

Matters: AM 2014/11 and AM2014/12

**Proposed Victorian Local Government
(Early Childhood Education Employees) Award 2016**

Further Submissions of the Australian Education Union (Victorian Branch)

1. The Australian Education Union (Victorian Branch) (**AEU**) relies on its previous submissions and affidavit of Ms Shayne Quinn filed in the Fair Work Commission in relation to these matters. The AEU files further submissions in accordance with the directions issued by the Fair Work Commission in the email of 9 May 2016.

Agreement of Parties on draft Award

2. The AEU does not object to the draft Victorian Local Government (Early Childhood Education Employees) Award 2015 ("**draft Award**") filed by Mr David Tozer of Meerkin and Apel Lawyers on 10 August 2015.
3. The parties have reached agreement on the draft Award filed by Mr Tozer. Attached to these further submissions and marked "A" is an email exchange between the parties confirming their agreement to the draft Award.
4. We note the submissions filed by Mr Geoff Pawsey of the Municipal Association of Victoria (**MAV**) in the Fair Work Commission on 11 August 2015. Despite his written and verbal agreement to the draft Award, Mr Pawsey stated that he did not agree to the draft Award for the first time in his submissions of 11 August 2015.
5. Mr Pawsey participated in proceedings before the Fair Work Commission and attended numerous meetings with the AEU and Mr Tozer. Mr Pawsey indicated his agreement to the draft Award filed by Mr Tozer in our discussions and correspondence between the parties. Attachment A shows that Mr Pawsey agreed to the draft Award. Mr Pawsey did not inform the parties that the coverage of the draft Award was in dispute at any stage throughout our discussions or correspondence.

Coverage

6. Ms Pawsey's argument about coverage is completely flawed. The *Victorian Local Government Award 2015* specifically excludes educators (previously classified as assistants). Clause 4.3 of the *Victorian Local Government Award 2015* provides as follows:

4.3 *This award does not cover:*

(a) *the chief executive officer of a local government entity, however described;*

(b) *nurses engaged in accordance with a modern Nurses award;*

(c) *early childhood teachers (university qualified) engaged in accordance with a modern Teachers award;*

(d) *early childhood assistants engaged in accordance with a modern Children's Services award; or*

(e) *local government associations and their employees.*

4.4 *The award does not cover an employee excluded from award coverage by the Act.*

4.5 *The award does not cover employees who are covered by a modern enterprise award, or employers in relation to those employees.*

4.6 *Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.*

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

7. The draft Award is the most appropriate award to cover the work of educators in accordance with clause 4.6 of the *Victorian Local Government Award 2015*.
8. The Consent Variation proposed in Mr Pawsey's submission from paragraph 51 onwards has already been rejected by the Full Bench in the proceedings for the *Victorian Local Government Award 2015*.
9. We refer to the following paragraphs of Ms Shayne Quinn's affidavit filed in the Fair Work Commission on 13 August 2014:

28. The qualification requirements have increased under the NQF. Under the former Children's Services Regulations 1998, there was no requirement for all staff to hold, or actively work toward, a minimum qualification. Such a requirement has been introduced in the Education and Care Services National Law and Regulations.

29. Regulation 126 of the Regulations relevantly states as follows:

126 Centre-based services—general educator qualifications

(1) *The qualification requirements for educators at a centre-based service educating and caring for children preschool age or under are as follows—*

(a) *at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and*

(b) *all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification...*”

30. Regulation 126 also shows the change in language relating to employees other than those holding an early childhood teaching qualification.

31. Prior to the Regulations, educators working in preschool programs with early childhood teachers were classified as Assistants which is also consistent with the nomenclature of the transitional award.

32. Presently, services use the terminology in the Education and Care Services National Law, Regulations and the associated National Standards and NQF and refer to those employees as Educators.

10. It is paramount to maintain the historical distinction between Kindergarten Assistants and Child Care workers due to the increased qualifications required for Educators under the National Quality Framework (“NQF”).

11. We disagree with Mr Pawsey’s statement at paragraph 55 of his submissions that early childhood educators frequently work in both formal early childhood education programs and childcare. It is not common practice for educators to work across formal programs and childcare based on our discussions with AEU members.

12. We note the correspondence filed by the Australian Services Union (**ASU**) on 11 August 2015 and 9 September 2015. The ASU has not been involved in these matters and did not advise the AEU that they intended to send correspondence to the Fair Work Commission. Unlike the MAV, the ASU has not attended discussions between the parties or proceedings before the Fair Work Commission.

13. The draft Award covers local government employees engaged in the provision of preschool programs as educators. Under Part 5 Constitution of the AEU's Federal Rules, Rule 6A states that the following persons employed in Victoria are eligible to be members of the AEU:

- “(i) In a position requiring the occupant to be a qualified kindergarten teacher other than a person employed in a post-secondary education institution as a tutor or lecturer or employed in an administrative capacity by Community Services Victoria;*
 - (ii) As a pre-school play leader in a pre-school subsidized by the Victorian Government;*
 - (iii) In Early Childhood Services provided that the person has a primary or secondary teaching qualification recognised in Victoria, performs professional duties requiring teaching qualifications and is not employed as an officer or employee pursuant to the provisions of the Public Service Act 1974 (Vic.) or any successor thereto; or*
 - (iv) In a Montessori early childhood centre including a pre-school or kindergarten as a qualified teacher.*
 - (v) as a preschool assistant, a kindergarten assistant, an additional assistant (special needs) or a co-ordinator in a preschool or kindergarten or in a Montessori early childhood centre including a preschool or kindergarten with the exception of:*
 - Persons employed in registered non-government schools registered with Registered Schools Board (Victoria) or any successor thereto; and*
 - employees of Local Government unless the main function of their work is the delivery of, or support for the delivery of, a preschool education program in conjunction with a preschool/kindergarten teacher.*
- (b) Any person elected or appointed to a full-time or part-time paid office in the Kindergarten Teachers' Association of Victoria.”*

14. Local government employees engaged in the provision of preschool programs as educators are eligible to become AEU members as we have coverage and standing to represent these employees under our Federal Rules.

15. On the other hand, part 1, Division 5 (Industry and Eligibility) of the ASU's Federal Rules provides that persons in Victoria who are:

"...employed in any of the occupations of social worker, recreation worker, welfare worker, youth worker, community development worker and/or social planner..."

are eligible to be ASU members.

16. Clearly, the ASU does not have coverage of local government employees engaged in the provision of preschool programs under their Rules.

Modern Awards Objective

17. We submit that the draft Award complies with the modern awards objective set out in section 134 of the *Fair Work Act 2009 (Cth)* ("**the Act**"). The Award meets the requirements of Part 2-3 Division 3 of the Act and does not contain any objectionable terms.

18. The draft Award does not hinder collective bargaining. The *Early Education Employees Agreement 2016* was approved by Commissioner Bissett on 19 April 2016 ("**the Agreement**"). The Agreement applies to the majority of employees who are employed as educators in local government.

19. We refer to paragraph 5 of Mr Pawsey's submissions where he states that the former *Local Government Early Childhood Education Employees' Agreement 2009* applies to educators employed in funded four year old preschool/kindergarten programs delivered by councils. The Agreement, and the former *Local Government Early Childhood Education Employees' Agreement 2009*, also applies to educators employed in unfunded three year old preschool/kindergarten programs delivered by councils.

20. The draft Award will have a limited impact on business, including productivity, employment costs, regulatory burden and flexibility, as the terms and conditions of employment in the Agreement refer to these matters.

21. There is no overlap between the modern awards as the *Victorian Local Government Award 2015* specifically excludes educators.

22. The AEU respectfully requests that the Victorian Local Government (Early Childhood Education Employees) Award 2016 is made by the Fair Work Commission in the same terms as the draft Award.

"A"

Amanda Threlfall

From: Chambers - Watson VP <Chambers.Watson.VP@fwc.gov.au>
Sent: Friday, 7 August 2015 11:50 AM
To: 'dt@meerkinapel.com.au'; Amanda Threlfall; 'Geoff Pawsey'
Cc: Brendan Avallone; 'Kate Lehane'; 'hollingworth.ian.c@edumail.vic.gov.au'; David Bunn; 'nschramm@vecci.org.au'; Amanda Watt; Tony Pick
Subject: FW: AM2014/11, AM2014/12 - the Proposed Early Childhood Education Local Government Award

Dear parties,

I refer to the below correspondence and note that the Commission has approved the amended directions proposed.

Kind regards,

Sarah Lis
Associate to Vice President Watson

Fair Work Commission
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chambers.watson.vp@fwc.gov.au

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From: David Tozer [<mailto:dt@meerkinapel.com.au>]
Sent: Thursday, 6 August 2015 3:59 PM
To: Chambers - Lee C
Cc: Amanda Threlfall; Shayne Quinn; 'Geoff Pawsey'
Subject: RE: AM2014/11, AM2014/12 - the Proposed Early Childhood Education Local Government Award

Dear Ms Bulluss,

In relation to the abovementioned matters, I am pleased to advise that the parties have reached agreement in relation to all outstanding issues pertaining to the content of draft Award. Accordingly, I would like to propose that:

1. Meerkin & Apel submit an agreed draft Award for the consideration of the Full Bench by 5pm on Tuesday 11th August 2015.
2. The Australian Education Union submit a letter confirming their agreement to the content of the draft Award by this same deadline.

This is a slight variation from the Directions issued by the Full Bench on 9 June 2015, the relevant Directions were:

*"[6] By 5.00 pm on Tuesday, 11 August 2015, each party will file and serve
(a) a draft Proposed Early Childhood Education Local Government Award; and
(b) written submissions, and any evidence to be relied upon, in relation to the Proposed Early Childhood Education Local Government Award."*

The parties are hopeful that the proposed actions will adequately meet the Directions, given that agreement has been reached.

The parties would also like to thank Commissioner Lee for assisting in guiding the negotiations to a successful resolution.

Yours faithfully
David Tozer
Workplace Relations Advisor

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Amanda Threlfall

From: Geoff Pawsey <GPawsey@mav.asn.au>
Sent: Thursday, 6 August 2015 2:37 PM
To: David Tozer; Amanda Threlfall
Cc: Shayne Quinn
Subject: RE: VICTORIAN LOCAL GOVERNMENT (EARLY CHILDHOOD EDUCATION EMPLOYEES) AWARD 2015

David,

Sounds good to me.

Geoff

Geoff Pawsey
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From: David Tozer [mailto:dt@meerkinapel.com.au]
Sent: Thursday, 6 August 2015 2:33 PM
To: 'Amanda Threlfall'; Geoff Pawsey
Cc: Shayne Quinn
Subject: RE: VICTORIAN LOCAL GOVERNMENT (EARLY CHILDHOOD EDUCATION EMPLOYEES) AWARD 2015

Hi Amanda & Geoff,

This is indeed good news. I am unlikely to be able to get the draft Award submitted by tomorrow but hope to do it early next week.

I can't recall whether Commissioner Lee expected to hear from us by tomorrow evening, however I believe it would be prudent if I emailed his associate to provide an update and to advise that the draft Award will be submitted next week. I am confident that I could submit the draft Award by C.O.B. Tuesday 11th August, which is in line with the original Directions of the Full Bench.

Let me know if you are content with the above 'game plan' and I will get cracking.

Yours faithfully

David Tozer
Workplace Relations Advisor

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From: Amanda Threlfall [<mailto:Amanda.Threlfall@aeuvic.asn.au>]
Sent: Thursday, 6 August 2015 2:15 PM
To: Geoff Pawsey; David Tozer
Cc: Shayne Quinn
Subject: RE: VICTORIAN LOCAL GOVERNMENT (EARLY CHILDHOOD EDUCATION EMPLOYEES) AWARD 2015

Hi Geoff and David,

Thank you for making those amendments to the Award.

The AEU does not object to the proposal that Meerkin and Apel submit the draft Award. The AEU confirms that it will file correspondence in the Fair Work Commission which states that the AEU agrees to the draft Award.

Regards,

Amanda Threlfall
Industrial Officer
AEU Victorian Branch

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Website: www.aeuvic.asn.au



From: Geoff Pawsey [<mailto:GPawsey@mav.asn.au>]
Sent: Thursday, 6 August 2015 9:06 AM
To: Amanda Threlfall; dt@meerkinapel.com.au
Cc: Shayne Quinn
Subject: VICTORIAN LOCAL GOVERNMENT (EARLY CHILDHOOD EDUCATION EMPLOYEES) AWARD 2015

Amanda,

Thank you for drawing these corrections to my attention.

I have made the required amendments to the draft award and attach a copy for your attention.

I propose that M&A submit the draft award to the FWC and for the AEU to submit a letter noting their agreement.

If you are ok with this proposal will you please confirm your agreement with David Tozer.

Regards,

Geoff

Geoff Pawsey
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Municipal Association of Victoria
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From: Amanda Threlfall [<mailto:Amanda.Threlfall@aeuvic.asn.au>]
Sent: Wednesday, 5 August 2015 6:04 PM
To: Geoff Pawsey; dt@meerkinapel.com.au
Cc: Shayne Quinn
Subject: RE: VICTORIAN LOCAL GOVERNMENT (EARLY CHILDHOOD EDUCATION EMPLOYEES) AWARD 2015

Hi Geoff,

Thank you for emailing the draft Victorian Local Government (Early Childhood Education Employees) Award 2015.

This afternoon, Shayne and I met to discuss the Award and we noticed two typographical errors:

1. Clause 19.11 (Non-contact time): The following words are missing at the end of the last sentence "*or perform other duties directed by the employer, for the purpose of planning, preparing, evaluating and programming activities*". We request that these words be inserted into clause 19.11.
2. Clause 22.5: There is a number "3" after the word "*accordance*". We request that the 3 be deleted from clause 22.5.

The AEU confirms that the remainder of the Award reflects the outcome of the parties' discussions.

Regards,

Amanda Threlfall
Industrial Officer
AEU Victorian Branch

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From: Geoff Pawsey [<mailto:GPawsey@mav.asn.au>]
Sent: Tuesday, 4 August 2015 9:07 AM
To: dt@meerkinapel.com.au; Amanda Threlfall
Subject: VICTORIAN LOCAL GOVERNMENT (EARLY CHILDHOOD EDUCATION EMPLOYEES) AWARD 2015

Good morning to you both.

Following our meeting last Friday, I have redrafted the award to reflect the outcome of our discussions.

A copy of the revised document is attached for your review and amendment/confirmation that it accurately reflects our discussions.

If there is any issue arising from this latest version then please raise this with the other parties as soon as possible.

Subject to final confirmation, I take it that both M&A and the AEU will formally submit the draft award to Commissioner Lee as an agreed position by both parties.

I would like to thank everyone involved for the effort put into arriving at an agreed position.

Regards,

Geoff

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