

**IN THE FAIR WORK COMMISSION
AT SYDNEY**

**EQUAL REMUNERATION CASE
(C2013/6333)**

**OUTLINE OF SUBMISSIONS
INDEPENDENT EDUCATION UNION OF AUSTRALIA**

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A. SUMMARY

1. The Independent Education Union of Australia (IEU) seeks an equal remuneration order pursuant to Part 2-7 of the Fair Work Act 2009 (Cth) (the Act) to increase the remuneration of early childhood teachers who are employed to work in long day care centres and preschools across Australia.¹

Primary relief

2. The draft order contained in the Application would require such teachers to be paid the same as primary school teachers in NSW.
3. The necessary jurisdictional prerequisite for such relief² is readily established by comparing female early childhood teachers in long day centres and preschools (**‘early childhood teachers’**) to male primary school teachers in

¹ As noted below, in light of the coverage of the IEU no claim is made in respect of teachers at a pre-school, kindergarten or child-care centre in Western Australia if they are not employed by a non-government school.

² See *Equal Remuneration Decision 2015* 2015 FWCFB 8200 at [158], [290] and [304].

NSW employed in government and catholic systemic schools (**‘primary school teachers’**):

- a. That the two groups of workers perform work of equal or comparable value cannot be doubted, noting amongst other matters:
 - i. Early childhood teachers have the same or similar qualifications and training as primary school teachers (if an early childhood teacher is registered or accredited as a teacher in accordance with State legislation, then the teacher is also registered to teach in a primary school);;
 - ii. Where there is accreditation or registration of early childhood teachers under state legislation, they have to meet the exact same nationally accredited competency standards as primary school teachers;
 - iii. The work done by early childhood teachers is essentially the same as the work done by primary school teachers (especially those teaching the first 3 grades of primary school) – to the extent they are different, the responsibilities of an early childhood teacher are greater;
 - iv. The two groups are covered by the same Modern Award³ and the Award does not differentiate between such teachers as to classification, conditions or rates of pay (other than providing 4% higher pay for early childhood teachers if they do not work school terms and work 48 weeks a year⁴ and an additional allowance for those employed as a director of a preschool or childcare centre).⁵
- b. Nor can it be doubted that primary school teachers employed in government and catholic systemic schools in NSW, who are paid pursuant to rates set out in enterprise agreements, have higher remuneration than the early childhood teachers in respect of whom the equal remuneration order is sought. Early childhood teachers, particularly in long day care centres, are usually employed on minimum Award rates. A minority are engaged on an enterprise agreement, and many of those agreements provide rates not substantially above the Award rates.⁶ (No order is sought in respect of the small number of early childhood teachers who are already receiving teacher rates, which would include those early childhood

³ *Educational Services (Teachers) Award 2010* (‘the Teachers Modern Award’).

⁴ See clause 14.2.

⁵ See clause 15.1.

⁶ See statement of Carol Matthews.

teachers who teach in preschools attached to a school who are paid the teacher rates that apply to teachers at that school.⁷)

4. If the draft order were made it would mean that early childhood teachers who are paid at the Modern Award rate (which make up a sizable majority), would obtain an increase in remuneration of 25% to 59% depending on their classification.
5. The proposed order would be made as a matter of discretion for the reasons set out in section P below.

Alternative basis for relief

6. In the alternative, the IEU seeks an order that requires early childhood teachers at graduate level (Band 1, starting rate) and at the top level (Band 2 top rate) to be paid the same as professional engineers are paid on average at the 25th percentile at graduate level and ‘experienced’ level (\$65,700 and \$104,500 respectively). The necessary jurisdictional prerequisite for such relief⁸ can be established:
 - a. The two groups of workers perform work of comparable value,⁹ noting amongst other matters:
 - i. Early childhood teachers are also four year degree-qualified professionals;
 - ii. A graduate early childhood teacher has to work with little direct supervision and is usually required to supervise or manage the work of others; and
 - iii. The service performed by a graduate early childhood teacher is arguably more significant than that provided by a graduate professional engineer;
 - b. Professional engineers, who are overwhelmingly male, are paid higher remuneration. As detailed in Section N below, professional engineers are paid on average at the 25th percentile \$65,700 as graduates and \$104,500 as ‘experienced’ engineers with 4 plus years experience.

Further alternatives

7. The IEU foreshadows that if its claim is opposed on the basis that an order cannot or should not be made in respect of a general class of early childhood teachers then it will submit in the alternative that the Commission would

⁷ The draft Order contained in the Amended Application will need to be amended to make this clear.

⁸ See *Equal Remuneration Decision 2015* [2015] FWCFB 8200 at [290] and [304].

⁹ As discussed in more detail in section N below.

nevertheless still uphold the application by making an order that would require the particular early childhood teachers who will give evidence to be paid no less than:

- a. the rates paid to male primary school teachers in NSW; or in the further alternative
- b. the rates paid to professional engineers.

B. PROCEDURAL BACKGROUND

8. On 8 October 2013 the IEU filed its initiating application.
9. On 30 November 2015, the Full Bench of the Fair Work Commission (**the Commission**) handed down the *Equal Remuneration Decision 2015* [2015] FWCFB 8200 (**the Equal Remuneration Decision**) on the relevant legal and conceptual framework relevant to the applications for equal remuneration orders made by United Voice, Australian Education Union (Victorian Branch) and the IEU) involving employees employed in the children's services and early childhood education sector.
10. On 26 July 2017, the IEU advised the Commission that it sought to have its application heard and determined independently from the preliminary application of UV and AEU.
11. On 13 September 2017, the Commission gave leave to the IEU to file an amended application and directed that the IEU file evidence and submissions by 20 December 2017.
12. On 27 September 2017 the IEU filed an amended application seeking the primary relief summarised above.

C. MATERIAL FILED

13. These submissions are filed with the IEU's evidence in accordance with the directions made on 13 September 2017. These submissions are to be understood to be an outline only of the submissions that the IEU will put at hearing.
14. With these submissions the IEU has filed statements of evidence from:
 - a. Early childhood teachers:
 - i. Amanda Sri Hilaire, Kamalei Children's Centre, Bowral New South Wales.
 - ii. Emma Cullen, director, Abbotsford Long Day Care Centre, Sydney New South Wales.

- iii. Emily Vane-Tempest, teacher, Sandcastles Childcare Chatswood, Sydney New South Wales.
 - iv. Lauren Hill, teacher, Catholic Early Learning Centre, Sydney New South Wales.
 - v. Lily Ames, teacher, City of Yarra, Melbourne Victoria.
 - vi. Gabrielle Connell, teacher, Albury Preschool Incorporated, Albury New South Wales.
- b. Primary school teachers:
- i. Anthony Atkinson, teacher, Merri Creek Primary School, Melbourne Victoria.
 - ii. James Jenkins-Flint, former teacher, St Brigid's Primary School, Sydney Australia.
 - iii. Luke Donnelly, teacher, St Joseph's O'Connor, Canberra Australian Capital Territory.
- c. Professional engineers:
- i. Brad Broughton, Project Engineer, York Civil Ptd Ltd, Adelaide South Australia, 5 years of experience.
 - ii. Thomas Haines-Sutherland, Civil Design Engineer, Mornington Peninsula Shire, Rosebud Victoria, 5 years of experience.
 - iii. Kenan Toker, Graduate Software Engineer, Langdale Consultants Pty Ltd, Sydney New South Wales, graduate engineer.
- d. Witnesses that describe the nature of the industry, remuneration of those employed in the industry and the industrial history of their regulation:
- i. Carol Matthews, Assistant Secretary, Independent Education Union of Australia - NSW Branch, who describes early childhood care services in Australia, especially in relation to the remuneration in the sector.
 - ii. Lisa James, Early Childhood Organiser, Independent Education Union of Australia - NSW Branch, who in the main deals with teacher accreditation, job requirements of early childhood teachers and bargaining within the sector.
 - iii. John Wesley Spriggs, an Industrial Officer with the Independent Education Union of Australia - Queensland Branch, who describes

early childhood care services in Queensland, especially in relation to the teacher registration and remuneration in the sector in that State.

- iv. Martel Menz, Vice President - Early Childhood at the Australian Education Union – Victorian Branch, who describes early childhood care services in Victoria, especially in relation to regulation of services, teacher registration and remuneration in the sector in that State.
 - e. Experts that describe the nature of early childhood teaching:
 - i. Sue Dockett, Professor, Early Childhood Education, School of Education, Charles Sturt University (Albury Campus) has provided an overview of teacher accreditation processes, with a focus on NSW.
 - ii. Susan Irvine, Associate Professor, School of Early Childhood, Faculty of Education, Queensland University of Technology primarily deals with early childhood teacher training and the roles that they perform.
 - iii. Fran Press, Professor in Early Childhood Education, at the School of Teacher Education, Charles Sturt University, Bathurst canvasses a range issues, including the governance of early childhood services and primary teaching and provides a comparison of early childhood educational programs and primary school educational programs.
 - f. A remuneration expert, Leanne Issko from Mercer, who provides a report on the comparability of early childhood teachers with engineers in terms of work value and remuneration.
15. The IEU has also filed 8 bundles of documents, numbered A to I. The bundles contain the documents to which the witnesses refer in their statements.

D. PRINCIPLES ESTABLISHED BY THE EQUAL REMUNERATION DECISION 2015

16. In order to obtain relief the Commission must be satisfied that a group of employees of a particular gender to whom the order would apply do not enjoy the same remuneration as another group of employees of the opposite gender who perform work of equal or comparable value.¹⁰ If that jurisdictional fact is established then the Commission can exercise its discretion to make an equal remuneration order.¹¹

¹⁰ Equal Remuneration Decision [158].

¹¹ Equal Remuneration Decision [367] 6 Summary [15].

17. In this case the primary comparator group is male primary school teachers in NSW. The alternative comparator group is male professional engineers.
18. If the necessary jurisdictional fact is established by reference to one or other comparators, an order can be made that would apply to both to female and male early childhood workers.¹²
19. In respect of the necessary work value comparison, an applicant need not establish that the work value is 'equal' (although on the IEU's primary comparator group the evidence establishes the two groups are either equal or so close thereto as to make little difference). It is sufficient if the work value between the employee covered by an order and a comparator are *comparable*. Hence, even though professional engineers and early childhood teachers do quite different work, such that they cannot be said to be the same, they can nevertheless be found to have work value that is comparable.
20. Once the Commission has determined that the groups of employees being compared are doing work of equal or comparable value, the Commission only need be satisfied that there is a difference in remuneration. There is no need to identify those aspects which are said to be caused by sex discrimination and those which are not gender related.¹³
21. The Commission's discretion will be exercised mindful of the "general purpose of the provisions is to remedy gender wage inequality and promote equal pay".¹⁴ While the Commission would not exercise its discretion merely to remedy comparative wage injustice¹⁵, there is no requirement on the applicant to satisfy the FWC that the remuneration was established on a discriminatory basis.¹⁶ Nor is it necessary to establish that the identified difference in remuneration is wholly or substantially related to gender.¹⁷
22. Rather, it is sufficient to identify that there is a substantial remuneration differential in respect of a group of employees who are overwhelmingly women (96% of early childhood workers are women), whose remuneration has stayed below that of other professionals, including primary school teachers, due to factors related to their gender, including:
 - a. Social expectations and gendered assumptions about the role of early childhood teachers as 'nurturers' and 'carers' of preschool age children rather than teachers;

¹² Equal Remuneration Decision [242]-[243].

¹³ Equal Remuneration Decision [158].

¹⁴ Equal Remuneration Decision [178].

¹⁵ Equal Remuneration Decision [210].

¹⁶ Equal Remuneration Decision [187].

¹⁷ Equal Remuneration Decision [158] and [212].

- b. Historical perceptions that view the value of the work as similar to that of the unpaid work of caring for children by women in the domestic sphere;
 - c. Historical perceptions that early childhood work does not require professional skills generally, and teaching skills in particular;
 - d. An undervaluation of early childhood teaching skills on the basis that they are skills that ‘naturally’ occur in women rather than are learnt or developed;
 - e. The historical undervaluation of professional work predominantly done by women based on a discriminatory view that it is less skilful and valuable than professional work traditionally done by men, and in particular that the value of the work of teaching preschool children is not skilful and valuable work akin to that of other professionals.
23. Further, early childhood teachers share almost all the factors that have been said to contribute to pay inequity in Australia, which Part 2-7 is intended to address,¹⁸ including:
- a. Early childhood centres and preschools provide a service rather than creating products, being a service which is (wrongly) seen as not justifying high remuneration;
 - b. The profession is marked by high turnover and low tenure;
 - c. The profession is heavily award reliant, with limited capacity to obtain enterprise agreements;
 - d. Employers are often small, providing limited capacity for workers to act collectively;
 - e. There are low levels of union density;
 - f. There is little evidence that early childhood teachers receive over award payments; and
 - g. There is limited capacity to move into more senior roles.
24. The fact that early childhood teachers, who are professionals, are paid so much less than the male dominated profession of engineering at both graduate level and experienced level, and less even than non-degree qualified engineering assistants,¹⁹ assists to conclude that there is a gender-basis for the reduced remuneration of early childhood teachers.

¹⁸ See the Equal Remuneration Decision at [22] and [23] which summarised the factors said to contribute to the gender pay gap.

¹⁹ See the ABS data summarised in section O below.

Interaction between Part 2-7 and other provisions of the FW Act

25. Part 2-7 is to be exercised having regard to other provisions in the FW Act such as ss3, 577, 578 and Division 3 of Part 5-1 of the FW Act.²⁰
26. The modern award objective has no application to the exercise of the powers in Part 2-7.²¹ There is no requirement on an applicant to demonstrate that the modern award rates were set incorrectly.
27. As to whether there is an ‘adequate alternative remedy’ to an equal remuneration order as set out in ss721 and 724, the Commission found that the moving party bears the onus of satisfying the Commission that there is an adequate alternative remedy.²² The potential for an enterprise agreement to be made is not an adequate alternative remedy.²³

Determining work value

28. As to determining the value of the work, the Full Bench stated:

[280] There was no issue, and we accept, that the expression ‘work of equal or comparable value’ refers to equality or comparability in ‘work value’. The established industrial conception of that term, as developed in decisions of this Commission’s predecessor tribunals as well as by the various State industrial tribunals is the primary source of guidance in this regard. Such decisions point to the nature of the work, skill and responsibility required and the conditions under which the work is performed as being the principal criteria of work value. We consider that those criteria are relevant in determining whether the work being compared is of equal or comparable value. However, as noted in the principle set down in the 1972 Equal Remuneration Pay Case, work value enquiries have been characterised by the exercise of broad judgment. [..]

[281] Depending upon the specific characteristics of the work under consideration, it may be appropriate to apply different or additional criteria in order to assess equality or comparability in value. Work in which discretionary bonuses make up a significant proportion of total remuneration, for example, would undoubtedly raise special considerations. Job evaluation techniques developed in the private sector may also assist in comparing the value of the work of different individuals or groups. (references excluded)

29. The Decision refers to a number of decisions as a “source of guidance” regarding work value. These decisions tend to largely mirror the work value

²⁰ Equal Remuneration Decision [200]- [202].

²¹ Equal Remuneration Decision [171].

²² Equal Remuneration Decision [343].

²³ Equal Remuneration Decision [346].

principles as per the Statement of Principles in *Safety Net Review - Wages June 2005*.²⁴

30. Another decision referred to by the Full Bench as a source of guidance is the previous *Child Care Industry Case (2005)*.²⁵ At paragraph 187 of that decision, the 2005 Full Bench stated:

Wage fixation principles dealing with changes in work value have existed for some time and broadly speaking the current Principle 6 codifies the general principles which have emerged over time. In this context we note that in the proceedings before us the parties generally accepted a statement made by Senior Commissioner Taylor in 1968 to the effect that the following factors were relevant to the assessment of work value:

- qualifications necessary for the job;
- training period required;
- attributes required for the performance of the work;
- responsibilities for the work, material and equipment and for the safety of the plant and other employees;
- conditions under which the work is performed such as heat, cold, dirt, wetness, noise, necessity to wear protective equipment etc;
- quality of work attributable to, and required of, the employee;
- versatility and adaptability: for example, performing a multiplicity of functions;
- skill exercised;
- acquired knowledge of plant and process;
- supervision over others or necessity to work without supervision; and
- importance of the work to the overall operations of the plant.

31. These traditional criteria or factors set out in 1968 while still relevant do not fully reflect the changing nature of work and skill, particularly that of professions that are service orientated.

32. As the Commission observed, the FW Act was clearly intended to expand the application of Part 2-7 by the use of the concept of ‘comparable’ value²⁶ so that dissimilar work can be compared using a work value inquiry that is ‘characterised by the exercise of broad judgement’.²⁷ This does not involve a

²⁴ *Safety Net Review - Wages June 2005* - [2005] 142 IR 1 at 125.

²⁵ *Australian Liquor, Hospitality and Miscellaneous Workers Union re Child Care Industry (Australian Capital Territory) Award 1998 and Children’s Services (Victoria) Award 1998 - re Wage Rates* [2005] AIRC 28; (13 January 2005).

²⁶ Equal Remuneration Decision [282].

²⁷ Equal Remuneration Decision [280].

demonstration that women’s work is equal or comparable in value to the work performed by men but a conceptual model that provides for a non-gendered standard against which all work can be judged. Instead of judging feminised work against a male standard, the correct approach is to judge the work performed against non-gendered factors that include attributes and skills dominant in both female dominated and male dominated industries.

33. While the Commission rejected the approach developed in the New South Wales industrial relations jurisdiction and following by the Queensland jurisdiction and subsequently in the SACS No 1 decision²⁸ that there is no need for a male comparator as an assessment can occur based on evidence of historical gender undervaluation of award rates in female dominated industries, the Commission did not reject the other element of the approach which was that the well-established and fundamental work value concepts were to be approached on a gender neutral basis and in the absence of assumptions based on gender.²⁹
34. The Commission accepted³⁰ Glynn J’s observations³¹ as to the term ‘comparable value’ as being concerned with value and not job content or likeness of value of the job content where there is dissimilar work.
35. The principle³² made by consent by the Queensland Industrial Relations Commission that “*The assessment is to be transparent, objective, non-discriminatory and free of assumptions based on gender.*” is relevant and appropriate in determining whether the work being compared is of equal or comparable value.

Issue of comparators

36. While on first impression, the idea of comparing work across different industries, occupation and professions seems novel, it is a concept that has applied since the Harvester judgement in 1907, when Higgins J established the basic wage, he also determined wages for skilled workers based on the assessment of the “*value of work*”.
37. Justice Higgins selected Mr McKay’s application because the factory engaged a variety of employees including representatives from numerous trades such as iron moulders, turners, drillers, dressers, blacksmiths, moulders, woodworkers, painters, writers, liners, brush hands, pattern makers and improvers. Justice Higgins determined the value of the work of these occupations and applied them

²⁸ *Re Equal Remuneration Case* (2011) 208 IR 345.

²⁹ (2000) 97 IR 177 at [154] set out at [263]. See also [286].

³⁰ Equal Remuneration Decision [285].

³¹ Set out in [283] of the Equal Remuneration Decision.

³² *Equal Remuneration Principle* (2002) 114 IR 305.

to the same and like occupations across the agricultural industry which was subsequently applied to other industries across Australia.

38. Once his Honour determined the basic wage, Higgins J determined that:

Those who have acquired a skilled handicraft have to be paid more than the unskilled labourer's minimum; and in ascertaining how much more, in the case of each of the numerous trades concerned in this factory, I have been invited to make myself an expert in a large number of technical details, and familiar with the mysteries of many mechanical appliances.

39. As to the method of evaluating the value of work, Justice Higgins observed that:

The Act left me free to inform my mind as best I could: and I was at full liberty to limit the evidence, or even act without evidence. I felt that, in the course of the contest on this application, I should best learn what is necessary for me to learn with regard to the various operations in the manufacture, the functions of the employees, the character of the work, and the proper conditions of remuneration. I intimated to all the participants that I should make full use of the information acquired by me in the course of this application for the purpose of dealing with the other applications, that I should not allow the same kind of evidence to be given over again, but that each of the subsequent applicants should be at liberty to show any exceptional characteristics of his undertaking.

40. The type of factors considered in comparing the different occupations included: pace, repetition, lifting, hazards, muscular strain, damage to body, relative skill, relative danger and relative conditions. While this represented a rough and ready nature of work evaluation, over time these factors were refined and adapted for technological change and changes in the type and nature of work. However, the principle has remained, that the value of work is not measured by the value of the work to an employer, but the value of the work based on the nature of the work, the skill and responsibility of the role assessed on an objective basis.

41. Once Higgins J determined the work value of the occupation, he considered evidence as to remuneration:

I have generally solid precedents for my standard in the actual practice of experienced employers in great undertakings; and sometimes; and sometimes precedents in awards and Wages Board determinations... I make use of this practice as a kind of check or regulator of my conclusions.

42. Higgins J made clear that he was not actually assessing an individual's work value but was setting a rate for those "*of average proficiency*".

43. In the Printing Industry case in 1947,³³ Kelly J developed five principles to determine margins. The fifth principle was "*the assessment of the true value*

³³ 59 CAR 278.

must have regard to comparisons of minimum rates payable for work in comparable industries or comparable occupations.”³⁴ Kelly J remarked that the fifth principle, the principle of comparison was at “*the very corner stone of any system of industrial regulation*”.³⁵

44. Prior to the introduction of a total wage in 1967, the basic wage remained a constant figure and applications were made to compare the value of the work done by one group of men with that done by another quite simply, by comparing the margins. In the 1960’s the Australian Conciliation and Arbitration Commission continued to develop a work value assessment that was considered to be quasi-scientific, this method sought to improve its capacity to value the work of particular groups of workers in response to relevant industry, sector or work considerations.
45. In adopting the total wage, the Full Bench of the Australian Conciliation and Arbitration Commission in the *National Wage Case (1967)*³⁶ stated: “We are sure that in work-value cases the fixation of total wages will bring to award-making both greater flexibility and greater reality.”
46. Wage fixation principles as to changes in work value continued to apply in the 1970s and the 1980s. In the March 1980 revision of the guidelines, the full bench stated that “*wherever appropriate, comparison may also be made with other wages and work requirements within the award or to wage increased for changed work requirements in the same classification in other awards*”.³⁷
47. In the *2005 National Wage Case*³⁸ set out Wage Fixing Principles Case set out Principle 4 in the following terms:

Principle 4: Work Value Changes

- (a) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.
48. As the Full Bench set out in paragraphs [57]-[64] of the Decision, the *National Wage and Equal Pay Case 1972*³⁹ allowed the Commission to make comparisons between groups of workers in different classifications across awards based on ‘*normal work value practice*’.

³⁴ Ibid at pp 287 and 288.

³⁵ (1947) 48 CAR 577 at p623.

³⁶ (1967) 118 CAR 655.

³⁷ MD Print E 2370 p39.

³⁸ (2005) 142 IR 1.

³⁹ (1972) 147 CAR 172.

49. The second principle adopted in the 1972 *Equal Pay Case* was that “Adoption of the new principle requires that female rates be determined by work value comparisons without regard to the sex of the employees concerned.”⁴⁰ This approach was endorsed in *Re Private Hospitals’ and Doctors’ Nurses (ACT) Award 1972*, known as the *Nurses Comparable Worth Case* in 1986.⁴¹
50. The Harvester decision set down a fundamental approach that the FWC and its predecessors have followed, and which was endorsed in the Equal Remuneration Decision. It is that where there is a question in regard to assessing the value of work performed by employees for the purpose of determining the appropriate level of remuneration, different professions or occupations should be compared to each other using “*the established*”⁴² or “*traditional*”⁴³ work value assessment methods.⁴⁴

Remuneration Assessment

51. If the Commission is both satisfied of the jurisdictional fact and decides to exercise its discretion, then the order must *ensure* that there *will* be equal remuneration.⁴⁵ However, s304 gives the Commission discretion to implement the order in stages.

Discretion

52. Upon the Commission being satisfied that the *requisite jurisdictional fact* has been established it has a discretion to make an equal remuneration order.⁴⁶ At [200] the Commission observed that:

Beyond the matters in s302(4), the FW Act does not specify any criteria for the exercise of the discretion conferred in s302(1). But that does not mean that the discretion is at large. It is to be exercised judicially having regard to the subject matter, scope and purpose of the FW Act and Part 2–7.

53. The Commission identified relevant provisions of the FW Act and other matters that may be taken into account in exercising its discretion on a case by case basis.⁴⁷ Where a person relies on a particular matter it claims is relevant to the Commission’s discretion, the person bears the onus of satisfying the

⁴⁰ Equal Remuneration Decision [61]

⁴¹ (1986) 13 IR 108.

⁴² Equal Remuneration Decision 67 [280].

⁴³ Equal Remuneration Decision pg 86 Summary [9].

⁴⁴ Section 156(4) of the FW Act sets out work value reasons that justify the amount that employees should be paid for particular work.

⁴⁵ Equal Remuneration Decision [[367 (20)].

⁴⁶ Equal Remuneration Decision [196].

⁴⁷ Equal Remuneration Decision [201] to [212]

Commission that the matter is relevant and providing a proper evidentiary basis for the assertion.⁴⁸

Orders

54. Once the Commission determines to exercise its discretion and make an equal remuneration order, s302(1) of the FW Act requires it to make an order that would ensure that for employees to whom the order will apply, there is equal remuneration for work of equal or comparable value.⁴⁹

E. STANDING OF THE APPLICANT

55. The Applicant is an employee organisation that is entitled to represent the industrial interests of employees covered by the application, other than those teachers at a pre-school, kindergarten or child-care centre in Western Australia who are not employed by a non-government school. (The application will be amended to reflect that limitation in respect of coverage, noting s303(3)(b)).

F. FEATURES OF THE EARLY CHILDHOOD TEACHING WORKFORCE

56. The sector is highly gender segregated. Some 96% of early childhood teachers employed in long day care centres and preschools are women.⁵⁰
57. There is a high turnover of staff in the sector compared with other occupations and/or industries.⁵¹ The 2016 ECEC National Workforce Census reported that educators averaged 3.6 years at their current place of work and a national survey of early childhood teachers in 2016 found that one in five planned to leave their job because of low pay, feeling undervalued and the increased time spent on paperwork.⁵²
58. There is a difficulty in attracting students to work in the early childhood sector and teachers in the sector actively seek to work as primary school teachers.⁵³
59. This translates to difficulties in recruiting⁵⁴ and retaining early childhood teachers to long day care centres and early childhood teachers have been placed on a skill shortage list by the Department of Employment for New South Wales, Sydney region.⁵⁵

⁴⁸ Equal Remuneration Decision [209].

⁴⁹ Equal Remuneration Decision [226].

⁵⁰ Press Statement at 5.2 page 12.

⁵¹ Matthews Statement [14].

⁵² Press Statement page 14.

⁵³ Press Statement at 6 page 13, James Statement [21]-[27].

⁵⁴ Matthews Statement [15]-[20].

⁵⁵ Press Statement at pg 6 13.

60. The workforce in long day care centres is younger compared to the Australian workforce overall. In 2016, 53% of employees in long day care centres were under the age of 35.⁵⁶
61. There is low union density amongst teachers because of the difficulty in organising workers with these demographic characteristics. This is compounded by the high number of small or disparate workplaces in the sector.⁵⁷
62. The main sources of revenue for providers of long day care are the federal government subsidies to parents in relation to the cost of child care and fees charged to parents. The average cost per child in 2016 for 50 hours per week of long day care was \$425.⁵⁸ The Australian government Child Care Benefit paid to parents is up to \$215 per week per child, subject to means testing, and a non means-tested Child Care Rebate of up to \$7,613 per year of out of pocket approved child care expenses may also be payable to parents.⁵⁹ Long day care centres have on average maximum capacity of 61 children and average typical capacity of 56 children. Almost two thirds of long day care centres reported having no capacity to take additional children.⁶⁰ State governments provide funding for the operation of preschools.

G. REGULATION OF THE EARLY CHILDHOOD SECTOR

63. Early childhood teaching meets the care, education and developmental needs of children aged 0-6 years. Early childhood education is provided using a variety of service delivery models, the most prominent of which is long day care centres and preschools, also known as kindergartens.⁶¹
64. Early childhood education services are financially supported and regulated by state and federal governments. Both levels of government contribute funding to services and set and maintain operating standards. The Australian Government has policy responsibility for child care. It administers a fee subsidy, an out-of-pocket subsidy and provides some funding to approved services. State and Territory governments may solely fund some child care services or contribute to services in receipt of Australian Government funding.⁶²
65. Total Australian, State and Territory governments expenditure on early childhood education and care services was \$9.1 billion in 2015-16.⁶³

⁵⁶ 2016 ECEC National Workforce Census prepared by the Social Research Centre.

⁵⁷ Matthews statement [13], [21].

⁵⁸ Matthews Statement [26]

⁵⁹ Matthews Statement [27] and [28].

⁶⁰ 2016 Early Childhood Education & Care National Workforce Census September 2017 Social Research Centre pg 29.

⁶¹ Defined in the award.

⁶² Matthews Statement [15]-[16]

⁶³ Matthews Statement [26].

66. Early childhood education services are provided by private for profit companies, the community sector, non-for-profit organisations, non-government schools, government schools and local government. The vast majority of preschools in NSW, Victoria and Queensland are community managed and the vast majority of preschools in Western Australia, South Australia, Tasmania, Australian Capital Territory and Northern Territory are government managed. Across States and Territories, the majority of long day care centres are private for profit, with approximately 63% of all services being for profit and 30% community managed. There is only a small number of government long day care centres, less than 6% of the total, mainly managed by local government.⁶⁴
67. As set out in the evidence of Professors Press and Dockett and Ass Prof Irvine, the fairly recent regulation of childhood education has been a significant change to the sector. In December 2009, COAG (Council of Australian Governments) endorsed a National Quality Framework for Early Childhood Education and Care (NQF).
68. Teachers deliver around one quarter of preschool programs in long day care services. The other staff have Certificate, Diploma and Advanced Diploma qualifications.⁶⁵
69. The NQF is a uniform national system jointly governed by the Commonwealth, states and territories. NQF operates under a national law system which comprises the *Education and Care Services National Law Act 2010 (Vic)* with some varied provisions applicable to the needs of each state and territory as set out in the table⁶⁶ below.

⁶⁴ 2016 Early Childhood Education & Care National Workforce Census September 2017 Social Research Centre-Table 3A.10 and Table 3A.12 of ROGS Bundle B.

⁶⁵ 2016 Early Childhood Education & Care National Workforce Census September 2017 Social Research Centre-7.2. The percentage is lower in Northern Territory and Western Australia Bundle B.

⁶⁶ <http://acecqa.gov.au/national-quality-framework/national-law-and-regulations/national-law>.

State or Territory	Legislation	Application Act
Victoria	<i>Education and Care Services National Law Act 2010 (VIC)</i> Changes to the National Law were introduced 1 October 2017 in all states and territories, except Western Australia.	
New South Wales		<i>Children (Education and Care Services National Law Application) Act 2010</i>
Australian Capital Territory		<i>Education and Care Services National Law (ACT) Act 2011</i>
Northern Territory		<i>Education and Care Services (National Uniform Legislation) ACT 2011</i>
South Australia		<i>Education and Early Childhood Services (Registration and Standards) Act 2011</i>
Tasmania		<i>Education and Care Services National Law (Application) Act 2011</i>
Queensland		<i>Education and Care Services National Law (Queensland) Act 2011</i>
Western Australia	<i>Education and Care Services National Law (WA) Act 2012</i>	

70. The *Educational and Care Services National Regulations (Regulations) 2010 (NSW)* cover numerous operational requirements for educational and care services such as the National Quality Standards (NQS) (Schedule 1), staffing arrangements and qualifications.⁶⁷
71. The purpose of the framework is to raise quality of services and enable continuous improvement in early education and care through a nationally applied regulatory scheme. NQF came into effect from 1 January 2012. It comprises guiding principles, quality areas, standards and elements. There are seven NQS:
- a. Educational program and practice.
 - b. Children’s health and safety.
 - c. Physical environment.

⁶⁷ Press Statement Part 1

- d. Staffing arrangements.
 - e. Relationships with children.
 - f. Partnership with families and communities.
 - g. Leadership and service management.⁶⁸
72. Under each NQS there is a number of standards, all up there are 18 standards. Each standard has a number of elements. All up there are 58 elements. These are all set out in the Approved Learning Framework.⁶⁹
73. Each preschool and long day care centre must 'achieve' the NQS for each of the seven quality areas to continue to be approved and licensed under the National Law and Regulations. The implementation and administration of the NQF is performed by the Australian Children's Education & Care Quality Authority (ACECQA) which is the regulatory authority.⁷⁰
74. The evidence of professors Press, Irvine and Dockett set out in detail the history and reasoning behind the reforms in the early childhood education sector. Since 2009 there have been significant reforms in early childhood education, including the National Regulations, which introduced a national curriculum for children in preschools and kindergartens. The national reforms demonstrate a commitment to increase the professionalism in the sector, which demonstrates the recognition in Australia of the importance of the work carried out by teachers and other educators employed in the early childhood education sector through their impact on educational, economic and productivity outcomes.
75. While the National Quality Framework sets out the broad National Quality Standards which teachers must comply with, the curriculum is not prescriptive and teachers are required to exercise high levels of judgement and pedagogical learning based on the individual needs of the child.⁷¹

H. TEACHER QUALIFICATIONS AND ACCREDITATION

76. Teacher accreditation/registration legislation for early learning and primary school is state based and the Acts set out in the table below are applicable:

⁶⁸ Press Statement Part 1, James Statement, Matthews Statement.

⁶⁹ Irvine Statement [18]-[21]; Dockett Statement 5; Press Statement, Part 1.

⁷⁰ Irvine Statement [17]

⁷¹ Press Statement 3.4

State or Territory	Application Act
Victoria	<i>Education and Training Reform Act 2006 (Vic)</i>
New South Wales	<i>Teacher Accreditation Act (2004)(NSW)</i>
Australian Capital Territory	<i>ACT Teacher Quality Institute Act (2010)</i>
Northern Territory	<i>Teacher Registration (Northern Territory) Act</i>
South Australia	<i>Teachers Registration and Standards Act 2004 (SA)</i>
Tasmania	<i>Teacher Registration Act 2000</i>
Queensland	<i>Education (Queensland College of Teacher) Act 2005</i>
Western Australia	<i>Teacher Registration Act 2012 (WA)</i>

77. From July 2016, in NSW all teachers working in early childhood settings as a teacher must be accredited. Teachers in Victoria, Western Australia and South Australia working in early childhood services have also been required in recent years to have teacher registration. In the ACT, Northern Territory and Tasmania teachers employed in early childhood service attached to schools are required to registered.⁷²
78. These changes mean that teacher qualification and accreditation or registration in most States is essentially the same for primary school teachers and early childhood teachers. Now, in most States all teachers are required to undertake a four year degree or a post graduate teaching qualification from university.⁷³

I. NATURE OF THE WORK PERFORMED BY EARLY CHILDHOOD TEACHERS

79. Early childhood teachers are university – qualified professionals.
80. Early childhood teachers employed in long day care centres or preschools and covered by the Award are employed either as a teacher or as a director.
81. In most cases early childhood teachers are employed as such because of government requirements that an early childhood teacher must be employed or in attendance as a condition of operation of the long day care centre or preschool. These requirements are currently contained in the *Educational and Care Services National Regulations*, made pursuant to *Children (Educational and Care Services) National Law (NSW) No 104a* and were previously contained in some states in state regulations.⁷⁴

⁷² Dockett statement [4].

⁷³ Press Statement 3.1.

⁷⁴ Matthews Statement [30].

82. Early childhood teachers have overall responsibility for the educational program provided by the long day care centre or preschool in accordance with *Belonging, Being and Becoming, the Early Years Learning Framework*, the national framework which applies to long day care centres and other early childhood education services. Teachers develop the curriculum applying their tertiary level skills and knowledge, are the pedagogical leaders, and develop and support the delivery of education by other employees.⁷⁵
83. A director covered by the Award is an early childhood teacher appointed to be responsible for the overall management and administration of a long day care centre or preschool.⁷⁶ The role includes ensuring compliance with all regulatory requirements; pedagogical leadership; overall management, administration and leadership of the service; accounting and financial management; administration, recruitment and human resources management, communication and engagement with staff members, children, parents, business contacts, community or local leaders and other stakeholders; and supporting and participating in management committees or other groups.⁷⁷

J. ENVIRONMENT/CONDITIONS UNDER WHICH WORK IS PERFORMED

84. The work of early childhood teachers in early childhood services is:
- a. performed in an environment that is stressful and intense;⁷⁸
 - b. noisy;⁷⁹
 - c. requires dealing with human waste;⁸⁰
 - d. confined;⁸¹
 - e. physically and emotionally demanding;⁸²
 - f. professionally isolating;⁸³
 - g. likely to lead to higher levels of illness.⁸⁴

⁷⁵ Matthews Statement [34].

⁷⁶ Award cl 3 Definition of “director”.

⁷⁷ Cullen Statement [46].

⁷⁸ Hilaire Statement [48]-[50]; Ames Statement [56]; Hill Statement [26].

⁷⁹ Vane-Tempest Statement [46]; Hilaire Statement [50]; Ames Statement [56].

⁸⁰ Vane-Tempest Statement [46]; Hill Statement [26].

⁸¹ Vane-Tempest Statement [45]; Hilaire Statement [48].

⁸² Vane-Tempest Statement [45]; Ames Statement [56]; Hill Statement [26].

⁸³ Hilaire Statement [47]; Ames Statement [56].

⁸⁴ Vane-Tempest Statement [45]; Ames Statement [56].

K. SOCIAL AND ECONOMIC BENEFITS OF EARLY CHILDHOOD TEACHING

85. The evidence demonstrates that there are significant social and economic benefits of early childhood teaching, which will be enhanced if teachers are remunerated at a level that will attract and retain them.
86. Research has linked the employment of university qualified early childhood teachers to higher quality education and care.
87. Early childhood education and care delivers significant social and economic benefits to the Australian economy, society, families and individuals.
88. High quality early childhood education and child care environments lead to positive intellectual and cognitive development and later-life learning outcomes in children and improved social, health and behavioural outcomes in children.
89. The workforce participation of women, and the consequent economic benefit, is directly linked to high quality and accessible child care.

L. COMPARISON OF WORK VALUE BETWEEN EARLY CHILDHOOD TEACHERS AND PRIMARY SCHOOL TEACHERS

90. The witness statements of the early childhood teachers and primary teachers provide evidence as to the nature of their work in their current and previous roles. Their evidence identifies the skills and responsibilities required and the conditions under which the work is performed.
91. The early childhood school teachers are;
 - a. Emma Cullen: Senior teacher.
 - b. Lauren Hill: Graduate teacher.
 - c. Gabe Connell: Senior teacher.
 - d. Lily Ames: Mid-level teacher.
 - e. Amanda Sri Hilaire: Mid-level early childhood teacher and primary school teacher.
 - f. Emily Vane-Tempest: Graduate teacher:
92. The primary school teachers are;
 - a. James Jenkins-Flint: senior teacher.
 - b. Luke Donnelly: senior teacher.
 - c. Anthony Atkinson: senior teacher.

93. Their evidence is confirmed on a wider level by the expert evidence filed with this submission of Professor Sue Dockett, Early Childhood Education, School of Education, Charles Sturt University, Associate Professor Susan Irvine, School of Early Childhood, Faculty of Education, Queensland University of Technology and Professor Fran Press, Professor of Early Childhood Education, at the School of Teacher Education, Charles Sturt University.
94. As to the skills required, the teacher witness statements identify the necessary qualifications, training time, skills exercised, attributes required for the performance of the work, versatility and adaptability (for example, performing a multiplicity of functions), acquired knowledge of workplace and processes.
95. As to the required responsibilities, their statements identify: responsibilities for the work, systems, compliance, governance, safety of the workplace for children and other employees; responsibility for vulnerable groups and their education; quality of work attributable to, and required of, the employee; supervision over others or necessity to work without supervision and importance of the work to the overall operations of the workplace.
96. The conditions under which work is performed includes physical and emotional demands, loud noise, dealing with human waste, confinement, professional isolation and exposure to infections.

Evidence of the early childhood teachers

97. The evidence from the early childhood teachers is that they are required to undertake four years of tertiary study before they can practice as an early childhood teacher.⁸⁵ In NSW they are required to be registered⁸⁶ and complete 20 hours of professional training a year⁸⁷ or 100 hours over 5 years.⁸⁸ Where accreditation or registration is required, the requirement for qualification, registration and requirement for ongoing training is very similar to the system that applies to primary school teachers in that State.
98. As a graduate, early childhood teachers can be expected to take on all the responsibilities of a teacher from the first day of employment⁸⁹ and they can find it difficult to find a mentor.⁹⁰ All early childhood teachers, after an initial settling in period, collaborate with and supervise other educators and are required to be the person responsible for compliance of the education delivered to the children in their room.⁹¹

⁸⁵ Ames Statement [2].

⁸⁶ Ames Statement [10]; Cullen Statement [7].

⁸⁷ Ames Statement [12].

⁸⁸ Vane-Tempest [7]; Cullen Statement [9].

⁸⁹ Ames Statement [49]-[53]; Cullen Statement [40]-[41], [43].

⁹⁰ Ames Statement [11]; Vane-Tempest Statement [37].

⁹¹ Ames Statement [16], [24], [55]; Vane-Tempest Statement [2], [38], [43] commenced to supervise another teacher after less than 12 months of experience.

99. The early childhood teachers are required to plan in advance the learning outcomes for each child as well as being able to immediately adapt to the learning requirements as they arise. They must be able to deal with a multitude of different dilemmas including interpersonal conflict between children, organising different learning environments, resourcing and maintaining attention on each individual child's learning needs.⁹² Compliance with the NQF also requires identification of risk and potential hazards⁹³ and maintaining mandated ratios.⁹⁴
100. Most teachers work with very few breaks and minimum planning and reporting times⁹⁵ but are responsible for the development of policies and procedures.⁹⁶
101. The conditions in which work is performed is loud, confined as to the proximity between teachers and children, requires constant physical movement and is often one which leads to teachers to being exposed to communicable infections.⁹⁷
102. Early childhood teachers are placed in a highly critical position of providing care and education to young children who are only learning to make decisions as to their safety and the safety of other children. It is a most critical and fundamental aspect of the work of early childhood teachers to navigate the risk factors affecting children.⁹⁸
103. Early childhood teachers make fundamental impacts on a child's life as to their emotional and educational development which is of high value not only to the individual child but also to our society and the economy.⁹⁹
104. Experienced teachers have the same responsibilities and work in the same conditions but are called upon to be involved with more complicated matters involving advanced communication skills such as developing and reviewing policies and procedures, taking on leadership roles such as mentoring and development of staff and acting as a room leader where there are teachers with less experience than themselves.
105. The direct evidence from the early childhood teachers is buttressed by the evidence from the expert witnesses¹⁰⁰ and the union officials and industrial staff.¹⁰¹

⁹² Ames Statement [31]-[43]; Vane-Tempest Statement [21]-[29]; Cullen Statement [14]-[17], [26]-[39]

⁹³ Ames Statement [14]

⁹⁴ Ames Statement [17]; Vane-Tempest Statement [12]

⁹⁵ Connell Statement [38]; Hill Statement [20]; Hilaire Statement [52].

⁹⁶ Ames Statement [15]; Cullen Statement [12].

⁹⁷ See reference to evidence in paragraph [84].

⁹⁸ Ames Statement [18]-[22]; Vane-Tempest Statement [13]-[16].

⁹⁹ Ames Statement [27]-[28] Vane-Tempest Statement [18]-[19]; Cullen Statement [21]-[22].

¹⁰⁰ Statements of Dockett, Irvine and Press.

¹⁰¹ Statements of Matthews, James, Menz and Spriggs.

Evidence of the primary school teachers

106. Primary school teachers are required to attain qualifications, comply with professional development requirements and be accredited as proficient by the state Educational Standards Authority in the same or similar manner to early childhood teachers.¹⁰²
107. Like early childhood teachers, primary school teachers are required to ensure children’s safety,¹⁰³ and foster lifelong learning. They spend time planning and programming quality teaching programs.
108. Primary school teachers, when compared to early childhood teachers:
 - a. do not supervise any staff or other teachers;
 - b. have less face to face teaching hours.¹⁰⁴
 - c. are not required to create policies or procedures.¹⁰⁵
 - d. have less contact with parents.¹⁰⁶
 - e. program and plan teaching programs for each class, but not for each child.¹⁰⁷
 - f. as a graduate teacher are released from teaching to be mentored.¹⁰⁸
 - g. have access to support staff and specialist teachers who provide support and assistance to teachers to carry out their teaching role.¹⁰⁹
109. Early childhood teachers have a work value which in many respects is identical to that of primary school teachers. To the extent there is a difference (in particular: higher face to face hours, higher supervision of other staff, and reduced support from other more senior teachers), the evidence demonstrates that early childhood teachers have a higher work value.
110. In 2013, the International Labour Organisation recommended that early childhood teachers be paid the same as primary school teachers on the basis of work value.¹¹⁰

¹⁰² Dockett Statement Part 2; Atkinson Statement [5].

¹⁰³ Atkinson Statement [11].

¹⁰⁴ Jenkins-Flint Statement [6]; Atkinson [4].

¹⁰⁵ Jenkins-Flint Statement [13]; Atkinson Statement [10].

¹⁰⁶ Jenkins-Flint Statement [32].

¹⁰⁷ Jenkins- Flint Statement [22]-[23]; Atkinson Statement [17].

¹⁰⁸ Jenkins-Flint Statement [33]; Atkinson Statement [32]-[33].

¹⁰⁹ Jenkins-Flint Statement [5].

¹¹⁰ Matthews Statement [63].

M. REMUNERATION OF EARLY CHILDHOOD TEACHERS COMPARED TO PRIMARY SCHOOL TEACHERS

111. The application seeks as primary relief an equal remuneration order that would increase rates of pay to the rates that are paid to teachers in Catholic and government schools in NSW as at 1 January 2017. These rates are contained for teachers in government schools in the *Crown Employees (Teachers And Schools And Related Employees) Salaries and Conditions Award 2017* and are out in the table below, with the Modern Award rates also included for comparison purposes:

<i>Educational Services (Teachers) Award 2010 (MA000077)</i>			<i>Crown Employees (Teachers and Schools and Related Employees) Salaries And Conditions Award 2017</i>				IEU CLAIM		
1-Jul-17			1-Jan-17						
	Preschool	LDC	Transitional Incremental Structure		Standards Structure			Preschool	LDC
			(School/Preschool)		(School/Preschool)				(+4%) ¹¹¹
Level 3	\$50,665	\$52,692	Step 5	\$65,608	Band 1	\$65,608	Level 3	\$65,608	\$68,232
Level 4	\$52,492	\$54,592	Step 6	\$68,983	Band 1	\$65,608	Level 4	\$65,608	\$68,232
Level 5	\$54,321	\$56,494	Step 7	\$72,368	Band 2	\$79,130	Level 5	\$79,130	\$82,295
Level 6	\$56,023	\$58,264	Step 8	\$75,751		\$79,130	Level 6	\$79,130	\$82,295
Level 7	\$57,726	\$60,035	Step 9	\$79,130		\$85,888	Level 7	\$85,888	\$89,324
Level 8	\$59,553	\$61,935	Step 10	\$82,509		\$89,273	Level 8	\$89,273	\$92,844
Level 9	\$61,383	\$63,838	Step 11	\$85,888	Band 2 top	\$97,853	Level 9	\$97,853	\$101,767
Level 10	\$63,211	\$65,739	Step 12	\$89,273		\$97,853	Level 10	\$97,853	\$101,767
Level 11	\$65,041	\$67,643	Step 13	\$97,853		\$97,853	Level 11	\$97,853	\$101,767
Level 12	\$66,868	\$69,543					Level 12	\$97,853	\$101,767

112. The NSW rates have been broadbanded, as the table above demonstrates. As explained in Matthews Statement at [49]:

Under the Modern Award, a Four Year Trained Teacher commences on Level 3 and a Five Year Trained Teacher commences on Level 4, and in each case the Teacher progresses by annual incremental progression to Step 12. Under the standard structure applying in NSW government and Catholic systemic schools, a Graduate teacher commences on the previous Four Year commencement step (Step 5) and remains on that step for at least two years and until the Teacher has attained Proficient Teacher status. The Teacher then progresses by annual steps, but the Teacher spends two years on the first rate of pay as a Proficient Teacher. The new standard structure replaces the

¹¹¹ Long day care centre workers who work 48 weeks a year and who are paid an additional 4% as a result.

incremental structure which remains in the Crown Employees (Teachers And Schools And Related Employees) Salaries and Conditions Award 2017 and the NSW and ACT Catholic Systemic Schools Enterprise Agreement 2015 for transitional reasons. The proposed rates in the claim for Level 1 to Level 4 are the rates that apply to a Graduate teacher in their first two years of teaching who does not have Proficient Teacher status; the rates from Level 5 to Level 12 reflect the rates for a Proficient Teacher.

113. The broadbanning, agreed to by the employers and unions in NSW for government and non-government schools appropriately reflects the commencement wage rates and progression for teachers throughout their career.
114. The rates of pay for teachers varies from state to state.¹¹² The rates in NSW are the fourth lowest in Australia in terms of the starting salary.¹¹³
115. As can be seen, the rates paid to primary school teachers in NSW are considerably higher than the Award rate, which is the rate paid to most early childhood teachers. Further, as discussed below, the primary school teacher rates are also higher than the amounts paid to almost all early childhood teachers who receive above-Award payments.
116. That is subject to some minor exceptions who will not be the subject of the proposed order. For example in stand-alone preschools in Victoria and Queensland early childhood teachers are paid the same or similar rates of pay as teachers in schools.¹¹⁴ The IEU will amend the Order to the extent necessary to ensure that it does not apply to any early childhood teacher who, as at the date of the order, is receiving remuneration that is not less than the comparator group.
117. Teachers employed at preschools attached to government schools are not subject to the claim (being employees of government, they are excluded from the draft order as drafted). Their remuneration is the same as that paid to primary school teachers.¹¹⁵
118. The majority of early childhood teachers employed in long day care centres covered by the application are award reliant.¹¹⁶ Award reliance by early childhood teachers employed in long day care centres is significantly higher than in the workforce overall.
119. For most early childhood teachers employed in long day care centres, their actual rate of pay is the minimum rate set by the Modern Teachers Award. It is

¹¹² Attachment A to the Matthews Statement.

¹¹³ Matthews Statement [48].

¹¹⁴ Matthews Statement [53].

¹¹⁵ Matthews Statement [52].

¹¹⁶ Submission to Productivity Commission in 2014 by Guardian Early Learning Group Pty Ltd.

estimated that about 20-30% of teachers receive some form of over award payment.¹¹⁷

120. Where there is coverage by an enterprise agreement, the rates of pay are usually less than the primary school teachers.
121. The IEU has taken various steps to collect data for the purpose of this application to allow the Commission to understand the nature of remuneration of early childhood teachers.
122. Randstad is a recruitment agency which lists job advertisements for early childhood teachers. Based on data extracted from the Randstad website, analysis was conducted on 77 early childhood positions across Australia.¹¹⁸ The results of the analysis of the 77 early childhood positions demonstrated that wage rates on the job advertisements were very close to the wage rates in the Award, with some wage rates being below the rates in the Award for long day care centres.¹¹⁹
123. The applicant also conducted an analysis of the limited number of enterprise agreements covering early childhood teachers across Australia. Based on 224 enterprise agreements examined, the findings demonstrate that only a minority of early childhood teachers are covered by such agreements, and of those agreements over 91% of the agreements paid less than the applicant's claim of \$34.41 for a graduate teacher employed at a long day care centre and over 98% of the agreements paid less than the applicant's claim of \$51.32 for an experienced teacher employed at a long day care centre.¹²⁰ The average wage rate paid to graduate teachers was about \$5 an hour above the Award rate.¹²¹
124. While it is difficult to determine with precision what percentage of early childhood teachers employed at long day care centres are covered by an enterprise agreement, from the research conducted and the evidence of persons who work with early childhood teachers on a regular basis,¹²² the incidence of over-award payments in the sector is very low and there has been limited collective bargaining in the sector. Where over-award payments are made through collective agreements or individual contracts they are not usually significantly above the wage rates in the Award.
125. Prior to the making of the Teachers Modern Award, there were no award wage rates for teachers in long day care centres in a number of states, although there

¹¹⁷ In 2014, just over 40% of employees were on collective agreement. See Oliver, Damian *Wage determination in Australia: The impact of qualifications, awards and enterprise agreements* (2016) 58(1) JIR 69-92.

¹¹⁸ Matthews Statement [58]-[59].

¹¹⁹ Matthews Statement [62].

¹²⁰ Matthews Statement [84].

¹²¹ Matthews Statement [82].

¹²² James Statement [30]; Spriggs [31]; Menz [82].

was in NSW.¹²³ As to NSW rates, those award rates have been eroded over time as a result of the move to the federal system.¹²⁴ Higher wage rates in NAPSAs applying to early childhood teachers in early childhood services in NSW were preserved by a non-standard transitional provision in the Teachers Modern Award. As a result of the transitional provisions, the transitional wage rates of early childhood teachers in long day care centres and preschools in NSW were between \$3,000 and \$11,000 per annum, depending on the step of the scale, above the wage rates in the Teachers Modern Award. Those higher rates ceased to have effect at 1 July 2014, and the wage rates dropped by this amount, exacerbating the undervaluation for early childhood teachers in NSW.¹²⁵

126. In addition to matching the primary school rates of pay the claim seeks an additional 4% payment for teachers in long day cares. This reflects the existing entitlement in the Modern Award in respect of teachers at long day care centres who have no entitlement to non-term week ordinary hours of work and work 48 weeks per year.¹²⁶ A higher rate of at least 4% can be justified on the basis of the rates paid to primary school teachers in NSW when one divides their annual rate to a weekly amount and multiply that by the number of weeks worked per annum.

N. COMPARISON OF WORK VALUE BETWEEN EARLY CHILDHOOD TEACHERS AND PROFESSIONAL ENGINEERS

127. The correct approach in comparing the work value between early childhood teachers and engineers is to assess the nature of the work, skill and responsibility required and the conditions under which the work is performed, referred to by the Commission in the Decision as “principal criteria of work value”.¹²⁷
128. Ms Issko’s evidence as well as the evidence from the engineers and the early childhood teachers is relied on for the work value comparison. Ms Issko is an experienced job evaluator with many years’ experience and has particular expertise assessing the work of engineers.
129. The evidence from the early childhood teachers¹²⁸ as to their skills, duties and responsibilities is described in paragraphs 97 to 105 above.

¹²³ Attachment B to the Matthews Statement.

¹²⁴ Attachment B to the Matthews Statement [1]-[9].

¹²⁵ Schedule A “Transitional Provisions” to the Award.

¹²⁶ Modern Teachers Award cl 14.2 and 19.

¹²⁷ Equal Remuneration Decision [280].

¹²⁸ Statements of Ames, Cullen, Vane-Tempest, Cullen, Hill and Hilaire.

130. The evidence from the engineers¹²⁹ is that they require a four-year degree to be qualified.
131. They are supervised as graduates and it is their supervisor or manager who has responsibility for signing off on their work.
132. Unlike early childhood teachers as graduates they do not supervise the work of others.
133. They are required to have capacity to apply a high level of applied mathematics, science and technology to their work and are required to be analytical, logical and focused on detail.
134. They may travel away from the office environment to the site and are required to work away from their usual workplace.
135. The experienced engineers have higher levels of responsibility for their work, work on more complicated projects with less oversight and may supervise the work of other engineers and persons engaged on projects.
136. The work carried out by early childhood teachers when compared to the work performed by engineers is of comparable value based on work value principles despite requiring significantly different skills and responsibilities.
137. The stark difference is that a graduate early childhood teacher has responsibility for the safety of a pre-school child, a graduate engineer bears no responsibility for the safety of a built structure.
138. Both engineers and early childhood teachers work in challenging environments. Engineers are required to travel and may be away from their home from time to time and spent their working time on building sites, as where teachers are in a constantly hectic environment which is noisy, high energy, physically and emotionally demanding. They are both relatively dangerous environments as both engineers and teachers are exposed to levels of risk of injury or illness.
139. Leanne Issko, Principal at Mercer evaluated graduate early childhood teachers and graduate engineers and experienced teachers and experienced engineers using the Mercer processes and systems. In conducting the job evaluation, Ms Issko assessed the jobs in terms of expertise, judgement and accountability measures. Expertise includes knowledge and experience, breadth and interpersonal skills. Judgement includes job environment and reasoning. Accountability includes independence and influence, impact and involvement.

¹²⁹ Statements of Broughton, Toker and Haines-Sutherland.

140. These factors were all assessed on a mathematical basis and work value points were determined for each sub-factor. The total work value points is set out on page 14 of the Mercer report.
141. The job evaluation conducted by Ms Issko was conducted in an objective and measurable manner, based on high quality data.
142. Ms Issko's evidence is relied on for the conclusion that the work value of graduate engineers and graduate early childhood teachers and engineers with five or more years experience and early childhood teachers with five or more years experience are comparable.
143. The conclusion as to comparative work value of professional engineers and early childhood teachers is supported by reference to the Award rates for both categories. The graduate (starting) rate in the Professional Employees Award for a four year degree qualified graduate is \$49,545. The graduate (starting) rate for a four year degree qualified graduate in the Teaching Modern Award is \$50,665. The rate for an 'experienced' professional in the Professional Employees Award is \$56,989. Assuming that such a level would be achieved after about 5 years the comparison rate in the Teachers Modern Award is \$59,553. That those Award rates are not substantially different reflects the fact that they are both rates for degree qualified professionals with comparable work value. That the Award rates for a Professional Engineer are actually lower than the Award rates for an early childhood teacher with the same level of experience confirms that a professional engineer would not readily be thought to have a higher work value.

O. REMUNERATION OF EARLY CHILDHOOD TEACHERS COMPARED TO PROFESSIONAL ENGINEERS

144. The applicant relies on the following evidence as to the remuneration paid to early childhood teachers:
 - a. Statements of early childhood teachers.
 - b. Matthews Statement [17], [48]-[59], [65]-[85].
 - c. James Statement [31]-[32].
 - d. Spriggs Statement [23], [30].
 - e. Menz Statement.
145. The applicant relies on the following evidence as to the remuneration paid to professional engineers:
 - a. Statements of engineers.

- b. Matthews Statement [86] Professional Engineers Employment and Remuneration Report 2017 produced by the Association of Professional Engineers Australia.
- c. Mercer Report by Leanne Issko.
146. Remuneration paid to professional engineers is significantly higher than remuneration paid to early childhood teachers in long day care centres and preschools.
147. The Mercer Report provides the following data for remuneration paid to engineers as at July 2017 on pages 25 and 26 in table 8 and 9:

Position Matching Data		25 th percentile	median	75 th percentile
Graduate engineer	4 years qualified	\$65 700	\$83 863	\$110 869
Experienced engineer	4 to 7 years' experience	\$104 532	\$140 173	\$157 762

148. The 'Position Match' data is from Mercer's survey database. Key indicators were identified such as educational requirements, years of experience, staff management responsibilities.¹³⁰ The remuneration amounts represent 'Employment Cost' which is base salary plus cash value of all other benefits excluding bonus/incentive payments.¹³¹
149. Four different survey titles, encompassing over 550 incumbents, were compared to the graduate teacher and three survey titles, encompassing over 450 incumbents were compared to the experienced teacher.¹³²
150. The data from the *Professional Engineers Employment and Remuneration Report 2017* (Professional Engineers Report) provides the following data for remuneration paid to engineers at page 18:

Total Package		25 th percentile	median	75 th percentile
Graduate engineer Level 1	4 year qualified	\$65 700	\$71 589	\$79 369

¹³⁰ Mercer Report pg 28.

¹³¹ Mercer Report pg 32.

¹³² Mercer Report pg 41.

Experienced engineer	4 to 7 years' experience	\$104 558	\$124 145	\$142 350
Level 3				

151. The Levels are defined on pg 60 of the Report. Level 1 is a graduate level entry and Level 3 is midlevel. The engineer outlines and assigns work, reviews work, may supervise work of other professionals and technical staff.
152. The Professional Engineers Report and the Mercer Report both identify the 25th percentile remuneration level for graduate engineer rate as \$65,700 and the experienced engineer at about \$104,000, there being a difference of some \$26 between the two reports. These reports demonstrate that these rates of remuneration are representative, robust and actually reflect the remuneration received by this group of employees being compared.
153. The remuneration paid to early childhood teachers in long day care centres is in large part based on the Award rate and where there are enterprise agreements, the wage rates are not significantly higher than the Award rates.¹³³
154. Early childhood teachers employed at preschools and kindergartens attached to schools or provided by the State government are likely to be paid at the same or similar rate as primary school teachers.¹³⁴
155. The evidence¹³⁵ is that overwhelmingly the remuneration paid to graduate teachers and Band 2 top teachers is below the 25th percentile of the remuneration paid to graduate engineers and engineers with between 4 to 7 years' experience.
156. The IEU contends that on the material set out above that the Commission would find that, at least in respect of engineers who are remunerated at the 25th percentile, professional engineers have a work value that is equal or comparable to that of early childhood teachers, and on that basis (and recognising that 75% of professional engineers are paid above this level of remuneration) the Commission has the power to make an order lifting the remuneration of early childhood teachers to that level of remuneration.
157. That means the Commission could make an equal remuneration order that requires early childhood teachers at graduate level (Band 1, starting rate) and at the top level (Band 2 top rate) to be paid \$65,700 and \$104,500 respectively.

¹³³ Matthews Statement, James Statement.

¹³⁴ Matthews Statement.

¹³⁵ Matthews Statement, James Statement.

Hourly earnings of occupational groups: Australian Bureau of Statistics data

158. The following material provides a further basis upon which the Commission could conclude that early childhood teachers are paid less than professional engineers. Indeed this material demonstrates that early childhood teachers are paid less than non-degree qualified engineering technicians who are overwhelmingly male. This material provides a basis to conclude that there are gender-based differences in remuneration that, as a matter of discretion, justify an order being made.
159. The applicant purchased data from ABS.¹³⁶ That material is summarised in the table It shows average hourly cash earnings for non-managerial employees paid at adult rates in the selected occupational groups.
160. The occupational groups are based on the Australian and New Zealand Standard Classification of Occupations (ANZSCO), which classifies occupations at six levels (from major, 1-digit, groups to 6-digit sub-groups). Early Childhood (Pre-Primary School) Teachers are represented as a 4-digit category (2411) within this system, separate from the Primary, Middle and Secondary School Teachers also within the 3-digit category of School Teachers (241). All 4-digit School Teacher categories are included in Table 1 because contrasts between them contribute to the overall picture of pay levels for Early Childhood Teachers. The male-dominated comparator group included in Table 1 is Engineering Professionals, a 3-digit ANZSCO group that includes a set of more specialised 4-digit categories. Also in Table 1 are Engineering Technician groups (4-digit classifications within the 3-digit Building and Engineering Technicians group) which are included to illustrate the contrast between Engineering occupations with different qualifications requirements. Data on the female share of employment in these classifications are drawn from the Australian Bureau of Statistics, Employed persons by Occupation unit group of main job series (6291.0.55.033). May 2016 figures are used to align with the earnings data in the table which are drawn from a different survey.
161. The earnings figures presented in Table 1 are drawn from the Australian Bureau of Statistics *Employee Earnings and Hours* survey conducted in May 2016. Hourly earnings is the optimal measure to use for comparison as occupations differ in the prevalence of part-time work, and even among full-timers patterns of weekly hours can vary. Hourly earnings can be estimated most accurately for non-managerial employees, and in this survey are calculated on the basis of hours paid for. Restricting the sample to those who are paid adult rates also enhances the comparison by eliminating the effect of potential variation in the prevalence and level of junior rates in these occupations.
162. Based on these measures, Table 1 indicates that average hourly total cash earnings for Early Childhood Teachers (\$38.90) are lower than those for other

¹³⁶ Matthews Statement [95].

4-digit School Teacher groups (which range from \$45.90 to \$48.70), and markedly lower than the 4-digit Engineering Professionals (which range from \$45.90 to \$78.60). They are also lower than those of Engineering Technicians (which range from \$39.90 to \$50.30). These comparisons do not account for variation on the basis of factors such as age and experience, but these are unlikely to differ systematically between the occupational groups. The utility of these comparisons in assessing the undervaluation of Early Childhood Teachers is discussed in the following sections.

Table 1: School Teachers, Professional Engineers and Engineering Technicians by ANZSCO sub-group: occupation size, female share (%), average hourly cash earnings, May 2016¹³⁷

ANZSCO 4-digit groups	Female share (%)	Average hourly cash earnings (\$)¹	
		Ordinary time	Total
241 School Teachers			
2411 Early childhood (pre-primary school) teachers	95.5	38.90	38.90
2412 Primary school teachers	83.1	45.90	45.90
2413 Middle school teachers	77.8	47.80	47.80
2414 Secondary school teachers	62.5	48.70	48.70
2415 Special education teachers	84.8	47.00	47.00
233 Engineering Professionals			
2331 Chemical and materials engineers	25.2	51.80	51.40
2332 Civil Engineering Professionals	13.8	56.70	57.00
2333 Electrical Engineers	8.1	57.50	58.30
2334 Electronics Engineers	0	45.90	45.90
2335 Industrial, Mechanical and Production Engineers	2.9	62.10	62.10
2336 Mining Engineers	24.7	78.70	78.60
2339 Other Engineering Professionals	26.9	54.40	54.40
312 Engineering Technicians²			
3122 Civil engineering draftspersons and technicians	8.4	39.00	39.90
3123 Electrical engineering draftspersons and technicians	0	43.70	44.60
3124 Electronic engineering draftspersons and technicians	5.5	48.50	49.70
3125 Mechanical engineering draftspersons and technicians	0	49.60	50.30

¹³⁷ Notes:

140. Non-managerial employees paid at adult rate.

1. ANZSCO 312 also includes Building technicians; the 4-digit categories for these workers are not included here.

Data sources:

1. Australian Bureau of Statistics 6291.0.55.033 Employed persons by Occupation unit group of main job (ANZSCO), Sex, State and Territory, downloaded 2/12/17 from: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.003Aug%202017?OpenDocument>

Comparing Early Childhood Teachers with Engineering Professionals and Technicians

163. As the table shows, the 4-digit engineering professionals groups are strongly male-dominated occupations, although the extent of this varies (from around one-quarter female in the case of chemical and materials engineers and mining engineers to no representation of women recorded among electronics engineers in May 2016). Although figures on female share fluctuate over time, electrical engineers, electronics engineers, and industrial, mechanical and production engineers are consistently the most male-dominated groups, with 3-6% female share in May 2006 and 0-8% in May 2016. This level of male-dominance is of a similar order to the female-dominance of early childhood teachers, a group with less than 5% male share. engineering professionals thus provide a clear gender contrast with early childhood teachers.
164. In terms of establishing comparable value, a basic indicator of the level of skill and responsibility in a job is the level of qualifications required for entry. Both professional engineers and early childhood teachers require a 4-year Bachelor degree for entry, indicating a basic level of similarity. Both require four years of study, clearly distinguishing them from the other group included in Table 1, engineering technicians. According to the Australian Government's Job Outlook website, entry level qualifications for these four technician groups (3122-3125) are generally Advanced Diploma or Diploma level (AQF 6 and 5 respectively) although some may be employed with Certificate III qualifications (equivalent to AQF level 3). For example, it is noted that four in five electrical engineering draftspersons and technicians have a Certificate III or higher Vocational Education and Training (VET) qualification (Job Outlook website).
165. Lower average hourly pay in these highly male-dominated engineering technician occupations compared with the also highly-male dominated engineering professional groups is consistent with the lower qualifications required for entry. However if it is legitimate to explain pay differences on this basis, a question is clearly raised as to why early childhood teachers, with a 4-year tertiary degree requirement, should have hourly earnings below those of both engineering professionals (who also complete a 4-year tertiary degree) and engineering technicians (who complete lower level qualifications).

Comparison with Primary School Teachers

166. It is also instructive to consider pay differences among the 4-digit school teacher classifications. All these occupational groups (2411-2415) are female-dominated, but none so strongly as the early childhood teachers – a group in which female share was over 95% in May 2016. This suggests that gender has had a role to play in the way work has been valued for this group. The difference

2. Australian Bureau of Statistics, Employee Earnings and Hours Survey, 2017, Customised Report

in average hourly pay between early childhood teachers and the lowest paid among the other 4-digit classifications, primary school teachers, is marked (\$39.80 compared with \$45.90 – a considerable difference bearing in mind that this is an hourly difference).

P. DISCRETIONARY FACTORS

167. If the Commission is satisfied that the s302(5) requirement is met it has a discretion as to whether an equal remuneration order is made.
168. There are a range of considerations which would lead the Commission to exercise the discretion in favour of making an equal remuneration order.

Eliminating gender based discrimination

169. For the reasons set out above, the early childhood teaching sector bears all the characteristics of a gender-segregated occupational group with substantially lower remuneration than other professionals (including other teachers). An equal remuneration order would assist to address the gender pay gap and to remove gender based discrimination.
170. As stated in the Equal Remuneration Decision, the provisions in Part 2-7 have a different purpose to that of modern awards.¹³⁸ So much is clear from the fact that the Commission is not granted a discretion as to the remuneration that is to be ordered – if it decides to make an order that order must be to lift remuneration up to the actual rate of the comparator – in other words to the ‘market rate’. Such a radical power has been included to address the persistent problem of gender pay inequity in this country. Nothing short of such orders has been considered appropriate. That the order sought in this case would substantially increase pay for large number of predominantly female workers (albeit to no higher than the rates that apply to primary school teachers – hardly high wages) is not a reason to determine not to make an order. To the contrary, such an order is entirely consistent with the purpose of Part 2-7.

Effect of any order on the delivery of services to the community

171. The effects of undervaluation of remuneration on early childhood teachers in long day care centres and preschools are numerous and undermine the move to improve the quality of service provided and increased educational and developmental outcomes for children.
172. The current low wages result in:
- a. high turnover of teachers;¹³⁹

¹³⁸ At [172].

¹³⁹ Matthews Statement [14].

- b. difficulty attracting and retaining teachers;¹⁴⁰
 - c. difficulties in recruiting teachers,¹⁴¹ resulting in job vacancies for early childhood teachers remaining unfilled; and
 - d. exemptions being sought to permit under-qualified employees to be appointed to perform work.
173. It is extremely difficult to retain early childhood teachers in long day care centres and to a lesser extent in preschools because the pay does not correspond to the high level of skills and responsibility of the work. Many early childhood teachers leave the long day care sector to obtain higher paying, less stressful jobs in other educational settings, including primary schools. Some teachers use working in both long day care and preschools as a “stepping stone” to entry into teaching positions in schools with higher pay.
174. Children’s developmental outcomes and emotional wellbeing are affected by the shortage of early childhood teachers and the lack of continuity of educators.
175. An increase in the minimum remuneration would assist to address those difficulties.

Impact on employment, productivity and growth

176. As noted, higher remuneration will assist to remove the current disincentive for those trained to teach 0-8yrs or 0-12yrs to teach pre-school children, and so assist to address the shortage of such teachers. Currently such teachers have a strong financial incentive to go straight to primary school teaching, or alternatively switch to primary school teaching.
177. Effective early childhood education is of great importance to the economy as a whole. There is a strong body of evidence that early learning delivers significant educational, social and emotional benefits for the children who participate. The OECD finds a consistent link between participation in pre-primary education and success in the Program of International Student Assessment (PISA) in mathematics, literacy and science. A child with no pre-primary education is 1.9 times more likely to perform poorly in education than a student who has attended more than a year of pre-primary education, even after controlling for socioeconomic status.¹⁴²
178. Quality Early Education for All: Fostering creative, entrepreneurial, resilient and capable learners records:

There is also unequivocal evidence that early childhood education delivers some of the strongest returns on investment of all social

¹⁴⁰ Press Statement at 6 page 13, James Statement [21]-[27].

¹⁴¹ Matthews Statement [15]-[20].

¹⁴² See Matthews Statement.

programs (Heckman, 2009; WISPP). Melhuish (2011) asserts that “the benefit arriving from 18 months of pre-school is similar to that gained from 6 years of primary school”.¹⁴³

179. James J Heckman, a Nobel Laureate in Economics has extensively studied the returns on investment for the broader community with respect to investing in early childhood programs. In his often-quoted article, *Schools, Skills, And Synapses*, Heckman, shows that the rate of return to a unit dollar invested in 0-5 age range programs produce a significantly higher rate of return to investment in human capital than school or post school education programs.¹⁴⁴
180. PricewaterhouseCoopers Australia (PwC) in their report, *Putting a value on early childhood education and care in Australia*, 2014 did some estimates of GDP Impacts of a number of proposed measures to increase access to and the quality of early childhood education services. The value to the Australian economy is estimated to be up to \$9.3bn in 2012/13 dollars, because of increased female participation in the workforce, helping children reach their full potential via participation in a quality early childhood education and care program and increasing participation of vulnerable children in early childhood education and care.¹⁴⁵

Capacity of employers to pay

181. The onus falls on the employer parties to lead evidence that there is an incapacity to pay the amounts sought.
182. Teachers do not constitute a majority of the employment costs of the employers affected.
183. The significant proportion of the teachers who would be affected by such an order are in NSW. When the NSW Industrial Relations Commission awarded a 12% increase in *Teachers (Non-Government Early Childhood Service Centres other than Preschools) (State) Award 2006 [2009]* NSWIRComm 198 it noted at [253]-[254] that the employer evidence failed to identify any adverse consequences that had followed the 20% increase that had been awarded by Schmidt J in 2001 notwithstanding arguments that had been put at the time.¹⁴⁶

Promotion of social inclusion by its impact on female participation in the workforce

184. The order would beneficially impact on the employment of women in terms of career progression, basis of engagement and their levels of remuneration.

¹⁴³ Bundle B (pp.5103-5176) at p.5112

¹⁴⁴ Bundle B (pp.4511-4546) – also see Bundle B (pp.4547-4548).

¹⁴⁵ Bundle B (pp.4713-4754) at p.4742.

¹⁴⁶ See Annexure B to the Matthews Statement.

The effect of the order on enterprise bargaining

185. The history of the early childhood teaching industry is characterised by low levels of bargaining. That is due to a range of reasons, predominantly the small numbers of teachers employed per employer, which in turn leads to low union density. As the Full Bench noted in the Equal Remuneration Decision:

The very factors which have impeded enterprise bargaining in the past will, presumably, still provide a barrier to bargaining in the enterprise, industry or sector concerned in the future, whether or not an order is made. Hence the making of an equal remuneration order may have no practical impact on enterprise bargaining.¹⁴⁷

Q. RELIEF

186. The application sets out the terms of the draft equal remuneration order sought by the IEU. The primary relief there set out would require that early childhood teachers who are employed to work in long day care centres and preschools be paid not less than the rates that are currently paid to primary school teachers in NSW.

Alternative claim – comparison with professional engineers

187. In the alternative, the IEU seeks an order that requires early childhood teachers at graduate level (Band 1, starting rate) and at the top level (Band 2 top rate) to be paid the same as professional engineers at graduate level and ‘experienced’ level are paid on average at the 25th percentile (\$65,700 and \$104,500 respectively).

Further alternative claim – for specific early childhood teachers

188. If the Commission determines that the claim cannot or should not be made in respect of a general class of early childhood teachers then the IEU submits in the alternative that the Commission would nevertheless uphold the application by making an order that would require the particular early childhood teachers who will give evidence to be paid no less than the amounts claimed on behalf of early childhood teachers as a class, namely:
- a. the rates paid to male primary school teachers in NSW; or in the further alternative
 - b. at graduate level (Band 1, starting rate) and at the top level (Band 2 top rate) remuneration that is the same as is paid to professional engineers at graduate level and ‘experienced’ level on average at the 25th percentile (\$65,700 and \$104,500 respectively).

¹⁴⁷ At [208].

R. CONCLUSION

189. The Commission has the power to make an equal remuneration order in respect of early childhood teachers who are employed to work in long day care centres and preschools across Australia.
190. For the reasons set out above it would be appropriate that the Commission determine to make an order providing the relief sought.
191. Having determined that the Commission has the power to make such an order and that as a matter of discretion that such an order should be made, it would be appropriate for the Commission to allow the parties an opportunity to have discussions and put further submissions (by consent or otherwise) as to the final form of an order that would give effect to such a decision.



**INGMAR TAYLOR SC
GREENWAY CHAMBERS**

22 DECEMBER 2017



**LARISSA ANDELMAN
153 PHILLIP CHAMBERS**