



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF
EMPLOYERS AND INDUSTRIES (AFEI)
AM2008/77 – EDUCATIONAL SERVICES PRE SCHOOL TEACHERS
AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
AWARD MODERNISATION

MATTERS NO. AM2008/70 – EDUCATIONAL SERVICES (TEACHERS)
AWARD 2010

1. AFEI makes the following submission in respect of the amendments proposed to the Educational Services (Teachers) Award 2010 (“the proposed Award”) in the Educational Services – Pre School Teachers industry grouping. AFEI has made earlier submissions in respect of Educational Services – Pre Schools and continues to rely on those submissions.

Clause 4 – Coverage

2. The proposed Award will cover employers employing teachers across Australia in the school education industry, children’s services and early childhood education industry. AFEI maintains and refers to its earlier submission regarding the difficulties associated with covering school teachers and early childhood teachers under one award.
3. Historically, award coverage for early childhood teachers has been separated from teachers in a registered school. The reasons for this industrial separation are complex and varied. In deciding to incorporate early childhood teachers into an exposure draft of the occupational teachers award, the Commission stated it considered:

The qualifications required by early childhood education teachers and their capacity to work in schools and preschools as well as childcare centres¹

¹ Australian Industrial Relations Commission – Award Modernisation [2009] AIRCFB 865

4. AFEI submits that the principal consideration as to whether the separation should continue under the modern award framework should not be limited to the similar nature of the roles between teachers in early childhood and teachers in schools, but rather the identity and resources of the employer and the operations of the pre-school and childcare centre itself should also be considered. Whilst the Commission was correct in defining pre-schools in Clause 2 of the proposed Award as a service that may 'approximate' schools in terms of hours, the use of the word approximate need be emphasised. Difficulty arises throughout the proposed Award where the terms of the proposed Award originally drafted for teachers in schools attempt to exactly align with pre-schools. Examples of such difficulties include:

- (a) *Clause 19.4 of the proposed Award requires that the maximum number of days that the employee will be required to attend during term weeks and non-term weeks will be 205 per year. Pre-schools not falling within the scope of Schedule A would be bound to observe this condition. This is inconsistent with existing practices in preschools that generally require more flexibility. Further this maximum is not stipulated in the existing Teachers (Non-Government Pre-Schools)(State) Award [NAPSA – NSW] (“the NSW Pre-School NAPSA”) and would form a significant change to practices where a small community run pre-school requires a teacher to attend during school holidays.*

- (b) *Clause 10.2(b) of the proposed Award requires the employer to specify face-to-face teaching load and details of the teachers extra curricular commitment. This requirement is not a general practice within early childhood teaching and does not reflect differences in attendance patterns between preschools. For example, some preschools may operate for 6 hours from 9.00am to 3.00pm, whilst others may operate for 8 hours from 8.00am to 4.00pm. An example of this inherent flexibility is demonstrated in clause 10.1(a) of the NSW Pre-Schools NAPSA where the terms of engagement relate only to specifying classification, salary, hours of the centre, and teachers' entitlements.*

5. AFEI reiterates its earlier submissions on the diverse nature of preschools. Unlike schools, preschools are frequently small, community based and need to be extremely flexible and responsive in meeting community needs. Managing with limited resources and maintaining adequate staffing levels are key, and continual concerns.
6. In the event that the Commission decides to maintain the incorporation of early childhood teachers within an occupational teachers award, AFEI submits that the Commission should create an additional schedule to the proposed Award entitled – “Hours of Work and Related Matters – Teachers employed in Pre-Schools not attached to Schools”. The creation of such a schedule would permit specific and appropriate terms and conditions to be created for preschools throughout Australia.

Clause 10.4 – Part-time employment

7. The proposed Award restricts the ability of an employer to change the employee’s teaching load or days of attendance to where an employee consents to such a change or to where the employer provides 7 weeks notice of such change. AFEI submits that 7 weeks is unworkable and impractical from an operational perspective. The existing NSW NAPSAs covering teachers in early childhood provide for a part-time employees pattern of attendance to be changed with 4 weeks notice. AFEI submits that 4 weeks is an appropriate amount of notice given its operation in New South Wales.
8. Further, the proposed Award does not permit the changing the hours of attendance of a full-time teacher. For example, clause 10.1(b) of the NSW Pre-Schools NAPSA provides:
9. The hours of attendance of a full-time teacher may be varied at the commencement of each calendar year or by giving four weeks’ notice during term time or with the agreement of the teacher at any time provided that the total hours of attendance cannot be increased except by mutual agreement.

10. In the event that a pre-school centre proposed to change its hours of operation, the employer would arguably be unable to enforce a change to a full-time teacher's attendance in accordance with any award provision. AFEI submits that the NSW NAPSA provision regarding changing the hours of attendance for a full-time teacher be adopted.

Clause 10.5 – Casual employment

11. Clause 10.5(b) of the proposed Award provides for a distinction between preschools and other childcare centres for the maximum period of engagement of a casual employee. AFEI submits that it is appropriate to align the maximum casual engagement in this instance. To this end, AFEI submits that all casual employees regardless of whether they are engaged in a school, pre-school or long day care centre should have a 10 week maximum engagement.

Clause 11.3 – Notice of termination by an employer – other than schools

12. The proposed Award provides for a notice of termination entitlement of at least four weeks notice for all employees other than casual employees. AFEI submits that notice of termination provisions should be regulated by the National Employment Standards ("NES"). In other modern Awards already made by the Commission, notice of termination is consistent with the NES.

Clause 14.5 – Casual employee

13. For reasons similar to those stated in paragraphs xx to xx of this submission, AFEI submits that the casual minimum engagement should be reflected in hours as opposed to half days or quarter days. As stated, pre schools or early childhood service centres may have variable operating (opening) hours dependent upon the needs of the community. Accordingly, the length of time that constitutes a half or quarter day will also vary depending upon opening time. AFEI submits that modern Award conditions should be standardised and not be dependent upon variables such as opening and closing times of the centre.

Clause 19 – Ordinary hours of work

14. Clause 19.7 of the proposed Award provides that the employer will provide notice of the term and non-term weeks and attendance requirements 6 months in advance of the requirement to attend. AFEI submits that this provision will be onerous for a small community based pre-school that may be run by a volunteer management committee. Pre-schools may not necessarily run exactly per the school year and may therefore it will be difficult to provide 6 months notice.
15. The creation of this obligation to provide notice pursuant to clause 19.7 would result in significant inflexibilities in operating a community based pre-school, and would ultimately be inconsistent with the objects of the Award Modernisation process to “promote flexible modern work practices”.
16. Of equal consideration on this point is that this obligation does not exist in existing state based Awards or NAPSAs covering early childhood teachers.

Clause 20 – Breaks

17. The proposed Award provides for entitlement to an unpaid meal break of 30 consecutive minutes, however does not provide any alternative in terms of the type of break that may be taken. AFEI submits that it is appropriate and necessary that employers within the early childhood sector be able to roster their employees for a paid break.
18. A paid break would allow an employer to require their teacher remain on premises whilst they are taking their break. This is an inherent requirement of the licensing obligations held by childcare centres and pre-schools in respect of maintaining appropriate child/staff ratios as required by legislation (for example, Children and Young Persons (Care and Protection) Act 1998).

19. AFEI submits that a paid crib break where the teacher remains on premises, as opposed to an unpaid meal break, is aligned with the NSW NAPSAs and is more appropriate in this industry.

Transitional Arrangements

20. AFEI notes that the proposed Award does not contain transitional arrangements. AFEI supports the inclusion of transitional provisions in accordance with the model transitional provisions set down by the Commission.²

16 October 2009

² Australian Industrial Relations Commission Award Modernisation [2009] AIRCFB800