



23 February 2017

Our Ref: 20160096

Your Ref: AM2014/266

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Award Modernisation Team
Fair Work Commission

Dear Sir / Madam

**4 YEARLY REVIEW OF MODERN AWARDS - GROUP 4 AWARDS - AM2014/266 -
EDUCATIONAL SERVICES (TEACHERS) AWARD 2010**

- 5.1 We refer to the abovementioned proceedings and to the Fair Work Commission's Statement and Directions [2016] FWC 6062 issued on 26 August 2016 (**Statement**).
- 5.2 We represent the Australian Childcare Alliance (**ACA**), Australian Business Industrial (**ABI**) and the NSW Business Chamber (**NSWBC**).
- 5.3 At [5]-[6] the Statement provides as follows:

***[5]** The parties are requested to file a short submission confirming the substantive claims being pursued. This is not expected to be a full submission, but should include the following*

- (i) the nature of the change sought;*
- (ii) a draft variation determination;*
- (iii) the type of case to be run (merits or evidentiary based); and*
- (iv) if the case is evidence-based, how many witnesses will be called?*

***[6]** This process will give parties the opportunity to reframe existing claims or to raise additional substantive claims. Parties are also requested to advise the Commission if they are no longer pursuing any of their earlier claims. The filing date for this submission is on or before **4pm on Friday 30 September 2016**.*

- 5.4 In accordance with the Statement, we provide confirmation of the proposed variations as follows.

6. THE NATURE OF THE CHANGES SOUGHT

- 6.1 Our clients intend to pursue two variations to the Award:

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Variation One: to provide employers with greater flexibility to change rosters;

- 6.2 This variation is pursued on the basis that the current arrangements set out in the Award do not provide a fair and reasonable safety net having regard to:
- (a) the legislative obligations in relation to rostering faced by employers in the children's services and early childhood education industry; and
 - (b) the inevitability that circumstances will arise where employees will be unavailable at short notice and employers will be required to "call-in" replacement employees to satisfy legislative obligations.

Variation Two: to allow ordinary hours in the children's services and early childhood industry to be worked after 6.30pm

- 6.3 This variation is pursued so as to allow ordinary hours to be worked up until 7.30 pm instead of the current 6.30pm.
- 6.4 This variation is pursued on the basis that requiring an employer to pay overtime between 6.30pm and 7.30pm is inconsistent with the Modern Awards objective and a fair and reasonable safety net.

7. DRAFT VARIATION DETERMINATION

- 7.1 A draft determination giving effect to the two proposed variations is annexed to this submission.

8. THE TYPE OF CASE TO BE RUN (MERITS OR EVIDENTIARY BASED)

- 8.1 Our clients propose to run an evidentiary case and intend to file witness statements outlining the position of employers and efficacy of the proposed variations at both an industry and individual operator level.

9. IF THE CASE IS EVIDENCE-BASED, HOW MANY WITNESSES WILL BE CALLED?

- 9.1 It is proposed that 2-4 witnesses will be called in support of the proposed variations.

If you have any questions, please contact Michal Roucek on (02) 9458 7018.

Yours faithfully


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FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

Part 2-3, Div 4 – 4 Yearly reviews of modern awards

Children’s Services Award 2010

[MA000120]

Children’s services industry

COMMISSION MEMBER

SYDNEY, XX YYY 2017

Review of modern awards to be conducted.

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/266, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Educational Services (Teachers) Award 2010* be varied as follows:

[1] By amending clause 10.4(d) and inserting a new clause 10.4(e) such that it appears in the following form:

(d) ___ An employer cannot vary a part-time employee’s teaching load or days of ___ attendance unless:

(i) ___
 ___ ~~(i)~~ the employee consents; or

(ii) ___
 ___ ~~(ii)~~ where such a variation is required as a result of a change in funding, enrolment or ___ curriculum, the employer provides seven weeks’ notice in writing ~~in the case of a school~~ ___ ~~teacher or four weeks’ notice in the case of an early childhood teacher~~, or where the change ___ would result in a reduction in salary, the salary of the teacher is maintained for a period of ___ seven weeks ~~in~~.



- (e) An employer of a part time teacher employed in the children's services and early childhood education industry cannot vary an employee's teaching load or days of attendance unless:
- (i) the employee consents and in circumstances consent cannot be obtained, the employer may change the days the employee is to work by giving seven days' notice in advance of a school teacher the change or where another employee has provided less than seven days' notice of his/her inability to perform a rostered shift, the employer may instead give the same amount of notice as is provided by the employee or a reasonable amount of time so as to make the required change; or
 - (ii) where such a variation is required as a result of a change in funding, enrolment or curriculum, the employer provides four weeks' notice, or where the change would result in a reduction in salary, the salary of the teacher is maintained for a period of four weeks in the case of an,
 - (iii) the change is necessary in order to comply with its statutory obligations in respect of maintaining staff to child ratios in the children's services and early childhood —teacher education industry; or
 - (iv) an emergency outside of the employer's control causes the employer to make the change. In this clause, emergency means any situation or event that poses an imminent or severe risk to the persons at the employer's premises, or a situation that requires the premises to be locked-down.

[2] By amending Schedule B.1.3 as follows:

The ordinary hours of work will be worked between the hours of 6.00am and 7.30pm on any five days between Monday and Friday and will not exceed eight hours in duration. Subject to the provisions of clause 7 - Award flexibility, by agreement between an employer and an employee, an employee may be rostered to work up to a maximum of 10 hours in any one day.

[3] The determination shall operate on and from XX YYY 2017.

BY THE COMMISSION