

Our Ref: DT: DB: 160010

20 May 2016

Ms Sarah Lis  
Associate to Vice President Watson  
Fair Work Commission  
GPO Box 1994  
**MELBOURNE VIC 3001**

**By Email:**  
[chambers.watson.vp@fwc.gov.au](mailto:chambers.watson.vp@fwc.gov.au)

Dear Ms Lis

**MATTER NO. AM 20145/11 EARLY CHILDHOOD TEACHERS INTERIM AWARD 1999**

**MATTER NO. AM 2014/12 EDUCATIONAL SERVICES – EARLY CHILDHOOD ASSISTANTS VICTORIA AWARD 1999**

Please find attached "*Submissions in response to MAV submissions – 11 August 2015*" as per correspondence dated 9 May 2016 relating to the abovementioned matters.

Please do not hesitate to contact us if you require any further information.

Yours sincerely



DAVID TOZER

Enc

Cc: Ms Amanda Threlfall: [Amanda.Threlfall@aeuvic.asn.au](mailto:Amanda.Threlfall@aeuvic.asn.au)  
Mr Geoff Pawsey: [GPawsey@mav.asn.au](mailto:GPawsey@mav.asn.au)

**MEERKIN & APEL LAWYERS**

56 GREVILLE STREET PRAHRAN

VICTORIA AUSTRALIA 3181

PO BOX 2207 PRAHRAN 3181

TELEPHONE 61 3 9510 0366

FACSIMILE 61 3 9510 0399

[ma@meerkinapel.com.au](mailto:ma@meerkinapel.com.au)

[WWW.MEERKINAPEL.COM.AU](http://WWW.MEERKINAPEL.COM.AU)

**PARTNERS**

ISAAC APEL

MICHAEL CZARNY

RODNEY SAW

MARVIN WEINBERG

EMANUEL TUMINO

GARY KATZ

HUGH MACLAREN

HOWARD CHAIT

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**MATTER NO. AM 2014/12 EDUCATIONAL SERVICES – EARLY CHILDHOOD ASSISTANTS VICTORIA AWARD 1999**

**STATE REFERENCE PUBLIC SECTOR TRANSITIONAL AWARD MODERNISATION PROCESS**

**Submissions – Response to Municipal Association of Victoria (MAV) Submissions (11 Aug 2015)**

1. In accordance with correspondence from the Full Bench of the Fair Work Commission (FWC) on 9 May 2016 in relation to the abovementioned matters, Meerkin & Apel submits the following in relation to submissions made by the Municipal Association of Victoria (MAV) on 11 August 2015:
2. The standing of the MAV in relation to the above mentioned matters is questionable. The MAV has previously described itself as an “interested observer”
3. The MAV did not nominate itself as a party to the matters.
4. The MAV did not make submissions with the original directions issued by FWC by July 2014.
5. The MAV's first participation in the matters was in the form of a response to submissions made by the Australian Education Union (AEU) on 13 August 2014, in which the MAV made the following statement in relation to their participation:

*“2. This submission relates specifically to matters arising from the submission dated 25 July 2014 by the Australian Education Union (AEU) as they relate to the Local Government Sector.*

*3. The Municipal Association of Victoria (MAV) is currently negotiating a new multi enterprise agreement to replace the Local Government Early Childhood Education Employees’ Agreement 2009 on behalf of the 24 councils listed in Schedule 1”*
6. The MAV participated in subsequent hearings and conferences, in which the participation was described as an interested observer, rather than a participating party.
7. The parties relevant to the above mentioned matters (The AEU & Meerkin & Apel) participated in a number of negotiation meetings with the objective of reaching agreement in relation to a draft Modern Award. The parties consented to the presence of the MAV in the negotiations, based on the MAV's role as lead negotiator for 24 Local Government Authorities in bargaining for a new Multi Employer Collective Agreement, to cover Kindergarten Teachers and Assistants/Educators.
8. The parties (including the MAV) reached agreement in relation to the content of the draft *Victorian Local Government (Early Childhood Education Employees) Award 2015* (the draft Award). The MAV did not identify any items that were in dispute or not agreed.

9. In correspondence between the parties, immediately prior to the draft Award being submitted (6 August 2015), the MAV made the following comments:

*“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.”*

10. The draft Award was submitted by Meerkin & Apel on 10 August 2015. The AEU confirmed (11 August 2015) that all terms and conditions contained in the draft Award was agreed. The submissions made by the MAV, objecting to coverage provisions contained in the draft Award were lodged on 11 August 2015.
11. We now turn to the specific objection to coverage submitted by the MAV.
12. The MAV maintains that their interest in these matters is contained to the influence that a Modern Award would have on bargaining for a Multi Employer Collective Agreement to replace the Local Government Early Childhood Education Employees Agreement 2009 (LGECEEA).
13. However negotiations for this new agreement have successfully concluded and have resulted in FWC approval of the *“Early Education Employees Agreement 2015”* (EEEE) ([2016] FWCA 2476, 19 April 2016).
14. The coverage clause contained in the EEEA (Clause 4) is somewhat vague which may or may not have been intentional:

***“COVERAGE OF THE AGREEMENT***

*This Agreement covers:*

- a) employers listed in Schedule 1;*
- b) employees of employers listed in Schedule 1 as defined in this Agreement;*
- c) Australian Education Union; and*
- d) United Voice.”*

***“SCHEDULE1-EMPLOYERS***

- Ballarat City Council*
- Banyule City Council*
- Corangamite Shire Council*
- Glenelg Shire Council*
- Golden Plains Shire Council*
- Greater Geelong City Council*
- Greater Shepparton City Council*
- Knox City Council*
- Latrobe City Council*
- Loddon Shire Council*
- Macedon Ranges Shire Council*
- Mitchell Shire Council*
- Moyne Shire Council*
- Northern Grampians Shire Council*

- Surf Coast Shire Council
- Towong Shire Council
- Warrnambool City Council
- West Wimmera Shire Council
- Wodonga City Council
- Wyndham City Council
- Yarra Ranges Shire Council
- Yarriambiack Shire Council"

15. Notwithstanding the unclear coverage clause, the EEEA contains definitions for Teachers and Educators, as well as providing minimum rates of pay for such employees:

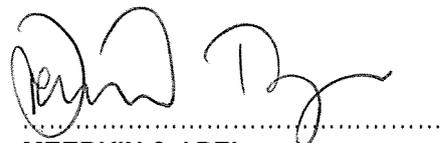
***“Definitions***

*Diploma Qualified Early Childhood Educator” means an employee engaged as such who is required to hold a diploma qualification approved by ACECQA for the purposes of the National Law and published in accordance with Regulation 137(1 )(b) of the Education and Care Services National Regulations 2011. Employees who are employed in a program that is operated in a long day care centre are excluded.”*

16. The employers covered by the EEEA have interpreted the provisions such that the EEEA covers both Teachers and Educators who work in funded Kindergarten Programs. This coverage is substantially the same as the coverage arrangements contained in the draft Award.
17. We submit that if the issues raised by the MAV in their submissions regarding the need for flexibility were so critical, then the appropriate instrument to create such flexibility would be an Enterprise Agreement.
18. The approval of the draft award would present no restriction to achieving flexibility in early childhood education and care through enterprise bargaining.
19. However, we submit that the existence of a Multi Employer Collective Agreement that relates to Teachers and Educators, creates barriers to achieving flexibility, not the approval of the draft Award.
20. We agree with the MAV submissions that suggest that it would be ideal for Local Government employees to be able to be rostered in both funded Kindergarten programs and other ‘child care’ environments, however this flexibility does not relate only to Educators. Particularly in smaller regional and rural Councils there are examples of agreement between employers and qualified Teachers to be rostered in child care environments. Once again, the approval of the draft Award does not prevent such arrangements from occurring. Arguably, the EEEA is the primary barrier to greater flexibility.
21. Ultimately, the approval of a Modern Award will only be relevant for the purposes of the Better Off Overall Test, given that all employees in Local Government are covered by comprehensive Enterprise Agreements.
22. The parties to this process have produced an agreed draft Award that complies with the requirements set out in the Fair Work Act. The draft Award does not offend any of the objectives set out in Section 134.

23. The MAV submissions do not raise any valid reasons as to why the draft Award should not be approved and there is no need for amendment to the coverage provisions contained in the Victorian Local Government Award 2015.
24. We respectfully submit that the proposed award that has been agreed by the parties be approved.
25. As stated in our previous submissions, Meerkin & Apel has no objection to a decision being made on the papers.

**DATED: 20 May 2016**



MEERKIN & APEL