

**AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

*Workplace Relations Act 1996*

**s.576E – Procedure for Carrying Out Award Modernisation Process**

**(AM2008/70)**

**EDUCATIONAL SERVICES - PRESCHOOL TEACHERS**

**(AM2008/77)**

**HEALTH AND WELFARE SERVICES – CHILDREN’S SERVICES**

**AUSTRALIAN CHILDCARE CENTRES ASSOCIATION**

**&**

**AUSTRALIAN COMMUNITY SERVICES EMPLOYERS ASSOCIATION**

**TABLE OF CONTENTS**

1.	INTRODUCTION .....	2
2.	DRAFT AWARD.....	2
3.	EARLY CHILDHOOD REFORMS ENDORSED BY AUSTRALIAN GOVERNMENTS	2
4.	CONSULTATION REGULATION IMPACT STATEMENT.....	4
5.	CONCLUSIONS .....	4
6.	WHY ONE AWARD?.....	5
7.	WAGE RATES/CLASSIFICATIONS.....	8
8.	AWARD CONDITIONS AND DIFFERENCES .....	10
9.	SUPERANNUATION.....	11
10.	TRANSITIONAL PROVISIONS.....	12
11.	CONCLUSIONS .....	12
	APPENDIX A – DRAFT AWARD .....	13
	APPENDIX B – TEACHERS LONG DAY CARE WAGES TABLE.....	13
	APPENDIX C – TEACHERS (KINDERGARTENS & PRESCHOOLS WAGES TABLE.....	13
	APPENDIX D – SPREADSHEET SUMMARY OF MAJOR CONDITIONS – NATIONAL CHILD CARE AND EARLY CHILDHOOD EDUCATION AWARDS & ALLOWANCES.....	13

## **1. INTRODUCTION**

- 1.1 These submissions relate to both the Educational Services – Preschool Teachers and Health and Welfare Services – Children’s Services. The Associations rely on and do not repeat previous submissions in relation to these matters but emphasis that information relevant to these issues in those submissions should be given weight.
- 1.1.1 This submission addresses the issue of whether a separate Award should be made for Preschool Teachers engaged in Early Childhood and Care Services. We also set out in detail the Federal Government (COAG) policy agenda in relation to this Industry. The Associations will submit that it is inappropriate to cover Preschool Teachers engaged in Early Childhood and Care Services under the *Educational Services (Teachers) Award 2010*.
- 1.1.2 Additionally these submissions address in part, issues relating to conditions of employment as they relate to Preschool Teachers as well as classifications and wage rates applicable to Children’s Services Workers and Teachers.
- 1.1.3 The Association will support these submissions and respond to other matters that may be raised at the hearings scheduled for Tuesday 4 August 2009.

## **2. DRAFT AWARD**

- 2.1.1 The Associations provide the Commission with a further revised draft Award entitled “*Children’s Services Early Childhood Education Industry Award 2010*” whilst this Award is not in a finalised format, the Associations believe that the content addresses the majority of the important conditions of employment for consideration by the Commission in the creation of an exposure draft (Appendix A).

## **3. EARLY CHILDHOOD REFORMS ENDORSED BY AUSTRALIAN GOVERNMENTS<sup>1</sup>**

### **3.1 Policy Agenda**

- 3.1.1 The Australian Government’s National Quality Agenda for Early Childhood Education and Childcare focuses on providing Australian Families with high quality, assessable and affordable integrated Early Childhood Education and Childcare. The Agenda is designed to ensure all Australian Children are fully prepared for learning and life. Investing in the health, education, development and care of our children benefits children and their families, our communities and the economy, and is critical to lifting workforce participation and delivering the Government’s productivity agenda.

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<sup>1</sup> Commonwealth Department of Education, Employment and Workplace Relations (DEEWR)  
[www.deewr.gov.au/earlychildhood](http://www.deewr.gov.au/earlychildhood)

## 3.2 Background

3.2.1 The National Quality Agenda for Early Childhood Education and Care (ECEC) is an important part of the National Early Childhood Development Strategy. It builds on the national partnership agreement between the Australian Government and State and Territory Governments on Early Childhood Education. The Agreement includes all Governments working together to provide all Australian children with access to a quality pre-school program in the year before formal schooling.

## 3.3 Early Childhood Reforms

3.3.1 The Council of Australian Governments (COAG) endorsed major Early Childhood Reforms at its meeting on 2nd July 2009, and released the first National Early Childhood Development Strategy – *Investing in the Early Years*, and an Early Years Learning Framework.

3.3.2 At this meeting COAG agreed to a jointly governed unified national system to replace the various current State licensing and quality assurance processes. This approach will impact on over 10,000 services nationally.

## 3.4 Early Years Learning Framework

3.4.1 The Early Years Learning Framework is a national curriculum framework to guide Early Childhood Educators in the delivery of quality Early Childhood Education and marks the start of the rollout of the Australian Government's Quality Reform Agenda.

3.4.2 The Early Years Learning Framework is part of the Council of Australian Government's (COAG) Reform Agenda for Early Childhood Education and Care and is a key component for the Australian Government's National Quality Agenda for Early Childhood Education and Care. It will underpin universal access to Early Childhood Education and be incorporated in the National Quality Standard in order to ensure delivery of nationally consistent Quality Early Childhood Education across all sectors and jurisdictions.

3.4.3 The Early Years Learning Framework has been developed collaboratively by the Australian and State Territory Governments, with substantial input from the Early Childhood Sector and Early Childhood Academics. The framework has incorporated feedback through extensive consultation process, including two National Symposiums, National Public Consultation Forums, Focus Groups, and Online Forum and Case-Study Trials.

3.4.4 The Early Years Learning Framework is a National Curriculum Framework which will ensure quality and consistency in the delivery of Early Childhood Education Programs across all Early Childhood settings. It will cover birth to five (5) years of age and support transition to formal schooling.

3.4.5 The release of the Early Years Learning Framework is also the first phase in the implementation of the Australian Government's National Quality Agenda for Early Childhood Education and Childcare.

3.4.6 The Early Years Learning Framework will be incorporated into the National Quality Standard and it is expected that Early Childhood settings will need to provide evidence of the use of the Early Years Learning Framework in designing and delivering their early learning programs.

3.4.7 The Australian and State and Territory Governments are working together to develop a range of support strategies for Early Childhood settings to implement the new Early Years Learning Framework which will be progressively implemented by each State and Territory.

### 3.5 Early Childhood Education – Universal Access

3.5.1 The Australian Government is committed to ensuring that every child has access to a Quality Early Childhood Education Program. The program is to be delivered by a four (4) year University Qualified Early Childhood Teacher, for 15 hours a week, 40 weeks a year, in the year before formal schooling (often referred to as “pre-school or kindergarten”). The commitment is to be fully implemented by 2013.

## 4. CONSULTATION REGULATION IMPACT STATEMENT

4.1 COAG released a Consultation Regulation Impact Statement (RIS) for Early Childhood Education and Care Quality Reforms in July 2009. The RIS sets out a series of options to improve Early Childhood Education and Childcare.

4.2 The Consultation Regulation Impact Statement sets out the reasons why we need to strengthen the quality of Early Childhood Education and care, explains the changes under consideration, assesses the relative costs and benefits of each of the options and sets out the consultation process.

4.3 The Consultation RIS proposes that all staff have a Certificate III qualification (or be enrolled) by the end of 2013, with 50% of staff to have a diploma level or higher qualification by the end of 2013; and access to a University Qualified Early Childhood Teacher in proportion to the number of children.

4.4 The Consultation RIS proposes that Long Day Care Services and Pre-schools will be assessed and rated against the National Quality Standard and Ratings Framework. Assessment and transition arrangements will be developed in consultation with the sector. Similar considerations will also apply to Family Day Care and Outside School Hours Care.

## 5. CONCLUSIONS

5.1 Overall, the National Quality Agenda will lead to better quality for Early Childhood Education and Care, and improved outcomes for children.

5.2 Governments have recognised that the workforce is a big part of providing good quality Early Childhood Education and Care.

5.3 The first element of the National Quality Agenda, i.e. the Early Years Learning Framework will come into effect from July 2009, and Governments will then work with families and service providers on the best way to transform to the new high quality, genuinely integrated National system.

5.4 The commitment by the Australian Governments will be underpinned by the development of the Early Years Learning Framework and supported by National Quality Standards for Childcare and Pre-school which will raise the quality of Early Childhood Education delivered, **regardless of setting.**

## 6. WHY ONE AWARD?

- 6.1 In Australia, Childcare and Early Childhood Education Programs have developed separately, with separate objectives. Preschools have been associated with Education, and Childcare has traditionally had an important focus on meeting the Childcare needs of working parents. The historical distinction does not recognise that learning and development begins at birth. Greater integration of Early Childhood Education and Care Services is therefore crucial in supporting our children's learning throughout Early Childhood.
- 6.2 Following endorsement by COAG, it is accepted that the new arrangements will commence incrementally to allow the Early Childhood Sector and Families time to adjust. Strategies to assist the transition of Early Childhood Services to the new National Quality Agenda will be developed in consultation with the Sector.
- 6.3 The COAG Reform Agenda published in the consultation RIS seeks as one of its broad outcomes to build a high calibre, integrated National Quality System for Early Learning and Care, that takes into account settings, diversity of service delivery and the individual development of children.
- 6.4 The RIS encompasses all types of ECEC services such as:
- Long Day Care;
  - Pre-School (incl. Kindergartens);
  - Outside School Hours Care;
  - Family Day Care;
  - In-Home Care;
  - Vocational Care;
  - Non Main Stream Services.
- 6.5 These important reforms and developments are clearly directed towards the objective of a single national system which does not distinguish between the types of service, be it Long Day Care Centre based, Kindergartens, Pre-Schools, Out of School Hours Care, or Family Day Care. The proposed Model supports a single integrated workforce structure within each service. It is therefore logical and practical to encompass the employees under one Award rather than separate Awards which would create an artificial separation, when indeed there is no such artificial separation in the service delivery.
- 6.6 A single Award covering all employees with appropriate terms and conditions is practical and consistent with the Award Modernisation objectives. Creating a single Award will not lead to a reduction in terms of conditions of employment, nor will it lead to or encourage a reduction in the quality of service delivered in the various settings. Indeed, the creation of a single Award will support the Federal Government's and COAG Agendas and is consistent with that Agenda and Policy.
- 6.7 The coverage of Early Childhood Teachers under the same Award as Children's Services Workers will, contrary to some minority views, not diminish the terms and conditions that might apply to these employees, nor would it disturb existing coverage arrangements by the respective registered organisations. A single Award will not impact on the quality of educationally and/or developmental programs

delivered in all Early Childhood and Care settings as this is an issue that is determined by regulation not by Award.

- 6.8 The reality however is that the future strategy of the Australian Governments is to ensure that qualified Early Childhood Teachers will be engaged in virtually every Children's service (of whatever description) in the future. Accordingly, the parties and the Commission have an absolute obligation to ensure that conditions of employment cater for Early Childhood Teachers to be engaged in all types of settings be it Long Day Care, Kindergartens, Preschools, Outside School Hours Care or Family Day Care. The perception that the creation of a single Award for this Industry will in some way lead to a diminution in the quality of either care or the educational program delivered, is simply wrong and misguided.
- 6.9 The Reform Agenda of the Australian Governments is designed to up-skill all staff in Children's Services, and ensure that all children, irrespective of age, have access to Early Childhood Education and Care on an equal basis irrespective of the setting in which that education and care is provided. There is simply no logical reason for the separation of one particular group (i.e. Early Childhood Teachers) under a separate Award.
- 6.10 The Commission would be aware that the vast majority of services within this Industry are relatively small employers with numbers of employees usually not exceeding 20 with an average of 10 to 12 employees per service. It is not practical to have different Awards applying to these workplaces. Additional, in many Community settings not only are there small number of employees (average 5 to 6) but the management committee invariably changes from year to year and it is difficult of these committees to come to terms with multiple Awards, hence a single Award would be of invaluable assistance to their operations.
- 6.11 The proposed single Award contains provisions which can be applied to services that operate either 52 weeks of the year, or those that operate according to "school term time". Concerns have been expressed to the Commission of 3 or 4 year trained Early Childhood Teachers positions being replaced by an employee with a 1 year diploma or a Certificate III level qualification in Children's Services. These submissions simply fundamentally misunderstand the whole Reform Agenda, as well as the Regulatory requirements that exist in each State and Territory of Australia regarding staffing levels and qualifications of those staff.
- 6.12 The Associations also rely on our previous submissions of 28 April 2009 which set out a range of issues and factors in support of the view that a separate Award for Preschool Teachers is not necessary nor desirable and that one single "*Children's Services and Early Childhood Education Industry Award 2010*" should be made to cover all classifications and encompass all conditions of employment. This is still the strong view of the members of the Associations.
- 6.13 The LHMU, in its supplementary submissions of 20 April 2009 confirmed its submissions that an "Industry" Award should be made covering all employees including Teachers. The LHMU via a draft Appendix B, and the IEU via a draft Award, both sought to draw on provisions contained in the NSW NAPSA covering this sector.
- 6.14 ACCA and ACSEA do not support the adoption of the NSW NAPSA as the appropriate vehicle to utilise for the determination of rates and conditions for Early Childhood Teachers. Rather, the Commission is strongly urged to look to the Federal Pre-Reform Awards, namely the ACT – *Childcare Industry (Teachers) (ACT) Award 2009* and the *Early Childhood Teachers Interim Award 1999 (Victoria)*.

- 6.15 Having examined these two Awards, the Associations' view is that the Commission should adopt the rates contained in the ACT Award for two reasons namely, firstly the rates are higher than the Victorian rates, and secondly, the Associations believe that the ACT rates are more closely aligned to Teachers in Non Governmental Schools in the ACT. These rates were endorsed by the Commission when the Award was created, (1999) as being consistent with the Commissions first Award principles. We examine this issue in more detail further in these submissions.
- 6.16 For the Commission to create a separate Award exclusively for Teachers will maintain an artificial separation that is completely inconsistent with the agreed national model from the Australian Governments, and the objectives being sought by all parties in the industry of a common national standard and model.
- 6.17 Additionally, a separate Award covering Teachers only will continue the deleterious theme of undervaluing the work of those employees engaged in Childcare settings, and particularly an apparent attempt by some to suggest that University Qualified Early Childhood Teachers working in Childcare are offering something different or of a lesser standard to the same Teachers who may work in a Kindergarten or Preschool, which in itself is completely false given that these employees have the same training and qualifications. Our proposed Award clearly identifies employees in various classifications as well as the qualifications required for their positions. A single Award with a single classification structure is easily workable and understood throughout the Industry.
- 6.18 **Response to AEU Submissions 24 July 2009**
- 6.18.1 The AEU argues that Teachers of preschool aged children should be covered under the *Educational Services (Teachers) Award 2010* in that Teachers form a distinct occupational group and therefore should be covered under the relevant Educational Services Teachers Award.
- 6.18.2 This submission seems to be contradictory to its own submissions in relation to the Federal and State Government directions for Early Childhood Education and Care. AEU states at paragraph 17, that the Regulation Impact Statement (RIS) specifically aims to reduce the regulatory distinctions between Preschools and Long Day Care Centres. Further, at paragraph 20 the AEU submission comments on the August 2008 discussion paper which indicates that the RIS commitments will have a significant impact on the Early Childhood Education and Care Sector and require significant change to the existing licensing and accreditation systems of both Childcare Centres and Preschools. The submission also indicates that a much higher level of national consistency between Preschools and Long Day Care Centres will be provided.
- 6.18.3 These factors should lead the Commission to the conclusion that there should not be a separation of Award coverage within these centres and services, but rather a single Award is necessary to cover all employees to ensure that there is no artificial distinction between the various roles and functions carried out in these services. Nothing by way of Award provisions would diminish the professional status of Teachers, and it is difficult to envisage that a separate Award will enhance the professional status of Preschool Teachers. By way of example, one may look to the range of classifications and professions currently covered under the Federal Metals Industry Award to see a diversity of classifications and qualifications from unskilled to professional levels under one Award.

- 6.18.4 The perception (paragraph 27) that Teachers rates will somehow be reduced or artificially limited by being associated under the same Award as Child Care Workers is simply not true. Witness the Child Care Industry Pay Equity case which delivered significant pay increase to the most highly qualified employees i.e. 16 to 20% increases for three (3) Year Qualified Employees.
- 6.18.5 The AEU submission also fails to mention the Queensland NAPSA Awards namely the *Early Childhood Education Award – State* (ECE) and the *Childcare Industry – State 2003*. The ECE covers both Teachers and Assistants. The Childcare Industry Award covers Unqualified, Qualified, Diploma and Degree Qualified Children’s Services Workers as well as three (3) and four (4) Year Trained Teachers in Long Day Care Centres. The submissions from the AEU do not support the creation of a separate Award.

## **7. WAGE RATES/CLASSIFICATIONS**

7.1 The submission by the Associations is that it is appropriate to look to existing Pre-Reform (Federal) Awards for guidance in relation to classification structures and wage rates.

### **7.2 Children’s Services Employees**

7.2.1 The classifications, position descriptions, definitions and wage rates have been adopted from the Children’s Services (Victoria) Award 2005, (AP840807) and the *Children’s Services (ACT) Award 2005 (AP840806)*.

7.2.2 Both of these Awards were subject to an extensive work value/pay equity hearing and decision of a Full Bench of the AIRC<sup>2</sup>. That decision determined that firstly, there had been a significant net addition to work requirements within the meaning of the work value principle, and secondly, that the proper fixation of rates required the aligning of the AQF Diploma level to a C5 Level in the Metal Industry Award. Additionally the Bench determined that it was appropriate for there to be a nexus between the CCW Level 3 on commencement classification, (Certificate III) in the ACT Award, (and the Certificate III Level in the Victorian Award), and the C10 Level in the Metal Industry Award.

7.2.3 This comprehensive decision established that these classifications and rates were properly fixed arbitrated minimum rates. Accordingly, it is appropriate in the Associations submissions to draw upon these rates for inclusion in the Modern Award. The classifications for support worker, and children’s services employee levels 1, 2, 3, 4, 4A, 5, 5A, 6 and 6A are contained at clause 17 of the proposed draft Award.

### **7.3 Early Childhood Education Employees (Preschool Teachers)**

7.3.1 The classifications and wage rates contained at clauses 17.13 and 17.14 of the proposed Award have been extracted from the *Pre-Reform Award – Childcare Industry (Teachers) ACT Award 1999 (AW777456CRA)*.

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<sup>2</sup> (PR954938 [2005] AIRC 28 (13 January 2005))

- 7.3.2 The Associations believe that this is the most appropriate Award to use for classification levels and wage rates for 3 and 4 year trained Early Childhood Education Employees (Preschool Teachers) as this Pre-Reform Award contains properly fixed minimum rates appropriate to the relevant classifications and qualifications.
- 7.3.3 The Award was made by the Commission 14 December 1999 by Deegan C. (Print S1824). In that decision the Commission indicated that the Award was a consent draft between the parties and that the classifications and wage rates, with one exception, were identical to those contained in the *Teachers (Non-Government Schools) ACT Award 1991*. The Commission made the Award and found it to be consistent with other Awards in the education sector in the ACT. The Commission accepted the parties submissions that the salary structure of the Award was a properly fixed minimum rates structure [para 8].
- 7.3.4 Commissioner Deegan at para 12 stated in part:
- “I find that the Award, with the 11 point incremental scale and noting that an additional clause dealing with progression through that scale will be inserted, complies with the Act, the first Award principles of the Commission and the paid rates decision of the Commission. I will make the Award...”*
- 7.3.5 Whilst the Award was made by consent, the Commission, in the Associations submissions, determined that in conjunction with first Award principles, the rates of pay were properly fixed minima. The Award has subsequently been subject to safety net review increases.
- 7.3.6 The rates set out in the draft Award at clauses 17.13 and 17.14 generally follow the rates that currently apply in the *Teachers (Non Government Schools) (ACT) Award 1999* (Pre-Reform Award). A four year trained Teacher under the ACT Teachers Award commences on Clause 8 step at 2 \$743.74pw whereas the Childcare Teachers ACT Award commences on \$729.60pw. The rate at step 5 after 3 years in the Teachers ACT Award is \$818.51pw and the rate in the Childcare Teachers ACT Award is \$799.52pw. The top level for the Childcare Industry Teachers Award, step 11 after 9 years is \$932.14pw, and the ACT Teachers Non Governmental Schools rate is \$951.03pw.
- 7.3.7 We attach 2 tables for the information of the Commission, setting out the current rates of pay for Teachers in Long Day Care comparing ACT, Queensland, South Australia, Western Australia and NSW (Appendix B). Also attached is a table comparing rates of pay for Teachers in Kindergartens and Preschools (Appendix C) which compares Victoria, Queensland, South Australia and NSW.
- 7.3.8 The submission of the Associations is that it is not appropriate to import State NASPA rates into a new Modern Federal Award, given that they have all been developed from vastly different bases and on different criteria and considerations at various points in time by different tribunals. The 2004/2005 Pay Equity proceedings before the AIRC created the foundation for a common national classification structure and rates of pay throughout the Industry and this model should be adopted and carried forwards. It is not appropriate in the new Modern Award to make specific provision for individual classifications that may exist in a particular State, especially when those classifications can be easily accommodated under the existing Federal classification structure e.g. Western Australia E Worker.

7.3.9 Both the LHMU and IEU proposed drafts include a classification for a five (5) Year Trained Teacher. The classification of five (5) Year Trained Teacher simply does not exist in any Pre-Reform Federal Award or in any State NAPSA applicable to Preschool Teachers. This is a new classification that has not been subject to consideration by the Commission and should be rejected.

## **8. AWARD CONDITIONS AND DIFFERENCES**

8.1 The LHMU proposed Award claims that it is principally based upon the ACT/Victorian Children's Services Award (Pre-Reform) and in a number of the provisions this is the case. However, there are some fundamental provisions that have been imported from other NAPSA Awards which lead to a significant inconsistency with existing terms and conditions of employment in both the Pre-Reform Federal Awards and in existing NAPSAs. These major areas of difference include but are not limited to:

- Hours of work – Spread of ordinary hours;
- Casual minimum engagement;
- Rest breaks;
- Payment for work on weekends;
- Provision of non contact time;
- Junior percentages;
- E Worker classification;
- Payment to attend staff or parent meetings;
- Five year trained Teacher classification.
- Appendix B – Teachers Conditions (LHMU)

8.2 A number of the above provisions have been selectively extracted from either the NSW NAPSA or the Northern Territory Pre-Reform Award. Neither of these Awards is regarded as being appropriate for comparative purposes and inclusion into the Modern Award. The LHMU simply can't "cherry pick" the highest common denominator at will. We attach a spreadsheet summary of major conditions of National Child Care and Early Childhood Education Awards and Allowances. (Appendix D) The spreadsheet is colour coded to indicate the clauses/provisions consistent with our draft Award, (green) and those provisions that are standard or model Commission clauses (red).

8.3 Limitations on flexibility have also been drafted by the LHMU into the provisions as they relate to:

- Hours of work (ordinary hours, both spread of hours and number of hours per day);
- Rostering arrangements which fail to provide for flexibility and change of rosters to meet operational circumstances especially in small workplaces.
- Paid rest pauses which do not provide for continuity of work where this may be necessary;
- Limitations on overtime.

8.4 Redundant provisions are also included, for example, shift work where the industry simply does not operate on a shift work basis, and where the industry operates almost exclusively Monday to Friday with virtually no weekend or public holiday operations. 24 hour 7 day a week operations are virtually non-existent and would be more appropriately covered by particular agreed arrangements for such operations.

## 9. SUPERANNUATION

9.1 The Associations have included at clause 23 of the proposed Award, comprehensive provisions regarding superannuation. The Associations support the inclusion of an Award clause that not only lists those funds that are presently in operation within the Industry, but also enables the parties to the Award to determine, by agreement, the use of an alternate complying superannuation fund. **The Australian Child Care Super Fund** is particular to the Childcare Industry and is not a generalist fund that applies across a range of industries. The Guild Fund is not geographically limited to one State or Territory in Australia but rather operates on a true national basis.

9.2 Our submission is that the Commission should include all funds as set out in clause 23.4 of our proposed draft Award, and in the alternate, and to avoid confusion, the Commission may find it preferable to simply include a clause which provides for the requirement of the employer to make superannuation contributions in accordance with the relevant legislation, and that those contributions be made to a complying fund under the relevant legislation chosen by mutual agreement between the employer and the employee.

9.3 The first preference of the Associations would be for all funds as set out in clause 23.4 of our draft Award to be included.

9.4 The members of the Associations represented by Australian Childcare Centres Association (ACCA) also support and endorse the submissions of 18 May 2009 forwarded to the Commission by Guild Trustee Services Pty Limited as trustee for the Australian Childcare Super Fund. This particular fund has a high level of participation by members of ACCA, where the Associations, their members (the employers) and the superannuation fund have worked together over a period of time to build a membership base within the fund that services this Industry, particularly the Long Day Care Sector.

9.5 The Australian Child Care Super Fund was established for the sole purpose of providing an Industry appropriate option for the superannuation savings of Childcare Industry participants. The fund has a lengthy history in providing support to the Industry by developing a range of insurance, investment and superannuation products specifically for Childcare Centres and the employees, as well as providing substantial support to the industry in a number of other ways. The extensive coverage of this fund throughout the Childcare Industry also enables employees who move from centre to centre to retain the one superannuation fund without having to transfer between funds and potentially incur additional fees.

9.6 The inclusion of a particular fund which caters for a particular industry has been recognised by the Commission in Stage 1 and Stage 2 Awards, where multiple funds, some of which are limited to a particular industry, have been incorporated into the Modern Awards e.g. Hospitality, Clerks, Manufacturing, and Security Services.

## **10. TRANSITIONAL PROVISIONS**

- 10.1 s467T of the Workplace Relations Act allows the Commission to include Transitional Provisions that deal with State based differentials.
- 10.2 s467J(2) also allows the Commission to include in a Modern Award, terms about other matters specified in the Award modernisation request.
- 10.3 Paragraph 12 of the Award Modernisation request allows the Commission to include Transitional arrangements in Modern Awards to ensure that the Commission complies with the objects and principles of Award Modernisation. Paragraph 2(c) provides that the creation of Modern Awards is not intended to disadvantage employees.
- 10.4 Hence the power of the Commission to include Transitional arrangements other than for State based differences is allowed by the Award Modernisation request. It is submitted that there is no need to include terms in Modern Awards that deal with the disadvantage to employees because of the availability of take home pay orders.
- 10.5 We refer to the Submission of the Australian Government dated 29 May 2009 where the issue of take home pay orders is dealt with at page 15, and at paragraph 4.10 the Submission states:

*“The Commission should ensure that Modern Awards transition the Industry standards applying in each relevant State to both higher and lower rates of pay as appropriate. As outlined above, the scope for take home pay orders is tightly constrained. The orders provide a remedial mechanism for existing employees only and will have no application to new employees. Phasing pay rates up and down where relevant will ensure a more orderly and gradual approach to the transition to new National Award Standards. Any phasing in proposal should apply equally to new employees and to existing employees.*”

## **11. CONCLUSIONS**

- 11.1 The Associations support this Submission and reserve their rights to provide further submissions to the commission in relation to Transitional Provisions. Conclusions
- 11.2 The Associations believe that there is no justification for a separate Award covering Preschool Teachers.
- 11.3 Classifications and wage rates as detailed in our proposed draft Award (Appendix A) have been taken from the Federal Pre-Reform Awards and are consistent with existing Commission standards.
- 11.4 Further submissions will be required following detailed consultations with members regarding the content of the LHMU proposed Award content.
- 11.5 The Associations will also undertake to provide the Commission with detailed submissions in relation to any exposure draft issued by the Commission following the public consultations.
- 11.6 The Associations will appear before the Commission as scheduled on Tuesday 4 August 2009 to provide any further information and input to the Commission and to, where appropriate provide limited responses to any submissions by other parties.
- 11.7 We thank the Commission for its considerations of these matters.

**APPENDIX A – DRAFT AWARD**

**APPENDIX B – TEACHERS LONG DAY CARE WAGES TABLE**

**APPENDIX C – TEACHERS (KINDERGARTENS & PRESCHOOLS WAGES TABLE**

**APPENDIX D – SPREADSHEET SUMMARY OF MAJOR CONDITIONS – NATIONAL  
CHILD CARE AND EARLY CHILDHOOD EDUCATION AWARDS & ALLOWANCES**



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**Signed**

**LIVINGSTONES AUSTRALIA agent for Australian Child Care Association and  
Australian Community Services Employers Association**

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