



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF  
EMPLOYERS AND INDUSTRIES (AFEI)  
AM2008/77 – CHILDREN'S SERVICES AWARD 2010

AWARD MODERNISATION

**AFEI**  
Australian Federation of  
Employers & Industries

**BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**  
**AWARD MODERNISATION**

**MATTERS NO. AM2008/77 – HEALTH AND WELFARE SERVICES**  
**(REMAINDER) – CHILDREN’S SERVICES**

1. AFEI represents a significant number of employers within the Childcare Industry throughout New South Wales and has been the leading employer party in major award applications affecting this industry.
2. AFEI has made submissions in earlier stages of the Award Modernisation process in respect of this industry and continues to rely on those submissions. In the context of those submissions, AFEI makes the following submissions in respect of the exposure draft document for the proposed Children’s Services Award (“the proposed Award”).

**Clause 4 – Coverage**

3. The proposed Award applies to employers throughout Australia in the children’s services and early childhood education industry. Children’s services and early childhood education industry is defined to include, inter alia, family based childcare. Similarly, the exposure draft of the Social, Community, Home Care and Disability Services Industry Award 2010 applies to employers throughout Australia in, inter alia, the family day care scheme sector.
4. When releasing the exposure draft of the proposed Award, the Full Bench said its statement:

*The structure includes family day care co-ordinators. We recognise that these classifications may also be included in the exposure draft for the Social, Community, Home Care and Disability Services Industry Award 2010. Award coverage will be dependent upon the industry of the employer.*

*We have not included family day care workers in the draft award. The only award currently covering these workers is confined in its operation to the Australian Capital Territory<sup>1</sup>*

5. AFEI submits that there is a potential for confusion between employers and employees upon reading the proposed Award and the Statement of the Commission as to the industrial coverage of Family Day Care employees of Family Day Care Schemes. AFEI submits that a specific exemption be inserted into the Children's Services Award 2010 for employees of the Family Day Care Scheme. Further, AFEI submits that a definition be inserted for Family based childcare and the classification of a family day care co-ordinator be deleted from the proposed Award.

#### **Clause 10.4 – Part-time employment**

6. The proposed Award provides for a minimum engagement for part-time employees of three consecutive hours on any shift. Such a minimum engagement for part-time employees would create a cost increase for employers engaging part-time employees to work in out of school hours care and for part-time employees employed to work on a broken shift. The draft award recognises that a shorter minimum engagement is necessary for casual employees working in out of schools hours care. AFEI submits that the same recognition is necessary for part-time employees in this type of service.
7. AFEI also relies on the provisions contained in the NSW NAPSA when making this submission. Clause 9.2(b) makes this distinction for out of school hours care. Furthermore, a lesser minimum engagement for casuals for out of school hours care service may discourage employers from employing part-time employees, which would be inconsistent with paragraph 53 of the Ministerial request.

---

<sup>1</sup> Australian Industrial Relations Commission, Award Modernisation [2009] AIRCFB 865

8. AFEI submits that more appropriate minimum engagement for part-time employees would be 2 consecutive hours.
9. Clause 10.4 (f) of the exposure draft document provides that overtime will be payable where the employee works in excess of the hours as mutually arranged. AFEI submits that this industry falls within the scope of the Minister's amended request (insertion of paragraph 53 to the Request) that modern Awards do not operate to discourage employers from offering additional hours of work to part-time employees. AFEI submits that childcare is a similar industry to retail and pharmacy as it is a service based industry and can be subject to variable demand.

#### **Clause 14 – Minimum Wages**

10. The proposed Award applies to childcare workers and support workers in both pre-schools, where operating hours approximate that of a school and also to long day care, and other child care centres operating at least 48 weeks of the year.
11. Historically in NSW, the wage rates for employees in pre-schools have been 4 per cent less than wage rates for employees in long day care centres. This 4 per cent differential is reflected in the wage rates set out within the Miscellaneous Workers – Kindergarten and Childcare Centres (State) Award ("the NSW NAPSA") and the differences in wage rates for teachers covered by the two NSW NAPSA's that cover teachers in childcare in New South Wales.
12. Further supporting the maintenance of the wage differential is clause 14.2 in the exposure draft Educational Services (Teachers) Award 2010. The Commission has recognised in this exposure draft that a four per cent differential is warranted. AFEI submits that a similar distinction in wage rates is made in the proposed Award.

## **Clause 15 – Allowances**

13. AFEI notes the inclusion of a broken shift allowance of 1.91% of the standard rate per day. Whilst AFEI considers broken shifts to be a necessary component of a modern Award covering employees in this sector, AFEI submits that the broken shift allowance should not be payable to employees working Out of School Hours (OOSH) Care (before and after school care). It is an inherent requirement of the role of an OOSH Care worker to work a broken shift and this is accepted upon commencement of the role. In this case, a first aid allowance should not be payable.
14. The proposed Award provides for a first aid allowance to an employee appointed by the employer to act as a first aid officer and holds a current first aid qualification. AFEI submits that employees classified as a Children's Services Employee (CSE) Level 3 or upwards should be required to possess and maintain a current first aid certificate as an inherent part of their role.

## **Clause 19 – Payment of Wages**

15. Clause 19.3 of the proposed Award provides for payment upon termination of employment. AFEI submits that the words "or electronic funds transfer" should be added to the end of clause 19.3. It is a reasonable expectation to have outstanding wages and entitlements paid directly into an employee's bank account on termination of employment.

## **Clause 21 – Ordinary hours of work and rostering**

16. The proposed Award restricts the method in which an employer and employee can agree to structure the 38 ordinary hours per week. The proposed Award provides that ordinary hours will be worked in periods not exceeding 8 hours, in unbroken periods save for meal breaks between Monday to Friday.

17. Currently, the predominant instrument that applies to childcare workers in New South Wales is the NSW NAPSA. The NSW NAPSA allows significantly greater flexibility in respect of how these ordinary hours can be arranged. The NSW NAPSA provides for an implementation of the 38 hour week:

*In respect of employees engaged after 28 August 2000, ordinary hours of work in accordance with clause 5, Hours of this award, may be implemented in one of the following ways:*

- (a) by working a 19 day month; or*
- (b) by working 3 x 10 hour shifts and 1 x 8 hour shift per week;*  
*or*
- (c) by working 4 x 9.5 hour shifts per week; or*
- (d) by working 5 x 7.6 hours; or*
- (e) by working 4 x 8 hour shifts and 1 x 6 hour shift per week*

18. Employers within NSW currently engage employees under one of the above stated methods. By potentially limiting the maximum number of ordinary hours to 8 hours per day, in its current terms the proposed Award would displace these more flexible arrangements.
19. AFEI submits that this outcome would be inconsistent with the objects of the Award modernisation process, which states that modern awards must promote flexible modern work practices. In this case, the reverse has occurred and the modern award has made work practices less flexible than they were under the NSW NAPSA.
20. AFEI submits that the modern Award should reflect the NSW NAPSA in respect of the implementation of the 38 hour week. Further supporting this view is the relatively flexible arrangements for the implementation of the 38 hour week under the Children's Services (Private) Award 2006 in Western Australia and under the Child Care (South Australia) Award.

21. In the event the Commission is minded not to include the implementation of the 38 hour week contained within the NSW NAPSA, AFEI submits that the modern Children's Services Award should provide for agreement to be reached for a more flexible arrangement, where hours in excess of 8 per day can be worked by an employee.
22. AFEI submits that modern Awards covering employees in childcare services should be consistent in respect of ordinary hours of work. For example, Schedule A of the exposure draft Educational Services (Teachers) Award 2010 provides for ordinary hours of work for teachers employed in a childcare service operating at least 48 weeks of the year to be worked between Monday to Saturday, 6.30am to 6.30pm. Under the proposed Award, childcare workers working at the same centre would have their ordinary hours limited to Monday to Friday. For this reason, AFEI submits that ordinary hours of work for the proposed Children's Services Award should be Monday to Saturday.

#### **Clause 21.5 – Non contact time**

23. The proposed Award provides for non-contact time of 2 hours for all contact staff for program preparation and reading. AFEI submits that such a sweeping new entitlement is inappropriate.
24. AFEI strongly opposes the introduction of non-contact time as a mandatory condition in children's services and early childhood education industry. AFEI submits that mandating contact time in an Award would create a significant cost increase for employers, especially those employers who may be small, community based, volunteer run management committees that have difficulty ensuring that the centre has sufficient coverage to meet their licensing requirements. AFEI submits that pre-schools generally have sufficient non-contact time during school holidays and before and after the students arrive at the centre.

## Clause 23.2 – Overtime and penalty rates

25. The proposed Award provides for an overtime penalty of time and one half for the first two hours and double time thereafter. AFEI submits that overtime penalties should be consistent in the childcare sector. We note the overtime penalty for teachers employed in early childhood services operating for at least 48 weeks per year (Schedule A) of the exposure draft Educational Services (Teachers) Award 2010 to be time and one half for the first three hours and double time thereafter.
26. In making the submission above, we also rely on the prevalence of the time and one half for the first three hours standard within the following awards:

| Overtime rate  | Instrument   |
|--|--|
| Time and one half for the first three hours and double time thereafter | Child Care Industry Award – State 2003 [NAPSA – QLD]   |
|  | Child Care (SA) Award [NAPSA – SA]                     |
|  | Child Care and Children’s Services Award [NAPSA – TAS] |

## Transitional Arrangements

27. The proposed Award does not contain transitional provisions. AFEI submits that it the model transitional provisions are an appropriate and a necessary inclusion in the modern Award.

**16 October 2009**