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Subject: 2013/6333 & AM2018/9 – Equal Remuneration Order / Application to Vary Modern Award - IEU Further Submissions in Reply
Date: 1 April 2020 at 16:52:20 AEDT
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Dear Associate,

Re.: 2013/6333 & AM2018/9 – Equal Remuneration Order / Application to Vary Modern Award - IEU Further Submissions in Reply

Please find attached submissions pursuant to the direction given by the Full Bench on 5 September 2019 permitting the IEU to file a written submission of up to three pages, following the filing of the Agreed Facts, that responds to the ACA written closing submissions that the IEU had not addressed in its oral closing submissions.

Apologies to the Commission for the brief delay in filing these submissions.

They are provided in both Word and PDF formats.

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

Regards,

Michael Wright

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**IN THE FAIR WORK COMMISSION
AT SYDNEY**

AM2018/9 – Application to Vary an Award – s.158

INDEPENDENT EDUCATION UNION OF AUSTRALIA
APPLICANT

IEU FURTHER SUBMISSIONS IN REPLY

These submissions are provided pursuant to a direction given by the Full Bench on 5 September 2019 permitting the IEU to file a written submission of up to three pages, following the filing of the Agreed Facts, that responds to any aspect of the ACA written closing submissions that the IEU had not addressed in its oral closing submissions.

The paragraph references are references to the paragraphs of the ACA written closing submissions dated 2 September 2019 and filed 5 September 2019. (**ACA Submissions**).

The NQIAS

1. At [218] to [234], the ACA submissions (for the first time in writing) deal with the National Quality Improvement and Accreditation System. It appears that the submission is that the existence of a previous system of national regulation meant that the introduction of the quite different National Quality Framework involved no actual change to the industry or the nature of or skill required by the work. That is said, notwithstanding that the NQIAS did not apply to the whole industry (excluding all pre-schools) and notwithstanding that the introduction of the NQF followed extensive consultation and collaboration across every State, with the express purpose of raising quality standards in early childhood education.
2. The IEU's expert evidence explained in clear terms the nature of the change in the industry. This was not affected by cross examination. Only Dr Press was asked about it, and then only to confirm its existence.
3. That the NQF initiated a quality improvement, and thus a change, is obvious. There is now a uniform system of regulation applying to the entire industry, affecting each aspect of the way that work is done, including standards directed specifically at pedagogical quality: see *Guide to the National Quality Framework*, Bundle J, page 1 [Exhibit 76: Doc.140], particularly standard 1.1 from page 93. New requirements for the presence of teachers were introduced. The change in standards meant what was required to achieve the highest level became, effectively, the bare minimum. And fundamentally, the system for assessing these matters became rigorous and complex, uniform across the whole industry, and the outcomes public: see, e.g. PN8225-8407 per Ms Prendergast.
4. To take the most similar quality area, (NQIAS quality standard area 4 – Children's Experiences and Learning): immediately before the implementation of the NQF 75-89% of services were rated High Quality (KV-9, p.8) against that standard. The residue were rated Good Quality – none, importantly, were merely 'satisfactory'. Consistent with the higher standards required, these ratings plummeted after NQF was introduced. In May 2013, only 24% of centre-based services were rated as 'exceeding' (the equivalent of High Quality), with a further 35% achieving only the minimum standard for accreditation (being 'working towards') (exhibit 124). Consistent with the notion that NQF would drive improvements in quality, these figures improved in 2014, with still only 24% making it to 'exceeding' but at least only 29% remaining merely on the minimum standard (the majority clustering at 'meeting the NQS' (Exhibit 125). Even as late as 2019, only 28% of services have reached 'exceeding', although the proportion stuck at 'working toward' has dropped to 10% (Exhibit 126).

ECTs are different to educators

5. Throughout its submissions, and in particular at [179], [182], [184], [187], [188], [195], [199], [201] and [205], the ACA asserts that there is no difference between

a degree-qualified early childhood teacher and a diploma- or certificate-qualified educator. This assertion is based solely on the bald proposition that many of the duties and conditions or hours of work are similar for teachers and educators. This misses the point.

6. Teachers perform that education and care work at a higher level. Their specialised pedagogical knowledge and capacity to apply that knowledge is recognised by the NQF, and is no doubt the reason why Governments mandate minimum ECT ratios. They are seen as leaders, are usually assigned formal leadership roles, and supervise their educator peers. It is unsurprising that as a matter of fact – notwithstanding the ACA position in these proceedings – for-profit enterprises emphasise the presence of tertiary-qualified teachers in their marketing material.

Teachers have had relevant work value change - and ECTs are teachers

7. ACA concedes that teachers *other than* ECTs have had relevant work value change: [299]-[301], [307]-[318]. Such acknowledged change, which is significant in scope and extent, justifies a significant increase in rates of pay. ACA however seeks to distinguish ECTs from other teachers.
8. There is no basis to distinguish ECTs. They can and usually do have the exact same educational qualification (0-12 year teaching degree). In New South Wales, Queensland, Western Australia and South Australia they have the same registration requirements, with moves afoot to introducing this in the remaining States and Territories: see the third report of Dr Irvine (Exhibit 14) at [38]; third report of Dr Press (Exhibit 11) at p.7; Exhibit 76: Doc. 214 '*One Teaching Profession: Teacher Registration in Australia*'. In addition, they have to meet the same national teaching standards and the same ongoing proficiency requirements (noting that ECTs have their own APST guides): cf [136] and [244].
9. The expert evidence led by the IEU consistently rejected the notion that ECTs have a different, lower, work value than other teachers. In the absence of any expert evidence to support its contrary assertion, ACA relies on a copy of a PowerPoint presentation which records, among other things, results of a survey of third-year students: [289], Exhibit 65. Read in full, the presentation in fact highlights the specialised skills required for ECEC work, not some lesser degree of difficulty – as well as the need to recruit quality teachers into this crucial area.
10. In any event, no party seeks to introduce a different classification or Award rate for ECTs. Accordingly, if there has been a change in the work value of teachers generally when taken as a whole, that would reflect in teacher rates generally, including ECTs.

Change in reporting requirements for ECEC teachers

11. At [122]-[123], [138] and [251]-[259] the ACA submits that there is no evidence aside from what is said by Ms James that requirements to provide detailed

complex reports on children's development, as well as general parental engagement, exist and have increased for ECTs.

12. Detailed descriptions of this aspect of the work were given by IEU witnesses (for example, by Ms Sri Hilaire in her supplementary statement (exhibit 56) at [6], Ms Finlay (Exhibit 50) at [69] and [75]-[76], Ms Ames in her first statement (Exhibit 58) at [38], Ms Cullen in her supplementary statement (Exhibit 70) at [29]-[30], Ms Hill (Exhibit 17) at [20]-[21] and Ms Vane Tempest (Exhibit 39) at [26]-[27]. There was no real challenge to this from ACA witnesses. They detail the change to daily reporting, by reference to the Early Years Learning Framework curriculum. For example:
 - a. at PN9663, Ms Viknarasah estimates that teachers and educators spend about 2.5hours a shift doing paperwork;
 - b. at PN8431-8437, Ms Prendergast discusses the real-time access to parents now available, with each of her staff now required to carry and monitor a device at all times; and
 - c. at PN7204-7230, Ms Toth described the range of purposes that observations are directed at, and the increased level of parental engagement.

Professional development requirements

13. At [133], the ACA state that teachers are required to do only 4 hours a year of professional development. The correct figure is 20 hours per week: see, e.g. Dr Dockett (Exhibit 44) at p.3, a change introduced for all teachers (including ECTs) in 2011.

Gabrielle Connell

14. At [225], ACA attacks the evidence of Ms Connell as, in effect, inconsistent with its witnesses' experience of for-profit ECEC centres. This fails to recognise that Ms Connell is a preschool teacher (as are the majority of employed ECTs) and cannot sensibly be criticised for not reflecting the experiences of the for-profit sector. ACA led no evidence from the pre-school sector that would call into question Ms Connell's evidence. Ms Connell was a persuasive witness whose evidence would be given great weight given her long industry experience and her standing in the industry.

Ingmar Taylor SC

Lucy Saunders

Greenway Chambers

1 April 2020