

From: Ben Cooper
Sent: Tuesday, 29 November 2016 2:36 PM
To: Chambers - Ross J
Cc: AMOD
Subject: AM2014/263

Dear Ms Richardson

We refer to the above matter and advise that we act for G8 Education.

We respectfully request that we be able to appear at hearing on 6 December 2016 by videolink from Brisbane.

We also attach the affidavit of Ms Jessica Battersby, Human Resources Manager, which is made in support of the submissions previously filed.

Sincerely

Ben Cooper

Ben Cooper
Associate Director



Employment & Industrial Relations |
Human Resources & Relationships |
Organisational Advisors & Psychologists |

FAIR WORK COMMISSION

Fair Work Act 2009 (Cth)

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR VARIATION OF CHILDREN'S SERVICES AWARD 2010 (s.156) – AM2014/263

AFFIDAVIT OF JESSICA BATTERSBY

I, Jessica Battersby, of [REDACTED] in the State of Queensland, make oath and swear as follows:

1. I am the Human Resources Manager of G8 Education Limited ('G8 Education'), and I am authorised to make this affidavit on its behalf.
2. This affidavit supports the making of variations to the *Children's Services Award 2010* ('Children's Services Award') in accordance with written submissions provided to the Commission on 12 November 2015 and 2 September 2016 on behalf of G8 Education.

Background

3. G8 Education has operated since 2006 and is now one of Australia's largest providers of developmental and educational child care services. G8 Education currently owns and operates 485 centres across Queensland, New South Wales, Victoria, Australian Capital Territory, Western Australia, South Australia and Tasmania. There are more than 72,750 children attending G8 Education's services in any given week and 11,000 employees educating those children.
4. There is no express provision in the Children's Services Award that allows an employer to classify an employee based on evidence of qualifications upon their appointment. In contrast, clause 13.3 of the *Educational Services (Teachers) Award 2010* ('Teacher's Award') provides that on engagement, an employer may require an employee to produce documentary evidence of qualifications and teaching experience. If an employee has not provided satisfactory evidence, an employer may decline to recognise the relevant qualification or experience until such evidence is provided.

5. The lack of clarity in the Children's Services Award has caused significant operational difficulty and exposed G8 Education to a number of complaints to the Fair Work Ombudsman ('FWO'). In such instances, the employees did not provide evidence of their qualifications or experience at the time of the commencement of their employment, or upon the attainment of qualifications, and subsequently sought back pay some significant time later.
6. The FWO provided written advice relating to their interpretation of the Children's Services Award (see Attachment "A"). In summary, the FWO opines that employees, both new and existing, should be classified and paid according to the completion of the relevant qualification or the application of the required skills and knowledge, irrespective of when they provide evidence of the qualification.

History of Complaints with FWO

7. On 21 April 2015, a complaint was made by a former employee of The Learning Sanctuary Ashwood, alleging that she was paid at the incorrect level. The employee commenced employment on 10 February 2015 and was classified at Level 3.1. The employee claimed that she had been previously employed as a Level 3.4 and was advised that in order for her previous service in the industry to be recognised, she needed to provide a statement of service from a previous employer. The employee did not comply with this reasonable request. Following correspondence with the FWO, this request was eventually satisfied and a back payment of wages was processed.
8. On 9 May 2015, a complaint was made by a former employee of Great Beginnings Aveley. The employee claimed to have been classified and paid incorrectly. Despite having knowledge of G8 Education's policies and procedures, the employee did not provide a statement of service or any other evidence of her qualifications and experience at any stage throughout her employment. Once the matter was referred to the FWO, the employee provided a statement of service and was back paid accordingly.
9. On 14 July 2015, an employee engaged under a traineeship with Community Kids Heathmont Early Education Centre disputed her rate of pay following the completion of the traineeship. The employee continued to be paid as a trainee due to the fact that evidence of the qualification was not provided. The issue was ultimately resolved with receipt and confirmation by the training provider of the employee's certificate of qualification. The employee was subsequently provided with the relevant back payment.

10. Similarly, on 7 September 2015, an employee made a complaint to the FWO in relation to the underpayment of wages at the conclusion of her traineeship. Despite having recently completed a Diploma qualification, the employee had not produced evidence of the qualification and therefore continued to be paid at the level equivalent to completion of a Certificate III. G8 Education agreed to process a back payment of wages.
11. On 10 June 2016, an employee made a complaint to the FWO alleging that she was paid at the incorrect rate. The employee did not provide evidence of service upon commencement and was provided with several opportunities to produce the required evidence in the month's that followed. The employee was informed that she would be back paid from her commencement date once evidence of prior service had been satisfied. The FWO advised that the matter be resolved internally and that no further action was required.

Classification Structure

12. The classification structure contained in the Children's Services Award is strongly aligned with the qualifications attained by an employee. As such, movement from one classification level to another is not only dependant on an employee's skills, responsibilities and duties, but on their qualifications and experience in the industry.
13. There are 36 pay points within the six (6) classification levels for a children's services employee. Progression from one pay point to the next is dependent on possession of a qualification and/or appointment to a particular role, combined with relevant experience.
14. Progression through the classification structure in the Children's Services Award, can be summarised as follows:-

Level	Qualification	Experience	Appointment
1	Nil	New to the industry	N/A
2	AQF Certificate II in Children's Services	12 months at level 1	N/A
3	AQF Certificate III in Children's Services or an equivalent qualification	Alternatively, the employee will possess, in the opinion of the employer, sufficient knowledge or experience to perform the duties at this level	N/A
3.4	AQF Level V Diploma in	Alternatively, the employee	N/A

	Children's Services or equivalent	demonstrates the application of skills and knowledge acquired beyond the competencies required for AQF Certificate III in the ongoing performance of their work,	
4A	<u>Has not obtained</u> an AQF Diploma in Children's Services or equivalent	N/A	Appointed as the person in charge of a group of children in the age range from birth to 12 years or an employee who is appointed as an Authorised Supervisor
4	AQF Diploma in Children's Services or equivalent	N/A	Appointed as the person in charge of a group of children in the age range from birth to 12 years or an employee who is appointed as an Authorised Supervisor
5A	<u>Has not obtained</u> an AQF Level V Diploma in Children's Services or equivalent	N/A	Appointed as an Assistant Director of a service or similar role
5	AQF Level V Diploma in Children's Services or equivalent		Appointed as an Assistant Director of a service or similar role
6A	<u>Has not obtained</u> a relevant Degree or a 3 or 4 year Early Childhood Education qualification, or an AQF Advanced Diploma, or a Diploma in Children's Services, or a Diploma in Out-of-Hours Care or other similar qualification.	<u>Otherwise</u> , a person possessing such experience deemed by the employer or the relevant legislation to be appropriate or required for the position	Appointed as the director of a service.
6	A relevant Degree or a 3 or 4 year Early Childhood Education qualification, or an AQF Advanced Diploma, or a Diploma in Children's Services, or a Diploma in Out-of-Hours Care or other similar qualification.	<u>Otherwise</u> , a person possessing such experience deemed by the employer or the relevant legislation to be appropriate or required for the position	Appointed as the director of a service.

Conclusion

15. In order to ensure that employees are classified in accordance with their skills, responsibilities, qualifications and experience in the industry, and therefore receive the appropriate pay, the Children's Services Award needs to be amended to explicitly state that employers can request proof of an employee's qualifications upon commencement of employment.

16. The Children's Services Award must also expressly state that an employer may decline to recognise the relevant qualification or experience of an employee until satisfactory evidence is provided.

17. The Children's Services Award is also silent as to the classification of employees who have completed additional qualifications after commencement of employment. As such, it is necessary to include a provision in the Children's Services Award to the effect that employees who have attained additional qualifications during their employment will be entitled to be classified and paid from the date satisfactory evidence is provided. In line with the Teacher's Award, employees may be entitled to be back paid from the date of completion of the qualification, provided the employee produced satisfactory evidence to the employer within three (3) months of completion.

18. It is my view that each of the aforementioned proposed amendments to the Children's Services Award are both necessary and appropriate.

Sworn / Affirmed by the deponent
at (place) ...UNIVERSITY LANES.....
on (date) ..28..11..16.....

[Signature]
Signature of deponent

Before me:

[Signature]
Signature of witness

Full name of witness: Sonia Palmer

Qualification of witness: Commissioner for Declarations



Bridget O'Connor

From: COOK,Laura <Laura.Cook@fwo.gov.au>
Sent: Thursday, 5 November 2015 11:44 AM
To: Jessica Battersby
Subject: Notice to produce records or documents [DLM=Sensitive]
Attachments: Notice to produce records or documents.pdf; ATT00002.txt

Sensitive

Hi Jess,

As mentioned last week the FWO sought internal advice relating to our view and interpretation on the Children's Services Award 2010 and the application of G8 Education qualification and evidence of service policy.

I would like to advise our view on the following provisions:

In summary, in our view:

- ? an employer can refuse to classify an employee in a particular classification under the CS Award unless and until the employee satisfies the requirements for classification at that level (of course, a dispute as to whether the employee has satisfied those requirements can be notified to the Fair Work Commission);
- ? a qualification will be "completed" for the purposes of the classification provisions in Schedule B to the CS Award on the date recorded on the certification of completion issued by the relevant training authority;
- ? an existing employee of G8 Education who is seeking classification at Level 3 under the CS Award should be classified and paid as such as of the date they completed the relevant qualification or, in the reasonable opinion of the G8 Education, they are first able to demonstrate the required skills and experience, irrespective of when they provide evidence of the qualification (by way of certification documentation). For the avoidance of doubt, in our view this would require back payment to the date of completion of the qualification or the date the skills and experience were able to be demonstrated;
- ? an existing employee of G8 Education who is seeking classification at Level 3.4 (or Level 3.3 with payment at the Level 3.4 rate) under the CS Award must provide evidence of both the appropriate qualification and the exercise of skills which exceed those required to be exercised by a person with a Certificate III. In addition, as appointment to Level 3.4 is progression within a classification (Level 3), the employee will need to comply with the requirements of clause 14.2 in terms of level of experience and training. Classification at Level 3.4 will only be required when all of these prerequisites are satisfied;
- ? a new employee of G8 Education who is seeking classification at either Level 3 or Level 3.4 under the CS Award and who has the appropriate qualification or skills and experience (in the case of Level 3.4, evidence of both the qualification and the skills and experience will be required) upon commencement should be classified and paid as such as of the date they commenced, irrespective of when they provide evidence of the qualification or skills and experience. For the avoidance of doubt, in our view this would require back payment to the date of completion of the qualification or the date the skills and experience were able to be demonstrated;
- ? it is possible for an employee to be classified at Level 3 under the CS Award without having completed the minimum qualification required (Certificate III or equivalent), provided that in the employer's opinion the employee has sufficient skills and experience. The employee may need to provide evidence to justify this. In our view, the evidence must be reasonably required, although this is not expressly stated in the CS Award. Requesting information from a previous employer clarifying the employee's past experience is one approach an employer might reasonably take, but we believe it would be unreasonable for the employer to refuse to accept any other method of establishing experience and skills.

The interpretation above reaffirms our view and therefore the submission of previous outcomes of request for assistance in relation to these provisions. On this basis we intend to continue to apply our view until a time that our view changes.

Please find attached a Notice to produce records or documents relating to the employment of [REDACTED] and [REDACTED].

Should you have any questions please contact me on the number below.

Kind regards

Laura Cook | Fair Work Inspector
Customer Engagement Team | Dispute Resolution and Compliance Group
Fair Work Ombudsman

T: 07 3404 4744

F: 02 6275 3727

A: Level 25, 400 George Street, Brisbane QLD 4000

E: laura.cook@fwo.gov.au



The Fair Work Ombudsman welcomes feedback about your interaction with the agency and invites you to send feedback to yourfeedback@fwo.gov.au

Alternatively you can send feedback by post to:

Customer Feedback
Fair Work Ombudsman
GPO Box 9887
SYDNEY NSW 2001

Did you know that Modern Award rates of pay increased from 1 July? Learn more about the increase to pay rates by visiting www.fairwork.gov.au and using the same free online calculator, the Pay and Conditions Tool (PACT), that we use.

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