

From: Michael Wright [<mailto:michael@ieu.asn.au>]

Sent: Tuesday, 3 September 2019 12:33 PM

To: Chambers - Hatcher VP

Cc: Sophie Margaret Whish ; Nicola Shaw ; Paula Thomson ; david.ireland@ags.gov.au ; Simon Spence ; Carol Matthews; Arthur Dowdle; Renee Mooney

Subject: 2013/6333 & AM2018/9 " Equal Remuneration Order / Application to Vary Modern Award - Revised documents

Dear Associate,

Re.: 2013/6333 & AM2018/9 – Equal Remuneration Order / Application to Vary Modern Award - Revised documents

Please find attached the following documents for filing:

1) An revised Annexure A (ERO Draft Order) to the Form F1 filed on 27 September 2017 [19.09.03 Amended ERO order.pdf]

2) A revised Form F46 Application to vary a modern award (original dated 17 August 2018) [19.09.03 Revised f46 signed - IEU.pdf]

3) An revised Schedule A to the IEU Submissions in Reply (s158) dated 3 may 2019 [19.09.03 Amended Schedule A to IEU reply submissions 3 may 19.pdf]

19.09.03 Revised f46 signed - IEU.pdf

The revisions reflect changes in the rates of pay contained in the *Educational Services (Teaching) Award 2010* and other relevant industrial instruments.

The parties to this matter are copied into this email by way of service.

Regards,

Michael Wright

Dr Michael Wright | Senior Industrial Officer

**Independent Education Union of Australia
NSW/ACT Branch**

485-501 Wattle Street Sydney

P 02 8202 8982 E michael@ieu.asn.au W www.ieu.asn.au



GPO Box 116
Sydney NSW 2001
The Briscoe Building
485 - 501 Wattle Street
Ultimo NSW 2007
P 02 8202 8900
www.ieu.asn.au

From: Robert Seals [<mailto:robert@ieu.asn.au>]

Sent: Wednesday, 27 September 2017 4:06 PM

To: Chambers - Hatcher VP

Subject: C2013/6333 - Application for an Equal Remuneration Order - Amended Application

Associate to Vice President Hatcher

Dear Associate,

The IEUA seeks to file as attached an amended Application Form F1 in accordance with the directions of the Vice President issued on 13 September 2017. The IEUA will serve the amended form on known interested parties.

Kind regards,

Robert Seals.



Robert Seals | Industrial Officer

IEUA (NSW/ACT Branch)

GPO Box 116 | SYD NSW 2001

The Briscoe Building

485 - 501 Wattle Street

ULTIMO NSW 2007

02 8202 8900 | 02 9211 1455

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Form F1—Application (No Specific Form Provided)

Fair Work Commission Rules 2013, subrule 8(3) and Schedule 1

This is an application to the Fair Work Commission.

The Applicant



These are the details of the person who is making the application.

Title Mr Mrs Ms Other please specify:
First name(s)
Surname
Postal address GPO Box 116
Suburb Sydney 2001
State or territory NSW **Postcode** 2001
Phone number 02 8202 8900 **Fax number** 02 9211 1455
Email address carol@ieu.asn.au; industrial@ieu.asn.au

If the Applicant is a company or organisation please also provide the following details

Legal name of business Independent Education Union of Australia
Trading name of business
ABN/ACN
Contact person Carol Matthews

How would you prefer us to communicate with you?

Email (you will need to make sure you check your email account regularly)

Post

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, a union or a family member or friend who will speak on behalf of the Applicant. There is no requirement to have a representative.

Yes—Provide representative's details below

No

The Respondents



These are the details of the person or business who will be responding to your application to the Commission.

| | | | |
|---------------------------|---|-------------------|--------------|
| Name | Australian Chamber of Commerce and Industry | | |
| Contact Person | | | |
| Postal address | Commerce House, Level 3, 24 Brisbane Avenue | | |
| Suburb | Barton | | |
| State or territory | ACT | Postcode | 2600 |
| Phone number | 02 62708000 | Fax number | 02 6273 3286 |
| Email address | info@acci.asn.au | | |

| | | | |
|---------------------------|---|-------------------|--------------|
| Name | Australian Childcare Centres Association | | |
| Contact person | | | |
| Postal address | Suite 6, 539 Highett Road | | |
| Suburb | Highett | | |
| State or territory | VIC | Postcode | 3190 |
| Phone number | 03 9532 2017 | Fax number | 03 9532 3336 |
| Email address | ausccs@cccinc.org.au , vic@childcarealliance.org.au | | |

| | | | |
|---------------------------|---|-------------------|--------------|
| Name | Australian Community Children's Services | | |
| Contact Person | | | |
| Postal address | C/- PO Box 1730 | | |
| Suburb | Preston South | | |
| State or territory | VIC | Postcode | 3072 |
| Phone number | 03 9486 3455 | Fax number | 03 9486 3336 |
| Email address | ausccs@cccinc.org.au , reception@cccinc.org.au | | |

| | | | |
|---------------------------|---|-----------------|------|
| Name | Australian Community Services Employers Association, Union of Employers | | |
| Contact Person | Kim Teague | | |
| Postal address | Unit 11, 39 Jeays Street | | |
| Suburb | Bowen Hill | | |
| State or territory | QLD | Postcode | 4006 |

| | | | |
|---------------------------|---|-------------------|--------------|
| Phone number | 07 3852 5177 | Fax number | 07 3852 5188 |
| Email address | info@acsea.org info@cmsolutions.org.au | | |
| Name | Australian Federation of Employers and Industries | | |
| Contact Person | | | |
| Postal address | PO Box A233 | | |
| Suburb | Sydney South | | |
| State or territory | NSW | Postcode | 1235 |
| Phone number | 02 9264 2000 | Fax number | 02 9264 5699 |
| Email address | | | |
| Name | Association of Independent Schools of South Australia | | |
| Contact Person | | | |
| Postal address | 301 Unley Road | | |
| Suburb | Malvern | | |
| State or territory | SA | Postcode | 5061 |
| Phone number | 08 6224 0125 | Fax number | 08 8373 1116 |
| Email address | office@ais.sa.edu.au | | |
| Name | Association of Independent Schools of Tasmania | | |
| Contact Person | | | |
| Postal address | PO Box 616 | | |
| Suburb | Sandy Bay | | |
| State or territory | | Postcode | |
| Phone number | 03 6224 0125 | Fax number | 03 6224 0174 |
| Email address | | | |
| Name | Association of Independent Schools of Western Australia (Inc) | | |
| Contact Person | | | |
| Postal address | Suite 3, 41 Walters Drive, Herdsman Business Park | | |
| Suburb | Osborne Park | | |

| | | | |
|---------------------------|---|-------------------|--------------|
| State or territory | WA | Postcode | 6017 |
| Phone number | | Fax number | |
| Email address | | | |
| Name | Australian Childcare Alliance New South Wales | | |
| Contact Person | Joe Russo | | |
| Postal address | 19 Fennell Street | | |
| Suburb | Parramatta | | |
| State or territory | NSW | Postcode | 2150 |
| Phone number | 1300 556 330 | Fax number | 1300 557 228 |
| Email address | admin@childcarensw.com.au | | |
| Name | Australian Childcare Alliance Victoria Inc | | |
| Contact Person | | | |
| Postal address | Suite 6, 539 Highett Road | | |
| Suburb | Highett | | |
| State or territory | VIC | Postcode | 3190 |
| Phone number | 03 9532 2017, 0413598922 | Fax number | 03 9532 3336 |
| Email address | | | |
| Name | Australian Childcare Alliance QLD Inc | | |
| Contact Person | | | |
| Postal address | 11/6 Vanessa Boulevard | | |
| Suburb | Springwood | | |
| State or territory | QLD | Postcode | 4127 |
| Phone number | 07 3808 2366 | Fax number | 07 3808 2466 |
| Email address | info@childcarequeensland.com.au qld@childcarealliance.org.au | | |
| Name | Australian Childcare Alliance South Australia | | |
| Contact Person | | | |
| Postal address | PO Box 4 06 | | |

| | | | |
|---------------------------|---|-------------------|------|
| Suburb | Hindmarsh | | |
| State or territory | SA | Postcode | 5001 |
| Phone number | 0407 580 645, 0407580645 | Fax number | |
| Email address | info@childcaresa.com.au info@childcarealliance.org.au | | |

| | | | |
|---------------------------|---|-------------------|--------------|
| Name | Australian Childcare Alliance Western Australia | | |
| Contact Person | | | |
| Postal address | Level 1, 9 Bowman Street | | |
| Suburb | South Perth | | |
| State or territory | WA | Postcode | 5001 |
| Phone number | 1300 062 645 | Fax number | 98 9368 5037 |
| Email address | info@childcarewa.com.au wa@childcarealliance.org.au | | |

| | | | |
|---------------------------|---|-------------------|--------------|
| Name | Community Connections Solutions Australia | | |
| Contact Person | John Gunn | | |
| Postal address | Floor 1, 77 Parke Street | | |
| Suburb | Katoomba | | |
| State or territory | NSW | Postcode | 2780 |
| Phone number | 02 47821470 | Fax number | 02 4782 4425 |
| Email address | office@ccsa.org.au | | |

| | | | |
|---------------------------|--------------------------------------|-------------------|--------------|
| Name | New South Wales Business Chamber Ltd | | |
| Contact Person | Aivars Berzins | | |
| Postal address | Level 15, 140 Arthur Street | | |
| Suburb | North Sydney | | |
| State or territory | NSW | Postcode | 2060 |
| Phone number | 02 9458 7481 | Fax number | 02 9922 1305 |
| Email address | | | |

| | | | |
|-----------------------|---|--|--|
| Name | Association of Independent Schools of NSW | | |
| Contact Person | | | |
| Postal address | Level 12/99 York Street | | |

| | | | |
|---------------------------|--|-------------------|--------------|
| Suburb | Sydney | | |
| State or territory | NSW | Postcode | 2000 |
| Phone number | 02 9299 2845 | Fax number | 02 9290 2274 |
| Email address | clovell@aisnsw.edu.au | | |
| Name | Independent Schools Victoria | | |
| Contact Name | | | |
| Postal address | PO Box 119 | | |
| Suburb | North Melbourne | | |
| State or territory | Vic | Postcode | 3051 |
| Phone number | 03 9285 7200 | Fax number | 03 9826 6066 |
| Email address | enquiries@is.vic.edu.au | | |
| Name | Independent Schools Queensland | | |
| Contact Name | | | |
| Postal address | PO Box 957 | | |
| Suburb | Spring Hill | | |
| State or territory | QLD | Postcode | 4004 |
| Phone number | 07 3228 1515 | Fax number | 07 3228 1575 |
| Email address | Enquiries @isq.qld.edu.au | | |
| Name | Catholic Commission for Employment Relations | | |
| Contact Person | | | |
| Postal address | Level 14, 133 Liverpool Street | | |
| Suburb | Sydney | | |
| State or territory | NSW | Postcode | 2000 |
| Phone number | 02 9390 5255 | Fax number | 02 9267 4559 |
| Email address | enquiries@ccer.catholic.org.au | | |
| Name | The Crèche and Kindergarten Association Limited | | |
| Contact Person | | | |
| Postal address | 14 Edmondstone Street | | |
| Suburb | Newmarket | | |

| | | | |
|---------------------------|-------------------|-------------------|------|
| State or territory | QLD | Postcode | 4051 |
| Phone number | | Fax number | |
| Email address | info@candk.asn.au | | |

Interested Parties

| | | | |
|---------------------------|---|-------------------|--------------|
| Name | Commonwealth Government, Department of Employment | | |
| Postal address | GPO BOX 9880 | | |
| Suburb | Canberra | | |
| State or territory | ACT | Postcode | 2601 |
| Phone number | 02 6121 5470 | Fax number | 02 6272 9259 |
| Email address | | | |

| | | | |
|---------------------------|----------------------------|-------------------|--------------|
| Name | Australian Education Union | | |
| Postal address | 120 Clarendon Street | | |
| Suburb | Southbank | | |
| State or territory | Vic | Postcode | 3006 |
| Phone number | 03 9693 1800 | Fax number | 03 9693 1805 |
| Email address | aeu@federal.org.au | | |

| | | | |
|---------------------------|-----------------------------|-------------------|--------------|
| Name | United Voice | | |
| Postal address | 303 Cleveland Street | | |
| Suburb | Redfern | | |
| State or territory | NSW | Postcode | 2016 |
| Phone number | 02 8204 3000 | Fax number | 02 9281 4480 |
| Email address | Will.ash@unitedvoice.org.au | | |

1. The Application

1.1 Please set out the provision(s) of the Fair Work Act 2009 (or any other relevant legislation) under which you are making this application.

s 302 of the *Fair Work Act 2009*

2. Order or relief sought

2.1 Please set out the order or relief sought.



Using numbered paragraphs, set out what you are asking the Commission to do.

See Annexure A

2.2 Please set out grounds for the order or relief sought.



Using numbered paragraphs, set out the grounds, including particulars, on which you are seeking the relief set out in question 2.1.

See Annexure B

3. The employer

3.1 What is the industry of the employer?

Children's services and early childhood education industry

4. Industrial instrument(s)

4.1 Please set out any modern award, agreement or other industrial instrument relevant to the application and their ID/Code number(s) if known.

Educational Services (Teachers) Award 2010

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature

Gloria Taylor

Name

GLORIA TAYLOR, DEPUTY SECRETARY

Date

27/09/2017



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

ANNEXURE A

FAIR WORK COMMISSION

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 2019.

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 Interpretations:

In this Order, unless 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 who is a national system employee within the meaning of the Act.

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, other than those employed by a State or Territory government, employed in:
 (a) Long day care centres and
 (b) Preschools
 and covers the employers of those Employees.

4.2 This Order covers an 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 Per Year (Preschools) \$ | Equal Remuneration Payment Per Year (Long Day Care) \$ |
|---|--|---|
| 1 | 65,608 68,929 | 68,232 71,686 |
| 2 | 65,608 68,929 | 68,232 71,686 |
| 3 | 65,608 68,929 | 68,232 71,686 |
| 4 | 65,608 68,929 | 68,232 71,686 |
| 5 | 79,130 83,136 | 82,295 86,461 |
| 6 | 79,130 83,136 | 82,295 86,461 |
| 7 | 85,888 90,236 | 82,295 93,845 |
| 8 | 89,273 93,793 | 92,844 97,545 |

| | | |
|----|-----------------------|------------------------|
| 9 | <u>97,853</u> 102,806 | <u>101,767</u> 106,918 |
| 10 | <u>97,853</u> 102,806 | <u>101,767</u> 106,918 |
| 11 | <u>97,853</u> 102,806 | <u>101,767</u> 106,918 |
| 12 | <u>97,853</u> 102,806 | <u>101,767</u> 106,918 |

An Employee appointed as a Director, in addition to the amounts payable pursuant to clause 5.2 of this Order, an annual allowance in accordance with clause 15.1 of the Award and based on the amounts payable pursuant to clause 5.2 of this Order.

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

5.4. The employer must apply any increase in minimum wages in the Award to the amounts in clause 5.2 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 fund transfer into 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 service 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 service 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 ACT and amongst early childhood teachers employed in preschools in NSW and ACT and Queensland. A majority of early childhood teachers employed in long day care centres in Australia are employed in NSW.

GROUNDINGS

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.

Feature 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 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 *Educational and Care Services National Regulations*, made pursuant to *Children (Educational 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 developed 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 were between \$3,000 and \$11,000 per annum, depending on the step of the scale, above the wage rates in the Teachers Modern Award. The transition provisions ceased to have effect at 1 July 2014 and the wage rates dropped by this amount, exacerbating 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 results 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 the 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;
 - 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. Professional engineers.
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 difference 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 applied 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 professional engineers with three or four years university qualifications. 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 Provision 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 values of the work of early childhood teachers in long day care centres and preschools compared to other employees doing work of comparable values. Furthermore, the transitional provisions only applied to some employees and ended in 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 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 gender 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 provision on Part 2-7 of the Chapter of the *Act*.

Relief Sought

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