

From: Michael Wright [<mailto:michael@ieu.asn.au>]

Sent: Tuesday, 3 September 2019 12:33 PM

To: Chambers - Hatcher VP

Cc: Sophie Margaret Whish ; Nicola Shaw ; Paula Thomson ; david.ireland@ags.gov.au ; Simon Spence ; Carol Matthews; Arthur Dowdle; Renee Mooney

Subject: 2013/6333 & AM2018/9 " Equal Remuneration Order / Application to Vary Modern Award - Revised documents

Dear Associate,

Re.: 2013/6333 & AM2018/9 – Equal Remuneration Order / Application to Vary Modern Award - Revised documents

Please find attached the following documents for filing:

1) An revised Annexure A (ERO Draft Order) to the Form F1 filed on 27 September 2017 [19.09.03 Amended ERO order.pdf]

2) A revised Form F46 Application to vary a modern award (original dated 17 August 2018) [19.09.03 Revised f46 signed - IEU.pdf]

3) An revised Schedule A to the IEU Submissions in Reply (s158) dated 3 may 2019 [19.09.03 Amended Schedule A to IEU reply submissions 3 may 19.pdf]

19.09.03 Revised f46 signed - IEU.pdf

The revisions reflect changes in the rates of pay contained in the *Educational Services (Teaching) Award 2010* and other relevant industrial instruments.

The parties to this matter are copied into this email by way of service.

Regards,

Michael Wright

Dr Michael Wright | Senior Industrial Officer

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Form F46 Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

The Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	GPO Box 116		
Suburb	Sydney		
State or territory	NSW	Postcode	2001
Phone number	(02) 8202 8900	Fax number	(02) 9211 1455
Email address	michael@ieu.asn.au industrial@ieu.asn.au		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	Independent Education Union of Australia
Trading name of business	
ABN/ACN	
Contact person	Michael Wright

Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes—Specify language

No

Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes— Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, or a representative from a union or employer association. There is no requirement to have a representative.

Yes—Provide representative's details below

No

Applicant's representative



These are the details of the person or business who is representing the Applicant.

Name of person			
Organisation			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

1. Coverage

1.1 What is the name of the modern award to which the application relates?



Include the Award ID/ Code No. of the modern award

Educational Services (Teaching) Award 2010 (MA77)

1.2 What industry is the employer in?

Early childhood education

2. Application

2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

- a determination varying a modern award
 a modern award
 a determination revoking a modern award

2.2 What are the details of your application?

1. The IEU applies to substitute the existing subclause 14.1 of the Award with the following replacement subclause:

14.1 The minimum salary per annum payable to a full-time employee will be determined in accordance with the provisions of clause [13—Classifications](#), and the following table.

Level	Per year
	\$
1	\$55,453 <u>\$57,117</u>
2	\$58,534 <u>\$60,290</u>
3	\$61,615 <u>\$63,463</u>
4	\$64,696 <u>\$66,636</u>
5	\$67,776 <u>\$69,809</u>
6	\$70,857 <u>\$72,892</u>
7	\$73,938 <u>\$76,156</u>
8	\$77,019 <u>\$79,329</u>
9	\$80,099 <u>\$82,502</u>
10	\$83,178 <u>\$85,675</u>
11	\$89,341 <u>\$92,021</u>
12	\$92,422 <u>\$95,194</u>

Attach additional pages, if necessary.

2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional requirements set out in the FW Act.

The grounds relied upon are in accordance with Annexure A.

Attach additional pages, if necessary.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Carol Matthews
Date	3 September 2019
Capacity/Position	Nsw/ACT Branch Assistant Secretary IEUVA



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

Annexure A

This Annexure provides the grounds and reasons that support the Independent Education Union's application made on 18 August 2018 pursuant to s158 of the Act to vary the modern award minimum wages in the *Educational Services (Teachers) Award 2010 (the Award)*.

INTRODUCTION

1. The current Award wage rates are wholly inadequate in that they do not reflect the work value of teachers. The Award needs to be amended accordingly to meet the modern award objective and the minimum wages objective.
2. The Award rates were not properly set at the time the Award was made in 2010, nor have they been considered on a work value basis since then.
3. The rates were derived from a federal award, the *Victorian Independent Schools – Teachers – Award 1998 (the 1998 Victoria Award)*, that had applied in Victoria. The rates in that award not been determined on a work value basis, either at all or at least since 1996.
4. To achieve the modern award objective the rates need to be increased in the manner described below.
5. The current rates undervalue the work of teachers by more than 25%. One option open to the Commission, which is the basis of the applicant's alternative claim, would be to rectify that undervaluation by increasing rates for all levels by a uniform percentage.
6. The applicant's primary claim is as follows.

TABLE A – CLAIM

Level	Award Rate	Current Award Relativities	IEU Claim Relativities	Adjusted Award Rates	+ 17.5% Work Value Increase	Total Increase
1	\$50,017	95%	90%	\$47,194	\$55,453	11%
2	\$51,049	97%	95%	\$49,816	\$58,534	15%
3	\$52,438	100%	100%	\$52,438	\$61,615	18%
4	\$54,329	104%	105%	\$55,060	\$64,696	19%
5	\$56,222	107%	110%	\$57,682	\$67,776	21%
6	\$57,984	111%	115%	\$60,304	\$70,857	22%
7	\$59,746	114%	120%	\$62,926	\$73,938	24%
8	\$61,637	118%	125%	\$65,548	\$77,019	25%
9	\$63,531	121%	130%	\$68,169	\$80,099	26%
10	\$65,423	125%	135%	\$70,791	\$83,179	27%
11	\$67,317	128%	145%	\$76,035	\$89,341	33%
12	\$69,208	132%	150%	\$78,657	\$92,422	34%

7. The rates in Table A adjust the current Award rates in two respects. First, the internal relativities are adjusted to remove the inappropriate internal compression at the higher levels. These relativities more closely reflect what is commonly found in the actual rates of pay for most teachers, and more appropriately reflect the comparative higher work value of teachers who have been determined to be proficient (or equivalent) and those who have obtained additional years of experience. Second, it contains an increase in the minimum rates of pay, better reflecting the current work value of teachers. The net result are rates of pay that more appropriately reflect the work value of teachers.
8. The applicant's alternative claim is that all rates be increased by a uniform 25%.
9. The alterations that are claimed would:
 - a. rectify the initial improper settlement of pay rates, which are both too low and contain an inappropriate compression of internal relativities; and
 - b. reflect significant changes in the work value of teachers' work.
10. For the reasons that follow, such variations are:
 - a. justified by work value reasons per s.157(2)(a); and
 - b. necessary to achieve the modern awards objective per s.157(2)(b).

THE CURRENT WAGE RATES ARE IMPROPERLY SET

11. The rates in the Award were set by applying the rates of 1998 Victoria Award as at 2009.
12. It is unclear if the 1998 Victoria Award (and its predecessor awards) were ever the subject of an arbitrated work value decision. Certainly it had not been reviewed on work value grounds since at least 1996.
13. As a consequence of using those rates, the rates set in 2010 for the Award were not rates that reflected an assessment of the work value of teachers. Further, they contained an inappropriate compression of internal relativities.
14. This can be demonstrated by comparison to the award rates that applied in New South Wales prior to 2010. The NSW Industrial Relations Commission considered the work value of teachers in government schools in 2003-2004, and set new rates on that basis (*Crown Employees (Teachers in Schools and TAFE and Related Employees) Salaries and Conditions Award [2004] NSWIRComm 114 (the Government Schools Case)*). The Government Schools Case increases flowed on directly to teachers employed in Catholic schools (*Teachers (Archdiocese of Sydney and Dioceses of Broken Bay and Parramatta) (State) Award 2004 and ors [2004] NSWIRComm 170*).
15. Table B below compares the NSW teacher rates as set by the NSW Industrial Relations Commission, following the assessment on work value grounds, to the Award rates as at 2009. It reveals a significant disparity of rates, and a significant disparity in respect of the internal relativities at the higher levels.
16. There is no reason to conclude that the work value of teachers in NSW is significantly different (or indeed different at all) to teachers elsewhere.

TABLE B – COMPARATIVE RATES WITH NSW RATES AS AT 1 JANUARY 2010

Educational Services (Teachers) Award 2010 [MA77]			NSW Govt School Teachers Award [NSW] *		
Level	Annual \$	Relativities	Step	Annual	Relativities
#3	\$40,201	100%	#5	\$54,749	100%
4	\$41,701	104%	6	\$57,565	105%
5	\$43,201	107%	7	\$60,389	110%
6	\$44,597	111%	8	\$63,212	115%
7	\$45,993	114%	9	\$66,031	121%
8	\$47,493	118%	10	\$68,853	126%
9	\$48,993	122%	11	\$71,671	131%
10	\$50,493	126%	12	\$74,496	136%
11	\$51,993	129%	13	\$81,656	149%
12	\$53,493	133%			

* Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2009 (NSW)

indicates 4 year trained entry level.

17. Table C below compares the current Award rates with notional rates that have been calculated by taking the NSW Government School Teachers rates that applied as at 1 January 2010 and adjusting them by the actual increases that had been applied to the Educational Services (Teachers) Award after 1 January 2010.

TABLE C – CURRENT AWARD RATES COMPARED TO NSW RATES ADJUSTED FOR FEDERAL ANNUAL WAGE INCREASES

Educational Services (Teachers) Award 2010 [MA77] - current			NSW Govt School Teachers Award [NSW] * applying MA77 increases after 1 January 2010 to 1 July 2018		
Level	Annual \$	Relativities	Step	Annual	Relativities
#3	\$52,438	100%	#5	\$70,793	100%
4	\$54,329	104%	6	\$74,347	105%
5	\$56,222	107%	7	\$77,910	110%
6	\$57,984	111%	8	\$81,472	115%
7	\$59,746	114%	9	\$85,030	120%
8	\$61,637	118%	10	\$88,590	125%
9	\$63,531	121%	11	\$92,143	130%
10	\$65,423	125%	12	\$95,709	135%
11	\$67,317	128%	13	\$104,743	148%
12	\$69,208	132%			

* Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2009 (NSW) – Common Incremental Salary Scale / # indicates 4 year trained entry level.

18. The above table demonstrates that merely taking the NSW rates, set based on the work value of teachers in 2003/2004, and applying minimum increases since that date, results in a difference in rates of pay of between 35% and 56. The differences are greater at the higher levels, due to the compression of relativities in the Award. This

difference is **before** consideration of the significant increases in the work value of teachers in the 15 years since the NSW IRC considered the work value of teachers.

S.157(2)(A) - THE VARIATION IS JUSTIFIED BY WORK VALUE REASONS

19. In determining whether the current rates are appropriate and if not what the rates should be, the Commission will consider the work value of teachers: s157(2)(a).
20. In undertaking that task the Commission is not obliged to engage in an exercise of determining *change* in work value since a particular date. However, the Commission may nevertheless have regard to how the work has changed:
 - a. since the last time the work value was assessed in respect of the current rates (in this case, that would be at least since 1996); and
 - b. to the extent the Commission has regard to other applicable rates that were set on work value grounds (for example, the NSW rates), changes in work value since they were last considered (in respect of NSW, since 2003/2004).
21. The applicant rejects the notion that in respect of an award, such as this Award, where the rates set in 2010 were not set by reference to rates that had been properly set on work value grounds, the Commission would limit itself to a consideration of change in work value since 1 January 2010. However, the applicant submits that even were the Commission to only consider work value change since 2010, there has been significant changes in work value justifying the increases sought.
22. The variation is justified by work value reasons, taking into account the following factors.

S156(4)(a) - The nature of the work

23. The nature of the work of teaching justifies the rates being sought. It is work conducted by professionals that requires high levels of professional knowledge, skills and judgement to effectively:
 - a. understand students and how they learn, know the content of what they teach and how to teach it;
 - b. plan for and implement effective teaching and learning,
 - c. create and maintain supportive and safe learning environments;
 - d. assess and provide feedback on student learning and;
 - e. engage in professional learning; and
 - f. engage with the rest of the profession, parents/carers and the community.
24. There have been significant changes in the nature of the work performed by teachers at the early childhood, primary and secondary levels, caused by factors including:
 - a. changing understandings of patterns of brain development and growth has led to increased understandings of the appropriate pedagogical approach to take at each level of schooling, and a need to adapt to new theories of pedagogy;

- b. the introduction and requirement to teach to national curricula (i.e. the Australian Curriculum and the Early Years Learning Framework);
- c. increases in the need for individualised and complex programming, and related data harvesting and utilisation for each student;
- d. moves to newer teaching methods such as project-based learning rather than more traditional methods of instruction;
- e. higher complexity, formalisation and accountability of assessment and programming processes, including real time assessment and reporting;
- f. increased interaction between early childhood education, primary schools and secondary school, with a focus on managing and supporting children's transitions between stages;
- g. increasing prevalence of a diverse range of technology in classrooms, and the need to use complex hardware and software technologies;
- h. other related productivity improvements.

S156(4)(b) - The level of skill and responsibility in doing the work

- 25. Teaching work requires degree qualifications. Teachers are required to be accredited/registered to teach in schools and to teach in early childhood services in most States and Territories.
- 26. Teachers have a high degree of responsibility in that are expected to prepare Australian children to lead successful and productive lives as adults.
- 27. Teaching roles now require the attainment and exercise of a higher level of skill, caused by factors such as:
 - a. changes in qualification requirements, including the phasing-out of three year degree programs;
 - b. the introduction of the Australian Professional Teaching Standards, meaning for the first time the professional role of a teacher is comprehensively articulated;
 - c. introduction of specialist qualifications and accreditation, including the introduction of 'Highly Accomplished' accreditation (which is not currently recognised in the rate structure);
 - d. increasingly standardised registration and accreditation requirements, including in particular in the early childhood teaching sector.
- 28. The level of responsibility required of teachers has also increased, due to factors such as:
 - a. increasingly stringent teacher-to-student ratios in the early childhood teaching sector, and other regulatory change;
 - b. updates to child protection legislation placing higher burdens on teachers;
 - c. increased ongoing quality assessment;

- d. a higher number of children with intellectual and physical disabilities in mainstream services, and a higher need to understand increasingly complex physical and mental health issues affecting students;
- e. more responsibility for the social and emotional learning of children, including a wide range of extra-curricula issues such as mental and sexual health, safe use of social media, and anti-radicalisation programs; and
- f. greater expectations for children at every level of education to reach developmental/academic benchmarks.

S156(4)(c) - The conditions under which the work is done

- 29. Teachers perform work in school and early childhood settings of varying size and complexity.
- 30. The work of teachers is performed under different conditions than in 2009 or when the Victorian Award rates were set, as a result of a number of factors including
 - a. a movement away from traditional classroom structure to agile space learning environments, and corresponding increases in the number of children per class;
 - b. technology-driven changes to the nature, timing and method of engagement with students and parents; and
 - c. ongoing changes in enrolment patterns.

SS157(1)(B) AND 284(1) - THE VARIATION IS NECESSARY TO ACHIEVE THE MODERN AWARD AND MINIMUM WAGES OBJECTIVE

A fair and relevant safety net of minimum wages

- 31. The Award rates are not relevant in the sense that they have no bearing or influence on the rates actually paid in the overwhelming majority of the industry. As the following table demonstrates, the current Award rates are up to 36% lower than wages paid to teachers employed in government and Catholic schools nationally, with the compression of relativities between levels meaning this is more exacerbated at the higher end of the scale. The majority of independent schools pay at or above these rates on a state-by-state basis.

TABLE D

MA77		IEU	Awards/Agreement covering public sector teachers across Australia							
Lvl	Rates	Claim	NSW	QLD	#VIC	WA	SA	TAS	ACT	NT
From	Jul-18		Jan-18	Jul-18	Oct-18	Dec-18	Oct-17	Mar-18	Apr-18	Oct-16
3	\$52,438	\$61,615	\$67,248	\$70,081	\$67,558	\$70,137	\$68,126	\$68,159	\$68,022	\$69,801
4	\$54,329	\$64,696	\$70,708	\$73,507	\$70,051	\$76,760	\$71,638	\$71,671	\$71,644	\$73,302
5	\$56,222	\$67,776	\$74,177	\$76,997	\$72,636	\$83,820	\$75,153	\$75,360	\$75,264	\$76,804
6	\$57,984	\$70,857	\$77,645	\$80,619	\$75,316	\$87,027	\$78,664	\$79,249	\$78,886	\$80,304
7	\$59,746	\$73,938	\$81,108	\$83,945	\$78,096	\$90,361	\$82,187	\$83,328	\$82,508	\$83,805
8	\$61,637	\$77,019	\$84,572	\$87,391	\$80,977	\$93,824	\$85,699	\$87,569	\$86,129	\$89,601
9	\$63,531	\$80,099	\$88,035	\$90,877	\$83,965	\$97,423	\$89,213	\$91,634	\$89,750	\$93,102
10	\$65,423	\$83,179	\$91,505	\$93,032	\$87,063	\$101,163	\$93,965	\$96,233	\$95,786	\$96,603
11	\$67,317	\$89,341	\$100,299	\$97,297	\$90,276	\$105,049	\$98,806	\$97,763	\$101,821	\$100,104
12	\$69,208	\$92,422	\$100,299	\$97,297	\$101,260	\$105,049	\$98,806	\$97,763	\$101,823	\$100,104

- in the Victorian Government Schools Agreement 2017 (AE425147), there are 10 levels after entry as a 4 year trained teacher, as opposed to 9 or less in the other States. The top rate for the Classification: Classroom Teacher 2-6 of \$101,260 is shown for comparative purposes at Level 12. The preceding Classification: Classroom Teacher 2-5 is paid \$93608.

32. The Award rates are not fair, in that they did not at the time they were set and do not now adequately reflect the value of the work performed, for the reasons set out at [11]-[30] above.

The need to encourage collective bargaining

33. A significant proportion of teachers are currently covered by enterprise agreements, including almost all primary and secondary school teachers. However, a portion of the workforce – primarily early childhood teachers in the for-profit sector – have very low levels of collective bargaining currently.
34. The variation sought will encourage collective bargaining in the Award-reliant sector, as having fair and relevant award rates:
- a. actively incentivises collective bargaining for employers, in that it increases the need to negotiate for enterprise-specific trade-offs and productivity benefits;
 - b. makes collective bargaining a relevant option for employees currently covered by the award, by making the starting point an appropriate minimum rate rather than an undervalued minimum;
 - c. removes disincentives to continue collective bargaining for employers who have negotiated rates at or higher than the correct minimum work value, by removing the gap between these rates and the Award minimum.

The need to promote social inclusion through increased workforce participation

35. The current Award rates, by their undervaluation of the work, affect the supply of teaching professionals in award-dominated sectors of the industry, in particular early childhood education.

36. The proposed variation will address this, leading to:
- a. a greater ability for private sector employers to attract and retain early childhood teachers;
 - b. thus greater community access to early childhood education services; and
 - c. from this, a potential increase in workforce participation as parents of young children are more readily able to return to work.

The need to promote flexible modern work practices and the efficient and productive performance of work

37. The proposed new Award rates will promote the efficient and productive performance of work by appropriately recognising and remunerating workers for the skills required to perform the work, which will:
- a. reduce turnover and supply difficulties in sectors of the industry where Award-only coverage dominates; and
 - b. incentivise teachers and non-degree qualified educators paid at Award level to participate in further study to upgrade their skills,
- both of which will deliver productivity gains at an enterprise and industry level.

Equal remuneration for work of equal or comparable value

38. As set out at [11]-[30] above, the current rates do not reflect the real work value of the classifications covered by the Award, assessed objectively or when compared to work performed.
39. The Award covers workers who:
- a. are qualified professionals;
 - b. exercise their professional skills in their work;
 - c. are predominantly women;
 - d. are paid substantially less than their professional peers; and
 - e. whose predominant gender has been a factor in that outcome.

Likely impact on business, including on productivity, employment costs and the regulatory burden

40. The proposed variation will have a positive effect on business productivity as:
- a. it will provide proper remuneration for the skills and work performed by teachers, leading to consequent productivity improvements;
 - b. it will encourage upskilling and the entry and retention of people into the teaching workforce;
 - c. it will address skill and labour shortage in the Award-reliant sector of the teaching industry (primarily early childhood teaching), increasing community

access to high-quality services of this kind and correspondingly increasing workforce participation and productivity in the short and long term, for the reasons set out above.

41. The impact on employment costs will be relatively constrained as:
 - a. the overwhelming majority of employers in the industry pay above the amounts claimed by the IEU and as such the claim will have no impact on their employment costs;
 - b. while the increases sought are proportionately large, in the Award-dominated early childhood sector, teachers form a small proportion of the overall workforce and therefore the impact on employers and consumers of services will not be significant;
 - c. recent changes in government funding in the early childhood teaching sector in particular will ameliorate much of the impact.

The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

42. Varying the rates in the manner sought by the IEU will ensure that the Award properly reflects the value of teachers' work, objectively ascertained, and that the rates are relevant to actual market rates. This will increase the stability and sustainability of the modern award system by ensuring that the Award is:
 - a. relevant to business and employees; and
 - b. fair.

Likely benefit to the sustainability, performance and competitiveness of the national economy

43. As set out at [33-36] above, the variation sought by the IEU will address supply and retention issues in the Award-reliant sectors of the industry. This will benefit sustainability, performance and competitiveness of the national economy by:
 - a. in the short term, providing increased access to early childhood education and care within the community and correspondingly increasing workforce participation and economic growth; and
 - b. in the long term, by increasing access to quality education services at all stages of pre-tertiary education for young Australians and consequently increasing ongoing educational performance and future workforce skills.

Other discretionary reasons

44. The proposed variation will reduce turnover and supply difficulties in sectors of the industry where Award-only coverage dominates and as a consequence improve the effectiveness of early intervention measures and the positive economic outcomes that follow.

18 August 2018