

IN THE FAIR WORK COMMISSION

Matter Number: AM2014/263, AM2014/266, AM2018/18 and AM2018/20

Fair Work Act 2009 - Part 2-3, Div 4 –s.156 - 4 yearly review of modern awards

Group 4A awards: Children’s Services Award 2010 [MA000120]; Educational Services (Teachers) Award 2010 [MA000077]

STATEMENT OF LISA JAMES

I, Lisa James of [REDACTED] in the State of New South Wales, say:

1. I am employed as an Early Childhood Organiser by the Independent Education Union of Australia (NSW/ACT Branch).
2. My qualifications are as follows:

1994-1997: Bachelor of Teaching (Early Childhood), Macquarie University. I am qualified to teach children from 0 - 8 years of age.

2005-2007: Master of Early Childhood, Macquarie University. I completed the compulsory Introduction to Educational Research Methods and chose to focus on special needs and professional issues in elective subject assessment tasks. These included Bilingualism, Emotion Regulation, Early Intervention, Communication Development in Children with Autism, The Influence of Visual Arts on a Child with Global Delay, Leadership, The Changing Family Context, The National Competition Policy and The National Child Public Health Strategic Framework for Children 2005-2008.

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3. My employment experience is as follows:

2007 – Present	Early Childhood Organiser, NSW IEU and then IEUA (NSW/ACT Branch)
2002-2007	Special Needs Teacher, Lorikeet Child Care Centre
2000-2001	Early Childhood Teacher, KU Barra Brui Preschool
1998–1999	Early Childhood Teacher, Emmerick Street Community Preschool
1998	Early Childhood Teacher, The Chase Kindergarten

4. Since 2007, my responsibilities have primarily concerned the early childhood sector of our membership. As an Organiser I have made at least one thousand workplace visits to about 500 different early childhood services across NSW to attend meetings with current and prospective early childhood members. During these visits it is my responsibility to answer questions that teachers ask regarding their role, entitlements and working conditions. Many other Union officers refer questions regarding early childhood services to me due to my experience as an early childhood teacher.
5. I have assisted the federal office of the Union write submissions for various government inquiries including the *Inquiry into the Provision of Childcare*, the Federal Government's policy regarding *Early Childhood Education and Care* and the *Early Years Learning Framework*. I gave evidence and assisted with the Union's submission to the 2014 Productivity Commission *Review of the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* and met with the Productivity Commission in the ACT in 2010 regarding their *Workforce Study*. On behalf of the Union I also provided a submission to the New South Wales Government on *Strengthening Early Childhood Education* and feedback on *Regulation Impact Statements*.

Traditional award coverage of directors

6. Historically, where the Director of an early childcare centre holds teaching qualifications, they are paid a teacher's salary plus a director's allowance.
7. Until 2009, two state awards covered teachers in the early childhood profession in NSW.

They were the *Teachers (Non-Government Pre-Schools) (State) Award* and the *Teachers (Non-Government Early Childhood Service Centres Other than Pre-Schools) (State) Award* (the State Awards). These awards applied to teacher-qualified directors. These awards have been replaced by the modern Educational Services (Teachers) Award 2010.

8. In the course of preparing for these proceedings I have reviewed the following awards:
 - (a) *Teachers (Non-Government Pre-Schools) (State) Award 1997* B5106 NSWIG 300 113.
(annexed and marked **Annexure 1**)
 - (b) *Teachers (Non-Government Early Childhood Service Centres Other Than Pre-Schools) (State) Award 1997* B5105 NSWIG 300 150 (annexed and marked **Annexure 2**)
 - (c) *Teachers (Non-Government Pre-Schools) (State) Award 2002* C1183 NSWIG 335 629.
(annexed and marked **Annexure 3**)
 - (d) *Teachers (Non-Government Early Childhood Service Centres Other Than Pre-Schools) (State) Award 2002* C1171 NSWIG 335 594. (annexed and marked **Annexure 4**)
 - (e) *Teachers (Non-Government Pre-Schools) (State) Award 2006* C4464 NSWIG 359 275.
(annexed and marked **Annexure 5**)
 - (f) *Teachers (Non-Government Early Childhood Service Centres Other Than Pre-Schools) (State) Award 2006* C4463 NSWIG 359 307. (annexed and marked **Annexure 6**)
9. Under the *Teachers (Non-Government Pre-Schools) (State) Award 2006* subclause 1(b) and the *Teachers (Non-Government Early Childhood Service Centres Other Than Pre-Schools) (State) Award 2006* subclause 1(c) Director was defined : “*Director*” means the teacher who is responsible for the day to day operation and management of the Early Childhood Services Centre as defined in subclause (d) of this clause, holding Early Childhood qualifications as defined in subclause (p), (q), (r) and (s) of this clause. These subclauses, in addition to (t) describe the qualifications required to be recognised as a teacher.
10. Under the *Teachers (Non-Government Pre-Schools) (State) Award 1997* (Annexure 1) clause 2(b), ““*Director*” means the teacher who is responsible for the day-to-day operation of a pre-school, as defined in subclause (c) of this clause.”. The *Teachers (Non-Government Early Childhood Service Centres Other Than Pre-Schools) (State) Award 1997*

(Annexure 2) at clause 2(c) states that a: “*“Director” means the teacher who is responsible for the day-to-day operation of the early childhood services centre, as defined in subclause (d) of this clause, holding early childhood qualifications as defined in subclauses (q), (r), (s) and (t) of this clause.*” Subclauses (q), (r), (s) and (t) define the various types of teachers and the qualifications required at each particular level.

11. By contrast, the *Miscellaneous Workers’ – Kindergartens and Child Care Centres, &c. (State) Award 2006* (annexed and marked **Annexure 7**) did not include employees employed as Directors, nor any qualified teachers, with the highest classification specified in subclause 8(xi) as Coordinator: Qualified. A *Co-ordinator: Qualified* “means a qualified carer who holds the Diploma in Children’s Services, an Associate Diploma in Social Science (Child Studies) from TAFE or equivalent qualifications which are recognised under the Children and Young Persons (Care and Protection) Act 1998 as amended, and who is appointed by the employer to co-ordinate, administer and manage a service.”
12. In my understanding that teachers and directors with teaching qualifications have always been covered by separate industrial instruments to Diploma and Certificate qualified educators.

National Quality Framework & legislative requirements

13. As the person responsible for the management of an early childhood service, a director utilises the knowledge acquired through completing their teaching qualification and their teaching experience on a daily basis. For example, they are responsible for ensuring that the centre meets the requirements of the National Quality Standards.
14. The Director is usually also the Nominated Supervisor. According to the *National Quality Framework Information Sheet* (annexed and marked as **Annexure 8**), Nominated Supervisors have responsibility for Educational programs, specifically:
“ensuring educational programs are:
 - i. Based on and delivered in accordance with an approved learning framework

- ii. *Based on the developmental needs, interests and experiences of each child*
- iii. *Designed to take into account the individual differences of each child."*

15. Teachers have extensive knowledge of early childhood pedagogy including modelling, scaffolding learning, facilitating sustained shared thinking, implementing an effective programming cycle and linking observations of children to child development theorists and the learning outcomes in the *Early Years Learning Framework*. This depth of knowledge enables teachers and teacher-qualified directors to mentor less qualified employees regarding the implementation of the Early Years Learning Framework and the evaluation of children's progress in relation to specific learning outcomes. The *Early Years Learning Framework* is annexed and marked as **Annexure 9**).
16. A director uses their skills obtained as part of their Teaching qualification on a day to day basis. Directors use the knowledge they acquired at university whilst undertaking their teaching studies when managing the service, developing and updating the service's Quality Improvement Plan as well as developing and implementing training for lesser qualified employees on the implementation of the Early Years Learning Framework. A recent meta-analysis conducted by Manning, Garvis et al in 2017 confirmed a positive and statistically significant relationship between teacher qualifications and the quality of the early childhood learning environment including program structure and activities, language, reasoning and interactions. The meta-analysis is annexed and marked as **Annexure 10**. A teacher employed as a director is still a teacher and employed as such.

Teacher accreditation and registration

17. Registration is not a requirement for Early Childhood Teachers under the National Quality Framework (NQF) but is a requirement for Early Childhood Teachers under some state and territory legislation (e.g. *Teacher Accreditation Act 2004* in NSW, the *Teacher Registration Act 2012* in WA and the *Education and Training Reform Act 2006* in Victoria). State and territory legislation reflects a nationally consistent approach to teacher registration for teachers in schools and, as determined by the state/territory legislation, in other educational settings, based on the *Australian Professional Standards for Teachers*

(Standards) that have been developed by the Australian Institute for Teaching and School Leadership (AITSL). The Standards are annexed as **Annexure 11**.

18. In order for an employer to include a teacher-qualified director in the number of qualified teachers required to be employed in the centre according to the National Regulations, the teacher-qualified director must maintain their teacher accreditation where this is applicable in their State or Territory. Employers who include office-based directors in the number of qualified teachers required by the National Regulation are reliant upon these teacher qualified Directors maintaining their Teacher Accreditation. This means such office-based directors must continue to meet the Australian Professional Standards for Teachers at Proficient level, must complete 100 hours of Professional Development directly related to the APST in each 5 year maintenance period (or 7 years if employed part time) and must pay an annual \$100 registration fee to the NSW Education Standards Authority, just like any other qualified teacher. The Accreditation in NSW - *global journey map* outlining the processes for all levels of accreditation with the NSW Education Standards Authority (including the Maintenance of Accreditation Cycle) is annexed and marked as **Annexure 12**.
19. All accredited teachers in NSW are required to submit a declaration that they have continued to meet the APST during their maintenance cycle. After a teacher has made their declaration, a colleague who is accredited at Proficient Teacher or above or a NESA designated officer must make an attestation stating whether the teacher has maintained their practice against the APST during their accreditation maintenance cycle. NESA has given the Union very clear advice that a teacher who accepts a position as an educator (as opposed to a teacher) cannot maintain their accreditation. NESA's advice to the IEU is annexed and marked as **Annexure 13**).
20. Each new graduate is assigned an Accreditation Supervisor who is paid to provide 10 to 18 hours of support per Provisional Teacher, including the writing of a final report detailing the teacher's progress in terms of the APST. Early career teachers need to be mentored on an ongoing basis in the workplace in order to develop their teaching skills and be provided with feedback on their proposed documentation, which is required to apply for Proficient

Teacher status. If the director is teacher-qualified, the role of mentoring early career teachers to ensure they are meeting the Australian Professional Standards for Teachers usually falls to the director. Early career teachers employed in Catholic Schools in NSW are provided with up to 18 days per year and those employed by the Department of Education receive 2 hours per week away from face-to-face teaching, specifically for the purpose of receiving mentoring and to complete the paperwork required to apply for Proficient Teacher status. Schools understand that it is vital for graduates to have access to a Proficient Teacher mentor on a regular basis. Mentoring takes the form of discussions, providing information and research that may be useful to the developing teacher, in addition to holding discussions on pedagogy, programming, assessment of student learning and the APST.

Treatment of Directors in practice through agreement making

21. In the more than 650 preschools and long day care centres covered by IEU Enterprise Agreements, all teacher qualified directors, regardless of whether they are teaching directors or office-based, are paid the applicable teacher salary in addition to a Director's Allowance.
22. For example, Goodstart Early Learning employs teacher-qualified office-based directors in many of their 649 centres. Goodstart pays these directors the teacher's salary in addition to a Director's Allowance of up to \$8,857 per annum (increases to \$9,229 as of 23/2/19). The *Goodstart Early Learning Enterprise Agreement 2016* is annexed and marked **Annexure 14** and the NSW 2016-18 pay rates are annexed and marked **Annexure 15**.
23. KU Children's Services employs teachers in teaching director and office-based director roles in their 120 services. KU pay all of their teacher-qualified directors the teacher's salary in addition to a Director's Allowance of up to \$20,283 per annum. The *KU Children's Services Teachers Early Learning Enterprise Agreement* is annexed and marked **Annexure 16**.

24. Uniting Early Learning employs teachers in teaching director and office-based director roles in their 59 services. Uniting pay all teacher-qualified directors the teacher's salary in addition to a Director's Allowance of up to \$12,221 per annum. The *Uniting Early Learning Enterprise Agreement 2017-2019* is annexed and marked **Annexure 17**.
25. Integricare Children's Services employs teachers in teaching director and office-based director roles. Integricare pays the teacher-qualified directors in their 7 services the teacher's salary in addition to a Director's Allowance of up to \$10,681 per annum. The *Integricare Children's Services Employee Agreement 2017* is annexed and marked **Annexure 18**.
26. Western Sydney University Early Learning Services employs teachers in teaching director and office-based director roles. Integricare pays the teacher-qualified directors in their 7 services the teacher's salary in addition to a Director's Allowance of up to \$17,276 per annum in their 6 services. The *Western Sydney University Early Learning Services Enterprise Agreement (2016-2019)* is annexed and marked **Annexure 19**.

Disputes re the classification of directors

27. However, some for-profit childcare centres pay teacher Directors at the rates set out in Children's Services Award 2010, which in the IEU's view is incorrect. I have been involved in several disputes about this, some of which I describe below.
28. Member ML was employed at a long day care centre as a Director under the Educational Services (Teachers) Award. In 2014 this centre was taken over by G8, who changed ML's job title from Director to "Centre Manager" and informed her that going forward ML would be employed under the Children's Services Award. ML questioned this change of award and G8 responded that they considered her previous employer had incorrectly employed her under the *Educational Services (Teachers) Award*, but they would continue to pay her current rate of pay "as an above award payment". ML's redacted Award Reclassification Letter is annexed and marked as **Annexure 20**.

29. Union Member JG was employed as an office-based Director in a not-for-profit service that closed in 2016. This centre paid JG as a 4 year trained teacher on the top incremental step plus a Director's Allowance. Guardian Early Learning Group offered JG a role as an office Based Director to be employed under the Children's Services Award at \$28.11 per hour, which was \$18.00 per hour less than she was paid at the not-for-profit service. JG declined the offer. Guardian Early Learning Group then agreed to match JG's rate of pay but still insisted on employing her under the *Children's Services Award*. JG's redacted contracts are annexed and marked as **Annexure 21** and **Annexure 22**.

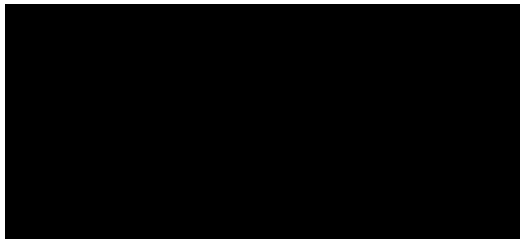
30. In 2017, member MS sought advice from the Union regarding her contract as a Director with Cherry Blossom Early Learning Centre. This contract stated that MS would be employed under the *Children's Services Award* despite her Job Description, which stated MS would be expected "*To ensure the delivery of the children's program is in accordance with the services [sic] philosophy, goals, aims, objectives, policies and procedures*" and "*To oversee, advice [sic] and support staff in the implementation of the programs, ensuring that all individual children's needs are met...*" "Person Specification" included "*Experience in planning and implementing an early childhood program*". The incomplete Employment Contract provided to MS is annexed and marked as **Annexure 23** and her job description is annexed and marked as **Annexure 24**.

31. In 2017, member RM sought telephone advice after being offered a position as a Director at Lawrence Community Preschool under the *Children's Services Award*. The Union advised RM of the correct Award and corresponding rate of pay. Once advised of this error, the Preschool immediately agreed to pay RM according to the correct Award rate and it appears that the Preschool were genuinely confused by the wording in the *Children's Services Award* and thought this Award applied to teaching directors.

Minimum Engagement for Casuals

32. In my role as Organiser, I have come across employers in the early childhood sector that have read Clause 14.5 of the *Educational Services (Teachers) Award 2010* as giving them the right to pay a teacher for quarter day if they work less than half a day.

33. In my view, the disputes and issues described in the above paragraphs arise due to an ambiguity in the drafting of the *Educational Services (Teachers) Award 2010*.



Lisa James

Date: 15 March 2019