Order.

6. Payment

Payments made by an employer in accordance with this Order must be paid weekly or fortnightly by cash, cheque or electronic funds transfer into the bank or financial institution account nominated by the Employee, unless other arrangements are made in an enterprise agreement approved under the Act.

7. Access to the Order

The employer must ensure that copies of this Order are available to all Employees to whom it applies either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

ANNEXURE B

THE APPLICATION

1. The Applicant seeks an equal remuneration order pursuant to section 302 of the *Fair Work Act 2009* (Cth) (“Act”).
2. The Applicant seeks an equal remuneration order for early childhood teachers (including early childhood teachers appointed as directors) who perform work in a long day care centre or preschool covered by the *Educational Services (Teachers) Award 2010* (the “Teachers Modern Award”). There are over 12,000 early childhood teachers covered by the application.
3. A long day care centre is a children’s service or early childhood service that usually provides services over a period of at least eight hours per day and for 48 weeks or more during the year.
4. A preschool means a service in the children’s services and early childhood education industry which usually operates during days and terms which approximate those of a recognised school, and includes a kindergarten, day school or nursery school.
4. The Applicant is an employee organisation that is entitled to represent the industrial interests of employees covered by the application. The applicant has significant membership amongst early childhood teachers employed in long day care centres in NSW and the ACT and amongst early childhood teachers employed in preschools in NSW, the ACT and Queensland. A majority of early childhood teachers employed in long day care centres in Australia are employed in NSW.

FOUNDATIONS

5. For the reasons set out below, early childhood teachers employed in long day care centres and preschools covered by the application do not receive equal remuneration for work which is of equal or comparable value to work performed: by other professionals in other industries; and by teachers employed in other parts of the education industry.

Features of the Sector

6. The sector is highly gender segregated. Over 95% of early childhood teachers employed in long day care centres and preschools are women.
7. There is a high turnover of staff in the sector compared with other occupations and/or other industries.

8. There is an acute shortage of appropriately qualified staff in the sector.
9. The workforce in long day care centres is younger compared to the Australian workforce overall.
10. There is low union density amongst teachers because of the difficulty in organising workers with these demographic characteristics. This is compounded by the high number of small or disparate workplaces in the sector.
11. The employers in the sector are not-for-profit organisations or operate with relatively small profit margins because of the nature of the service and funding arrangements. The main source of revenue for employers is fees charged to parents. There are constant pressures to minimise the fees charged to ensure accessibility to early childhood education and care. The federal government provides subsidies to parents in relation to the cost of child care and state governments provide funding for the operation of preschools.

Nature of the work performed

12. Early childhood teachers are university - qualified professionals.
13. Early childhood teachers employed in long day care centres or preschools and covered by the Teachers Modern Award are employed either as a teacher or as a director.
14. In most cases early childhood teachers are employed as such because of government requirements that an early childhood teacher must be employed or in attendance as a condition of operation of the long day care centre or preschool. These requirements are currently contained in the *Education and Care Services National Regulations*, made pursuant to *Children (Education and Care Services) National Law (NSW) No 104a* and were previously contained in some states in state regulations.
15. Early childhood teachers have overall responsibility for the educational program provided by the long day care centre or preschool in accordance with *Belonging, Being and Becoming, the Early Years Learning Framework*, the national framework which applies to long day care centres and other early childhood education services. Teachers develop the curriculum applying their tertiary levels skills and knowledge, are the pedagogical leaders at the service, and professionally develop and support the delivery of education by other employees.
16. A director covered by the Teachers Modern Award is an early childhood teacher appointed to be responsible for the overall management and administration of a long day care centre or preschool. The role includes ensuring compliance with all regulatory requirements; pedagogical leadership; overall management, administration and leadership of the service; accounting and financial management;

administration, recruitment and human resources management; communication and engagement with staff members, children, parents, business contacts, community or local leaders and other stakeholders; and supporting and participating in management committees or other groups.

Environment

17. The work of early childhood teachers in early childhood services is performed in an environment that is intense, noisy, requires dealing with human waste, physically and emotionally demanding; and likely to lead to higher levels of illness.

Social benefit

18. Research has linked the employment of university qualified early childhood teachers to higher quality education and care.
19. Early childhood education and care delivers significant social and economic benefits to the Australian economy, society, families and individuals.
20. High quality early childhood education and child care environments lead to positive intellectual and cognitive development and later-life learning outcomes in children and improved social, health and behavioural outcomes in children.
21. The workforce participation of women, and the consequent economic benefit, is directly linked to high quality and accessible child care.

Early Childhood Teachers Pay in Long Day Care Centres and Preschools

22. The majority of early childhood teachers employed in long day care centres and preschools covered by the application are award reliant. Award reliance by early childhood teachers employed in long day care centres and preschools is significantly higher than in the workforce overall.
23. The minimum award wage rates are usually the actual rates of pay received by early childhood teachers employed in long day care centres.
24. Prior to the making of the Teachers Modern Award, there were no award wage rates for teachers in long day care centres in a number of states. There were award wage rates applying to early childhood teachers in long day care centres in NSW.
25. Higher wage rates in NAPSAs applying to early childhood teachers in early childhood services in NSW were preserved by a non-standard transitional provision in the Teachers Modern Award. As a result of the transitional provisions, the transitional wage rates of early childhood teachers in long day care centres and preschools in NSW are currently between \$3,000 and \$11,000 per annum,

depending on the step of the scale, above the wage rates in the Teachers Modern Award. When the transition provisions cease to have effect at 1 July 2014, the wage rates will drop by this amount and this will exacerbate the undervaluation for early childhood teachers in NSW.

26. The incidence of over-award payments in the sector is low.
27. There has been limited collective bargaining in the sector.
28. Where over-award payments are made through collective agreements or individual contracts they are rarely significantly above the wage rates in the Teachers Modern Award.

Gender Based Undervaluation

29. The wage rates paid to early childhood teachers in long day care centres and preschools do not adequately reflect the skills, responsibilities and qualifications required to perform the work, when compared to work of equal or comparable value, requiring equal or comparable qualifications, skills and responsibilities in other occupations and/or other industries.
30. The undervaluation of the work performed by early childhood teachers in long day care centres and preschools has been caused by a variety of factors that result from the predominance of women working in the sector including:
 - a. social undervaluation of the skills and responsibilities required to perform the work because of a perception that they are
 - i) “soft” skills;
 - ii) an extension of the unpaid work performed by women in the domestic sphere;
 - iii) skills that “naturally” occur in women rather than are learnt or developed; and
 - (iv) caring work; and
 - b. limited bargaining power of early childhood teachers in long day care centres and preschools to achieve recognition of the skills, responsibilities, qualifications and benefit of the work through enterprise bargaining.

Comparators

31. Indicatively, the undervaluation of the work can be seen by comparing work performed and the remuneration paid to the following comparators-
 - a. teachers employed in schools, and
 - b. professionals employed in other occupations in other industries.
32. Teachers employed in government and non-government schools are also covered by the Teachers Modern Award and the same salaries in clause 14 of the award apply to them as to early childhood teachers in long day care centres and

preschools. Whether or not early childhood teachers in long day care centres and preschools should be included in the Teachers Modern Award was a matter canvassed in the award modernisation process with the Full Bench determining that their inclusion was appropriate (see decision 25 September 2009 [2009] AIRCFB865).

33. The only differences in the award wage rates between teachers in schools and early childhood teachers in long day care centres and preschools are that an additional 4% loading applies to early childhood teachers in long day care centres who do not receive school holidays and subject also to the fact that until July 2014 higher transitional rates of pay apply to teachers in long day care centres and preschools in NSW.
34. The actual remuneration paid to teachers in schools is much higher than the remuneration paid to early childhood teachers employed in long day care centres and preschools. Remuneration for teachers in promotions positions in schools is also much higher than for early childhood teachers appointed as Directors of long day care centres or preschools. However early childhood teachers in preschools that are part of government schools are paid the same as other teachers in government schools and perform the same or very similar work as that performed by early childhood teachers in stand-alone preschools.
35. The work of early childhood teachers in long day care centres and preschools is comparable to that of work performed by other professionals with three or four years university qualifications, such as professional engineers. Remuneration paid to professional engineers is much higher than remuneration paid to early childhood teachers in long day care centres and preschools.

Loss of previous pay relativities

36. Historical wage rate gains by early childhood teachers employed in long day care centres and preschools have been eroded over time with changes to industrial regulation and legislation, and in particular with the move to the federal system.
37. The introduction of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* saw the minimum rates under previous state-based awards (i.e. Notional Agreements Preserving State Awards [NAPSAs] and pre-reform awards) transitioned to federal Pay Scales.
38. As outlined in paragraph 24 above, these higher NAPSA rates were preserved to some extent during the award modernisation process, by the insertion of non-standard 'transitional provisions' in the Teachers Modern Award. However this has not maintained the value of the work of early childhood teachers in long day care centres and preschools compared to other employees doing work of comparable value. Furthermore, the transitional provisions only applied to some employees and will not in any event continue beyond 2014.

Impact of undervaluation on remuneration

39. As a result of the matters raised in paragraphs above, the remuneration of early childhood teachers in long day care centres and preschools covered by the application is less than the remuneration paid to employees in other occupations and/or other industries who perform equal or comparable work.
40. The effects of undervaluation of remuneration on early childhood teachers in long day care centres and preschools are numerous and undermine the move to improve the quality of service provided and increased educational and developmental outcomes for children.
41. It is extremely difficult to retain early childhood teachers in long day care centres and to a lesser extent in preschools because the pay does not correspond to the high level of skills and responsibility of the work. Many early childhood teachers leave the long day care sector to obtain higher paying, less stressful jobs in other educational settings. Some teachers use working in both long day care and preschools as a “stepping stone” to entry into teaching positions in schools with higher pay.
42. The low wages and poor industrial conditions result in job vacancies for early childhood teachers remaining unfilled or exemptions being sought to permit under-qualified employees to be appointed to perform the work.
43. Children’s developmental outcomes and emotional wellbeing are affected by the shortage of early childhood teachers and the lack of continuity of educators.

No Suitable Alternative Remedy

44. There is no suitable alternative remedy to an equal remuneration order to address the gendered undervaluation of the work performed by early childhood teachers in long day care centres and preschools.
45. A low paid authorisation pursuant to s.243 or a low paid workplace determination pursuant to Part 2-5, Division 2 of the *Act*, even if available to professional employees, would not adequately address the historical gendered undervaluation of the work.
46. An application to vary the modern award pursuant to s.158 of the *Fair Work Act* could not result in increases to the award wages comparable to actual rates earned in other occupations and/or other industries and would therefore not meaningfully address the gendered undervaluation of the work.
47. The undervaluation by the lack of recognition of equal or comparable work value can only be adequately addressed by an assessment of the undervaluation of the

work through the provisions in Part 2-7 of Chapter of the *Act*.

RELIEF SOUGHT

48. The Applicant seeks relief in the form of the draft order attached as Annexure A.

