

**From:** Masters, Virginia <Virginia.Masters@ags.gov.au>  
**Sent:** Tuesday, 18 October 2016 1:26 PM  
**To:** Chambers - Ross J  
**Cc:** 'ask@lgaq.asn.au'; 'lgasa@lga.sa.gov.au'; 'reception@lgat.tas.gov.au';  
'info@lgant.asn.au'; 'inquiries@mav.asn.au'; 'info@walga.asn.au'; 'lgnsw@lgnsw.org.au';  
'aivars.berzins@nswbc.com.au'; 'wa@childcarealliance.org.au'; 'office@ccsa.org.au';  
'info@childcarealliance.org.au'; 'qld@childcarealliance.org.au';  
'admin@childcarens.com.au'; 'info@cmsolutions.org.au'; 'reception@cccinc.org.au';  
'vic@childcarealliance.org.au'; 'info@acci.asn.au'; 'Amanda.threalfall@aeuvic.asn.au';  
'LukeF@hallpayne.com.au'; 'vic@childcarealliance.org.au'; 'admin@afei.org.au';  
'info@acsea.org'; 'Joe Kennedy'  
**Subject:** C2103/5139 United Voice & Australian Education Union v Commonwealth of Australia  
& Others [SEC=UNCLASSIFIED] [AGSDMS-DMS.FID1651069]  
**Attachments:** 20161018 Letter Associate to President FWC from AGS C2013\_5139.pdf; 20161018  
C2013\_5139 Form F53 for Commonwealth.pdf; 20161018 Letter Hall Payne from  
AGS.pdf

Dear Associate

Would you please draw the attached correspondence to the attention of the President, prior to tomorrow's directions hearing.

Regards

**Virginia Masters**

Senior Executive Lawyer

Australian Government Solicitor

T 03 9242 1201 F 03 9242 1333 M 0438 211 119

[virginia.masters@ags.gov.au](mailto:virginia.masters@ags.gov.au)

Find out more about AGS at <http://www.ags.gov.au>

**Important:** This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.



Your ref. JK:4130712 Our ref. 13141544

18 October 2016

Joseph Kennedy  
Hall Payne Lawyers  
Locked Bag 2013  
South Brisbane QLD 4101

**Australian Government Solicitor**  
Level 21, 200 Queen Street Melbourne VIC 3000  
GPO Box 2853 Melbourne VIC 3001  
T 03 9242 1222 F 03 9242 1333 DX 50 Melbourne  
www.ags.gov.au

Canberra  
Sydney  
Melbourne  
Brisbane  
Perth  
Adelaide  
Hobart  
Darwin

By Email: [joek@hallpayne.com.au](mailto:joek@hallpayne.com.au) and [lukef@hallpayne.com.au](mailto:lukef@hallpayne.com.au)

Dear Mr Kennedy

**C2013/5139 Application by United Voice and Australian Education Union for Equal Remuneration Order**

---

1. We refer to your email sent at 4:35pm on 14 October 2016, which attaches your client's proposed orders to be considered by the Fair Work Commission (the Commission) at the directions hearing on Wednesday. We thought it prudent to give your client some understanding of the Commonwealth's position in advance of the directions hearing. The Commonwealth has carefully considered your client's (and that of the Australian Education Union (AEU)) proposed Third Further Amended Application and your client's proposed approach as indicated in the draft orders.
2. While the Commonwealth will consent to the Commission giving both Applicants (noting the proposed order only deals with the application of United Voice) leave to file the amended application in the form filed with the Commission on 28 September 2016, the Commonwealth has some concerns with the balance of the orders proposed. We would note that we do not know the position of the AEU with respect to the proposed orders and approach.
3. With respect to the remainder of the proposed orders, our concern is that United Voice are seeking to depart from the ordinary process by which matters of this kind are run. Ordinarily, the applicants would prepare and file all their evidence and the responding parties do the same before the Commission is required to consider complex factual and legal questions including appropriate comparators. To depart from this course should only be done where there are sound reasons in terms of efficiency, time and cost. We do not think those reasons apply here.
4. Firstly, the imprecision of your client's further amended Application is such that it will not assist the Commission and the other parties in understanding your client's case or determining this complex question early. The Application is vague and imprecise as to the very question of appropriate comparators. It does not specify the respective appropriate comparators for all the classifications in each of the

instruments identified in paragraph 2 of the Application, noting the breadth of the unspecified instruments in sub-paragraph 2.d of the amended Application.

5. Secondly, the Commonwealth does not believe that it is possible to determine the very important question of appropriate comparators in a vacuum (where not all of the respective classifications are considered) and without the benefit of evidence upon which a proper assessment of work value can be undertaken. For the Commission to be required to do otherwise is likely to lead to the Commission either not being able to determine the question or determining it at such a level of hypothetical generality that any decision will not actually assist in any final determination of the matter.
6. Accordingly, it is the position of the Commonwealth that the better approach would be for the matter to proceed in an orthodox fashion where the applicants put on all the evidence upon which they intend to rely. It may be that once the evidence has been filed by all parties that the Commission is able to determine discrete questions but the appropriateness (including efficiency) of such an approach cannot be determined until after this point.

Yours sincerely



**Virginia Masters**

Senior Executive Lawyer

T 03 9242 1201 F 03 9242 1333

M 0438 211 119

virginia.masters@ags.gov.au



Your ref. C2013/5139 Our ref. 13141544

18 October 2016

Justice Iain Ross  
President  
Fair Work Commission  
11 Exhibition Street  
MELBOURNE Vic 3000

**Australian Government Solicitor**  
4 National Circuit, Barton ACT 2600  
Locked Bag 35, Kingston ACT 2604  
T 02 6253 7000 DX 5678 Canberra  
www.ags.gov.au

Canberra  
Sydney  
Melbourne  
Brisbane  
Perth  
Adelaide  
Hobart  
Darwin

By Email: chambers.ross.j@fwc.gov.au

Dear Associate

**C2013/5139 United Voice & Australian Education Union v Commonwealth of Australia represented by Department of Education, Employment and Workplace Relations & Ors**

---

1. We act for the First Respondent, the Commonwealth of Australia.
2. The writer now has carriage of this matter on behalf of the Commonwealth. We have filed a Form F53 Notice of Representative Commencing to Act (copy enclosed). Would you please amend your records so that future correspondence about this matter is directed to the writer.
3. We refer to the letter dated 28 September 2016 to you from Hall Payne Lawyers, solicitors for the First Applicant (United Voice), which enclosed a draft Further Amended Application and which proposed that directions be made to timetable a hearing to determine a preliminary question as to whether the comparator proposed in the amended application satisfies paragraph [290] of the reasons for decision in the *Equal Remuneration Order – Jurisdictional Decision* [2015] FWCFB 8200.
4. We note that this matter has been listed for directions on 19 October 2016.
5. For the reasons set out in our letter dated 18 October 2016 to Hall Payne Lawyers (a copy of that letter is enclosed), the Commonwealth has no objection to United Voice being granted leave to further amend the Application in the manner proposed, but does not consider that the appropriate way forward is for the comparator question to be determined as a preliminary question.
6. Kate Eastman SC with Elizabeth Raper will appear on behalf of the Commonwealth at the directions hearing scheduled for 19 October 2016, via video link from Sydney.

7. We have forwarded a copy of this letter to Hall Payne Lawyers, and a copy of this letter and its enclosures to the current and proposed new parties.

Yours sincerely



**Virginia Masters**

Senior Executive Lawyer  
T 03 9242 1201 F 03 9242 1333  
M 0438 211 119  
virginia.masters@ags.gov.au

**Copies to:**

Hall Payne Lawyers, solicitors for United Voice  
Attention Joel Kennedy and Luke Forsyth  
[joek@hallpayne.com.au](mailto:joek@hallpayne.com.au) and [LukeF@hallpayne.com.au](mailto:LukeF@hallpayne.com.au)

Australian Education Union  
Attention: Amanda Threlfall  
[Amanda.threlfall@aeuvic.asn.au](mailto:Amanda.threlfall@aeuvic.asn.au)

Australian Chamber of Commerce and Industry  
[info@acci.asn.au](mailto:info@acci.asn.au)

Australian Childcare Centres Association  
[vic@childcarealliance.org.au](mailto:vic@childcarealliance.org.au)

Australian Community Children's Services  
[reception@cccinc.org.au](mailto:reception@cccinc.org.au)

Australian Community Services Employers Association, Union of Employers  
Attention: Kim Teague  
[info@acsea.org](mailto:info@acsea.org) and [info@cmsolutions.org.au](mailto:info@cmsolutions.org.au)

Australian Federation of Employers and Industries  
[admin@afei.org.au](mailto:admin@afei.org.au)

Australian Childcare Alliance New South Wales  
Attention Joe Russo  
[admin@childcare NSW.com.au](mailto:admin@childcare NSW.com.au)

Australian Childcare Alliance Victoria Inc  
[vic@childcarealliance.org.au](mailto:vic@childcarealliance.org.au)

Australian Childcare Alliance QLD Inc.  
[qld@childcarealliance.org.au](mailto:qld@childcarealliance.org.au)

Australian Childcare Alliance South Australia  
[info@childcarealliance.org.au](mailto:info@childcarealliance.org.au)

Australian Childcare Alliance Western Australia  
[wa@childcarealliance.org.au](mailto:wa@childcarealliance.org.au)

Community Connections Solutions Australia  
Attention: John Gunn  
[office@ccsa.org.au](mailto:office@ccsa.org.au)

New South Wales Business Chamber Ltd  
Attention: Aivars Berzins  
[aivars.berzins@nswbc.com.au](mailto:aivars.berzins@nswbc.com.au)

Local Government and Shires Association of New South Wales  
[lgnsw@lgnsw.org.au](mailto:lgnsw@lgnsw.org.au)

Western Australian Local Government Association  
[info@walga.asn.au](mailto:info@walga.asn.au)

Municipal Association of Victoria  
[inquiries@mav.asn.au](mailto:inquiries@mav.asn.au)

The Local Government Association of Northern Territory  
Attention: Tony Tapsell  
[info@lgant.asn.au](mailto:info@lgant.asn.au)

The Local Government Association of Tasmania  
Attention: Alan Garcia  
[reception@lgat.tas.gov.au](mailto:reception@lgat.tas.gov.au)

The Local Government Association of South Australia  
[lgasa@lga.sa.gov.au](mailto:lgasa@lga.sa.gov.au)

The Local Government Association of Queensland  
[ask@lgaq.asn.au](mailto:ask@lgaq.asn.au)

## Form F53 Notice of representative commencing to act

*Fair Work Act 2009, s.596 and Fair Work Commission Rules 2003, Rules 11 and 12*

This is a notice to the Fair Work Commission that a lawyer or paid agent is commencing to act in a matter in accordance with the [Fair Work Act 2009](#).

### The represented party

<b>Title</b>	[ <input type="checkbox"/> ] Mr [ <input type="checkbox"/> ] Mrs [ <input type="checkbox"/> ] Ms [ <input type="checkbox"/> ] Other please specify:		
<b>First name(s)</b>			
<b>Surname</b>			
<b>Postal address</b>	GPO Box 9880		
<b>Suburb</b>			
<b>State or territory</b>	Canberra	<b>Postcode</b>	2601
<b>Phone number</b>	02 6121 5470	<b>Fax number</b>	
<b>Email address</b>	jody.anderson@employment.gov.au		

**If the represented party is a company or organisation please also provide the following details**

<b>Legal name of business</b>	Commonwealth of Australia represented by Department of Employment
<b>Trading name of business</b>	
<b>ABN/ACN</b>	
<b>Contact person</b>	Jody Anderson

### The party's representative

<b>Name of person</b>	Virginia Masters		
<b>Organisation</b>	Australian Government Solicitor		
<b>Postal address</b>	Level 21, 200 Queen Street		
<b>Suburb</b>	Melbourne		
<b>State or territory</b>	Victoria	<b>Postcode</b>	3000
<b>Phone number</b>	03 9242 1201	<b>Fax number</b>	
<b>Email address</b>	virginia.masters@ags.gov.au		

## The other party

<b>Title</b>	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name(s)</b>			
<b>Surname</b>			
<b>Postal address</b>	303 Cleveland Street		
<b>Suburb</b>	Redfern		
<b>State or territory</b>	New South Wales	<b>Postcode</b>	2016
<b>Phone number</b>	02 8204 3000	<b>Fax number</b>	
<b>Email address</b>	david.mcelrea		

### If the other party is an organisation please also provide the following details

<b>Legal name of organisation</b>	United Voice
<b>Trading name of organisation</b>	
<b>ABN/ACN</b>	
<b>Contact person</b>	David McElrea

## 1. Details of the matter

### 1.1 What is the name and matter number of the matter before the Commission?

C2013/5139

United Voice & Australian Education Union v Commonwealth of Australia represented by Department of Education, Employment and Workplace Relations & Ors

### 1.2 Which party are you commencing to act for in the matter before the Commission?

- Applicant  
 First Respondent  
 Other

Provide details of the party if it is not the applicant or respondent.

--



## Signature

<b>Signature</b>	
<b>Name</b>	Virginia Masters
<b>Date</b>	18 October 2016
<b>Capacity/Position</b>	AGS lawyer for and on behalf of the Australian Government Solicitor

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**