

FAIR WORK COMMISSION

Matter Nos: AM2014/263 & AM2014/266

Four Yearly review of Modern Awards - Award Stage – Group Four Awards

REVISED IEU SUBMISSION

This revised submission is made in response to the request by the President for the Independent Education Union of Australia (IEU) to confirm its current position in light of developments at the hearing of 28 November 2018 and the statement issued by the Commission on 13 November 2018 ([2018] FWC 6953). They also follow discussions between the IEU and other parties.

We confirm that the substantive claims made by the IEU in respect of the *Educational Services (Teachers) Award 2010*, as set out in Attachment B to the Commission's statement of 13 November 2018 are accurate.

The IEU's position with respect to each of the claims made to vary the *Educational Services (Teachers) Award 2010* is as follows:

1) **Claims made by ACA and ABI & NSWBC**

- a) providing employers with greater **flexibility to change rosters**;
- b) allowing **ordinary hours** in the children's services and early childhood industry to be worked after 6.30pm.

Both claims relate to the *Educational Services (Teachers) Award 2010* and the *Children's Services Award 2010*. There is a confluence of interest between the two awards and the matters can be heard together. It is the IEU's position that these claims should be heard when the *Educational Services (Teachers) Award 2010* is up for review. The IEU sees no impediment to them being programmed but would request that any hearing be deferred until after the hearings in the IEU's ERO/Work Value Case (C2013/6333; AM2018/9) [hereafter referred to as the ERO/Work Value Case] as many of the parties involved in this matter, including the IEU, have extensive resources allocated to this matter.

2) **Claims made by IEU**

- a) a variation to the **definition of "teacher"** to ensure the award covers teachers employed as Directors;
- b) a variation to the award to ensure teachers are only paid the **quarter day rate** when employed for less than two hours and, correspondingly, paid the **half day rate** when employed for less than 3.8 hours;

- c) a variation to the award to cap, at 205, the number of days teachers in **distance education** can be required to teach.

As there is no linkage between these claims and the *Children's Services Award 2010* it is the IEU's position that they should be heard in the context of the Teacher's Award, separately from the *Children's Services Award 2010*. The IEU understands that any hearing would most likely not occur until the second half of 2019.

3) **Claims made by United Voice (UV) and an Individual**

- a) "a weekly allowance for an employee appointed as an **educational leader**" (UV Claim). This is the full detail of the claim - the details and operative provisions are unspecified.
- b) providing a new annual **educational leader** allowance to teachers with educational leadership responsibilities in early childhood education and care settings (an Individual Claim).
- c) "an hourly allowance for the **responsible person** physically present at a child care centre" (UV Claim); This is the full detail of the claim - the details and operative provisions are unspecified.
- d) an annual or hourly allowance (it is not clear) for a **Responsible Person** (Individual Claim).

The IEU's position is that these claims should be dealt with as part of the normal timetable for the *Educational Services (Teachers) Award 2010* 4 yearly review. If, after the details of the claims are produced, it is considered that there is sufficient overlap between these claims and seemingly related claims in the *Children's Services Award 2010* then those claims impacting on the latter Award should be jointly considered with *Educational Services (Teachers) Award 2010* in the second half of 2019, sometime after the hearings in the ERO/Work Value Case.

We make this submission on the following basis:

- I. the Union is not aware of any of the detail of the UV claims in respect of the *Educational Services (Teachers) Award*. The IEU notes the UV claims in the *Children's Services Award 2010* are significantly different from the Individuals' claim;
- II. there is a real question as to whether the allowance claims by the Individual across the two awards are in the same terms – first, they produce different dollar allowances in the two awards as the standard rates of pay are different. Secondly, it is not clear how the Responsible Person allowance relates to the classifications of Director in each Award. For example, the Responsible Person allowance proposed by the individual appears identical to the existing Director allowance in the *Educational Services (Teachers) Award*

but there is an existing Director classification in the *Children's Services Award* which is different. Thirdly they are being overlaid across classifications with fundamentally different skill and role attributes (e.g. Cert III trained Children's Services Employee vs. 4 year university trained Teacher);

- III. the IEU holds genuine concerns that the employer parties who are involved in both these matters and the ERO/Work Value Case may seek to postpone programmed hearings in the ERO/Work Value Case as a result of the running or outcome of these matters. The IEU's claims in the ERO/Work Value Case have been on foot since 2013 and have been already subject to considerable delay for a variety of reasons. Hearing dates for evidence and submissions have been set between 10 June – 7 August 2019;
- IV. the claims sought by the IEU in the ERO/Work Value Case are more comprehensive and of greater scope than the claims sought by United Voice (UV) and an Individual in these matters. In that context (and in light of II. above) it would be more useful for these claims to be considered after the ERO/Work Value Case is heard; and
- V. we also seek that these matters be heard after the ERO/Work Value Case as many of the parties involved in this matter, including the IEU have extensive resources allocated to that Case, and the Union anticipates these Award claims will be arbitrated. If there are any matters that can proceed by consent, the Union would be prepared to review its position.