

From: Simon Spence [mailto:simon.spence@ccer.catholic.org.au]
Sent: Monday, 14 May 2018 3:54 PM
To: Chambers - Hatcher VP
Cc: Equal Remuneration Case _ Child Care_CCER SYDNEY Email
Subject: C2013/6333 - IEU application for an Equal Remuneration Order [IWOV-Client.FID21591]

Dear Associate to Vice President Hatcher,

Please find attached the submissions of the Catholic Commission for Employment Relations in relation to the application by the Independent Education Union for an Equal Remuneration Order for early learning teachers.

Kind Regards



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A promotional graphic with a blue and red color scheme. On the left, a red banner contains the text "Resources Spotlight" in white. To its right, the text "Need help?" is written in a large, bold, blue font. Below this, a blue rounded rectangle contains the text "Check out our library of easy to use HR templates and resources designed specifically for Catholic workplaces." in white. To the right of this rectangle is a white icon of a clipboard with a checklist, featuring three checkmarks and three horizontal lines representing text.

**Catholic
Commission**



For Employment
Relations

**Catholic Commission for Employment Relations
(NSW/ACT)**

**Submission to
FAIR WORK COMMISSION**

**APPLICATION BY THE INDEPENDENT EDUCATION UNION
FOR AN EQUAL REMUNERATION ORDER FOR EARLY
CHILDHOOD TEACHERS
(C2013/6333)**

14 May 2018

FAIR WORK COMMISSION

Title of matter:

APPLICATION BY THE INDEPENDENT EDUCATION UNION FOR AN EQUAL REMUNERATION ORDER FOR EARLY CHILDHOOD TEACHERS (C2013/6333)

RESPONDENT'S OUTLINE OF CONTENTIONS

Catholic Commission for Employment Relations (NSW/ACT)

1. On or about 28 November 2013, the Independent Education Union ('IEU'), lodged an application with the Fair Work Commission ('Application') under the equal remuneration provisions of the *Fair Work Act 2009 (Cth)* ('Act') in respect of early childhood teachers who are employed to work in long day care centres and preschools across Australia.
2. The Catholic Commission for Employment Relations ('CCER') is a respondent to the Application.
3. CCER is an employer body representing Catholic employers in New South Wales and the Australian Capital Territory.
4. CCER wishes to provide a general submission in relation to the matters relevant to Catholic early learning centres that the Fair Work Commission may wish to consider in determining whether the wages and classifications structures which apply to Early Learning Teachers should be altered or replaced in the manner set out in the Application.

Background

5. The 11 Catholic Dioceses in NSW and the ACT run and operate systemic schools which are significant employers of teachers and general employees in primary and secondary schools. Some of the 11 Dioceses also offer early childhood services which employ teachers.

6. CCER is aware of Catholic Early Learning Centres (CELCs) operating within the following Dioceses which employ early learning teachers and educators:
- The Catholic Education Diocese of Parramatta operates 5 CELCs (being a combination of four Preschools and one Long Day Care centre). CELC services within CEDP offer lower fees to families where they are located in a lower socio economic area, as measured by the Socio-Economic Indexes For Area (SEIFA).
 - CatholicCare Broken Bay within the Diocese of Broken Bay operates 5 CELCs (being a combination of Preschools and Long Day Care centres);
 - The Catholic Diocese of Maitland-Newcastle trading as St Nicholas Early Education operates 5 long day care child centres;
 - The Catholic Schools Office Lismore operates 6 CELCs, all of which offer long day care and 2 of which also offer pre-school services;
 - The Archdiocese of Canberra-Goulburn operates 5 CELCs attached to its primary schools. Early learning teachers in CELCS in the ACT are paid equivalent rates of pay to primary and secondary school teachers pursuant to a stand-alone enterprise agreement (as noted in paragraph 51 of the Carol Matthews statement in the IEU evidence);
7. In addition to the above, a number of Catholic Independent Schools provide early learning services which employ early learning teachers. Some of the early learning centres attached to these Catholic Independent Schools already provide equivalent rates of pay to primary school teachers through enterprise agreements.

Rates of Pay

8. On 1 April 2009, the NSW Industrial Relations Commission made the *Teachers (Catholic Early Childhood Service Centres and Pre-Schools) (State) Award 2006* (the "State Award"), applying to teachers employed in licensed child care centres attached to or operated by Catholic non-government schools (368 NSWIG 623). The State Award had a nominal term of operation from 29 March 2009 to 31 December 2011.
9. On 1 December 2009, the NSW Government passed legislation to refer its power to regulate the industrial relations of private sector employers to the Commonwealth and this referral commenced with effect from 1 January 2010.

10. On 1 January 2010, the *Teachers (Educational Services) Modern Award 2010* (the “Modern Award”) commenced operation. This Modern Award has general application to teachers (including early learning teachers) in Australia, including those who work for Catholic employers.
11. A number of Catholic employers pay the minimum wage rates under the Modern Award, however, in some instances above Award rates are paid in recognition of market and other factors. For example, it is understood that at the time of introduction of the Modern Award in 2010, a decision was made by some Catholic employers to maintain the rates of pay provided under the State Award which were higher than the Modern Award (but less than the rates paid to primary and secondary school teachers under the *NSW and ACT Catholic Systemic Schools Enterprise Agreement 2015*).

Education and Care Services National Law

12. The *National Quality Framework* came into effect in 2012 and introduced National Quality Standards for early learning centres. The Standards provide for prescribed ratios and qualifications of educators to children and early learning teachers to children. The Regulations require that early learning teachers must be in attendance for a specified number of hours relative to the number of children. For example, the *Education and Care Services National Regulations* (New South Wales) provide that if a centre-based service has between 25 to 59 children at pre-school age or younger, then an early learning teacher will need to be in attendance for at least 6 hours on that day (which roughly equates to a ratio of 1 teacher to 10 pre-school students).¹
13. While ratios for early learning teachers were in place prior to the introduction of the National Law, the introduction of a National Quality Framework introduced a range of new compliance requirements, including that Educators were to have a minimum qualification of Certificate III, and a range of other due diligence requirements which Approved Providers are required to meet. The Framework also has minimum requirements around the amount of indoor space and outdoor space which each child who is being educated or cared for is to receive (these being in place in NSW prior to the introduction of the Framework).²

¹ *Education and Care Services National Regulations* (New South Wales), Regulation 132.

² *ibid.*, Regulations 107-108.

14. As a result of the introduction of the National Law there was disruption to the private market, with a consequent reduction in some small operators who were unable to readily comply with the National Law, and an expansion in CELC services in some Dioceses (for example, within the Catholic Education Dioceses of Parramatta) to respond to an increase in parental demand for early learning services.

Funding of Early Learning Education services

15. Funding for pre-school services is derived from a number of sources, including the Commonwealth Government's National Partnership Agreement, State/Territory recurrent funding, Fee subsidies (the Commonwealth provides a Child Care Benefit (CCB) which is means tested, and a Child Care Rebate (CCR) which is not), and parent fees.

16. State and Territory governments are predominantly responsible for funding pre-school services operating during school term weeks for at least 7.5 hours per day, for example 8:15am – 3:45pm. The provision of pre-school services as part of a Long Day Care service receive Commonwealth funding through CCB and CCR rebates for working families and supplement funding from the State Government under 'Start Strong' funding for pre-school aged children.

17. For pre-schools and Long Day Care centres in NSW which offer pre-school services, the different government funding sources are not sufficient to cover the cost of running and operating the service alone and parental fees provide a substantial source of necessary income for these centres. The differential between government funding and the contribution of parental fees towards pre-school services can be illustrated by research conducted by the Productivity Commission which found that across NSW pre-schools (not only in Catholic Early Centres) the contribution of parent fees to the cost of pre-school in 2012-13 was 34 per cent (or \$161M of \$473M estimated recurrent funds). In the ACT, the Territory Government's direct contribution to pre-school services is significantly higher than in NSW and this is reflected in parental fees which were 17 per cent of the contribution (or \$6.8M of \$38.8M).³

18. The manner of funding of Early Learning Centres described above can be compared to Catholic systemic primary and secondary schools. NSW Catholic systemic schools receive approximately 80 per cent of their income from Government sources, with 60

³ Productivity Commission Inquiry Report No. 73, *Childcare and Early Childhood Learning* (Volume 2), 31 October 2014, page 497.

per cent received from the Commonwealth Government and 20 per cent from the State (less in the ACT) and with the remaining 20 per cent coming from private sources, mostly school fees. These funds are used to support staffing, capital and operation costs in schools.

Impact of an Equal Remuneration Order

19. Catholic employers run CELC operations on a not for profit basis, with CELC services recognising that families require these services not only to support individual families' workforce needs, but more importantly to provide families with affordable education and care services beyond formal schooling.
20. Any increase to early learning teachers' salaries through an ERO would require a significant reconsideration of operating models to ensure that Catholic Early Learning Centres in NSW remain viable and continue to comply with the National Law. The requirements of the National Quality Framework are such that an ERO for early learning teachers will not be able to be accommodated by increasing the number of children being educated and cared for without employing additional staff to meet ratio and qualification requirements. Furthermore, increases in numbers of children would also be limited by space restrictions which apply to early learning centres. As a result, the cost of any increase to early learning teachers' salaries through an ERO would need to be found through an increase in funding sources.
21. If the Commission were to decide that an Equal Remuneration Order (ERO) should be made providing equivalent rates for teachers, the CCER submits that Government will need to improve investment in the early childhood education and care sector to dedicated pre-schools and long day care services in order that existing services can be sustained and so that affordability is maintained for families with children who attend CELCs.
22. The CCER further submits, that without a corresponding increase to Government grants to fund any increase from an ERO, CELCs in NSW would almost certainly need to increase the fees charged to parents. This increase would impact on decisions about affordability and access and which may in turn impact on the viability of some centres. Fee increases would be felt most acutely in certain geographical locations in NSW where families are least able to afford an increase (for example, Western Sydney within the Catholic Education Dioceses of Parramatta, or regional areas within the Dioceses of Lismore and Maitland-Newcastle). The potential

negative impact of any increases to salaries (and the capacity of Early Learning Centres to pay) would be partly mitigated through the staging in of increases over time.

CCER Summary of position

23. Catholic employers recognise that there is a disparity in the Modern Award rates of pay for early learning teachers compared with those paid to primary and secondary school teacher. Given the qualifications and professional standards for early learning teachers are equivalent to primary school teachers, the CCER acknowledges the legitimate aspirations of early learning teachers for increased rates of pay. At the same time, CCER notes that Catholic employers in New South Wales have limited means to fund the proposed increases. Most employment in the sector is funded by State or Commonwealth Government through direct contributions and subsidies available to working parents, as well as fees paid by parents which go directly towards the running costs of CELCs. Staffing costs, including the salaries of teachers and educators, represent approximately 80 per cent of the operational budget of CELCs.
24. Catholic employers acknowledge the intrinsic benefits that flow from improving pay and conditions of workers, for the workers, the organisations that employ them (including improved attraction and retention), and the clients that they serve, while at the same time being acutely aware of the financial pressure such increases will place on many Catholic organisations and their funders.
25. In this regard if the FWC determines to increase rates of pay it would be essential that State and Commonwealth Governments fully adjust funding to provide for such increases in a timely way.
26. Failure to fund the transition may have the unintended consequence of forcing many CELCs to reduce their level of service, to reduce the number of employees and/or withdraw from providing some CELC services.
27. CCER asks that if there is any decision by the FWC to increase rates of pay, that those rates be phased-in in such a way as to reflect the changes in funding and minimise the adverse impact on the provision of services and the rate of employment in CELCs. CCER reserves the right to make further submissions on the implementation of any increases to rates of pay for early learning teachers should there be a determination for equal remuneration.

28. CCER proposes to monitor proceedings and be available to assist the Fair Work Commission where required. We reserve the right to make further specific submissions if matters arise that warrant that course of action.

A handwritten signature in black ink, appearing to read 'Anthony Farley', with a large, stylized flourish at the end.

Anthony Farley
Executive Director
Catholic Commission for Employment Relations