

Our ref: WXR 200977  
Your ref: AM 2020/6



30 April 2020

Deputy President Clancy  
Fair Work Commission  
Level 10, 80 William Street  
EAST SYDNEY NSW 2011

Via email: [Chambers.Clancy.DP@fwc.gov.au](mailto:Chambers.Clancy.DP@fwc.gov.au)

Dear Deputy Commissioner

**AM 2020/6 - Application to Vary Education Services (Schools) General Staff Award 2010 (the Schools Award)**

We refer to our attendance at the case conference on 12 March 2020.

We appear on behalf of the Federation of Parents and Citizens Association of New South Wales (**P&C NSW**). At the case conference we were invited to make further submissions on behalf of the application and to provide a schedule setting out comparative rates between existing awards and the intended rates that would be applicable pursuant to the Schools Award.

Our comments are made as an addendum to our original submission dated 7 November 2019.

**Comparison of rates**

We note the invitation by the Deputy President to forward a spreadsheet comparing rates between what P&C NSW understands to be the awards that cover employees typically employed by P&C's and annex it.

**Award Coverage of P&C's in NSW**

As per paragraph 3.2 of P&C's earlier submissions, it is our current view that the P&C's are excluded from the coverage by the Schools Award (in its current form). However, it is simply not clear. We are seeking a variation to the Schools Award it to make clear that the Schools Award covers employees of P&C's within its nominated classifications.

The threshold question for coverage is whether P&C's are *engaged in* the School Education Industry; which in turn is defined in Clause 3 of the Schools Award as meaning "... *the provision of education...*".



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**SYDNEY NEWCASTLE CANBERRA MELBOURNE BRISBANE**

A reason to accept that the P&C's are engaged in the School Education Industry lies in the objects of P&C's as outline in the *Education Act NSW (1990)* (The Act). Part 11 of the Act is dedicated towards the establishment of "Parents and Citizens Associations".

Section 116 of the Act sets objects of such an association which are:

- (a) *to promote the interests of the school by bringing parents, citizens, students and teaching staff and close cooperation, and*
- (b) *to assist in providing facilities and equipment for the school and promoting the recreation and welfare of the students at the school, and*
- (c) *to encourage parent and community participation in curriculum and other education issues in schools where there is no school council."*

Subparagraph 116(2) goes on to state the functions of the association's as including:

"

- (a) *to report, when requested by the Minister, on the material requirements of the school and advise on the subject of maintenance of the school, alterations and additions to school facilities and the selection of new sites;*
- (b) *to assist and cooperate with teaching staff in public functions associated with the school,*
- (c) *to be responsible for the election of parent representatives to any school council...*
- (d) *to assist in any other matters which the Ministers may seek the cooperation of the Association and to exercise such functions as prescribed by the [Education] Regulations."*

A further complication as to the coverage of P&C's by the School's Award lies in clause 3 of the Act (Definitions and Interpretation), where the phrase **General Employee** defines a list of nine different areas within schools (each with its own list of roles) which is covered by that phrase. However, that definition qualifies its expansive list of roles with the following statement:

**"General Employee means an employee of a school providing:"**

Having defined such a specific but expansive term ('General employee') it is rarely and inconsequentially used elsewhere in the Schools Award.

In particular, in the critical clause 4.1 of the Schools Award, instead of:

*'... and their **general employees** employed in the classifications contained in Schedule B to the exclusion of any other modern award',*

(which would clearly have excluded coverage of P&C's, the less confined phrase:

*'... and their **employees** employed in the classifications contained in Schedule B to the exclusion of any other modern award'*

was used.

As a consequence of the above arguments, the Schools Award may – in its current form - provide coverage for P&C's. However, this is not certain, as the rates differ between the award and therefore, the risks are high for volunteer committees to adopt that position. Hence, P&C NSW requires a variation of the Schools award to incorporate the P&C's.

### **Addition of Out of School Hours Care (OOSH)**

Of the approximately 1745 P&C's that are members of P&C NSW, approximately 50 operate OOSH. Accordingly, we have included the comparison rates for workers within those centres. We invite you to consider the comparison of rates under the current *Child Services Award* and the Schools Award. You will note that there is a good comparison in rates until senior levels. Our instructions are (and we can provide evidence in due course) that the overwhelming majority of employees employed at an OOSH are employed at the junior levels where the Schools Award is advantageous. Throughout the table, you will see that the proposal will not disadvantage the overall majority of workers. In fact, most of them will be slightly advantaged by the change.

Further, any of the directors of the OOSH Centres that are qualified as teachers/early childhood teachers are covered by the *Educational Services (Teacher) Award 2010* and will remain covered by that award.

### **Coverage issue a Definition of P & C.**

We have not included submissions regarding the appropriate definition of a 'P&C' at this time, noting that the intervention of other P&C related parties – in particular from interstate or the independent schools – will have a major influence on the appropriate scope of the definition of P&C to this Schools Award.

The definition of P&C for the purposes of the Schools Award variation could be broad:

*'Parents and Citizens Association employer means an incorporated or not incorporated, not-for-profit, school-based organisation consisting of parents, teachers and interested parties, established under the requisite State Education Act, for the purpose of supporting a school for the benefit of the school students'*

Or narrower and more specific – being the definition set out in Section 114 of the *Education Act (NSW)*:

*'... an association constituted under this Act and consisting of parents of children attending any government school together with other residents of the district served by the school who are interested in the welfare of the school.'*

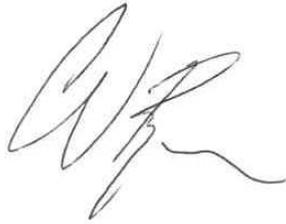
### **Provision of Evidence**

Our client can provide evidence as required by the Fair Work Commission as to the actual numbers of Assistant Directors and Directors and/or Book keepers that are employed by P&C's and likely to be subject to the rates pursuant to the School's Award.

We await further directions from the Fair Work Commission.

Yours faithfully

**HICKSONS**

A handwritten signature in black ink, appearing to read 'WR', is positioned below the company name. The signature is fluid and cursive.

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## **Annexure**

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[Spreadsheet showing comparison for 3 awards and EA rates](#)