

Form F1 Application (No specific form provided)

(Subrule 6.3, Fair Work Australia Rules 2010)

IN FAIR WORK AUSTRALIA

FWA use only

FWA Matter No.:

THIRD ~~SECOND~~ FURTHER AMENDED APPLICATION (NO SPECIFIC FORM PROVIDED)

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The Applicants apply, pursuant to the provision(s) in part 1, for the order or relief set out in part 2 on the grounds specified in part 5.

1. Provision(s) under which application is made:

s.302(3)(b) *Fair Work Act 2009*.

2. Order or relief sought:

The order sought is Annexure "B".

3. What is the industry of the employer?


Children's services and early childhood education industry.

4. Relevant industrial instrument(s) (if any):

Children's Services Award 2010
 Educational Services (Teachers) Award 2010
~~Local Government Industry Award 2010~~
Educational Services (Schools) General Staff Award 2010

5. Grounds:

Refer to ~~Third~~ ~~Second~~ Further Amended Annexure "A"

Date:	<u>28 September 2016</u>
Signature:	
Name:	<u>Louise Farrant, National Secretary, United Voice</u> <u>Solicitors for the First and Second Applicants</u>

Date:	
Signature:	

Name:

~~G. Robertson, Branch Secretary, AEU Victoria~~

Service requirements

This application must be served on the named Respondent(s) as soon as practicable after the application is lodged with FWA.

This application must also be served on other persons as directed by FWA if and when such direction(s) are given.

Note: Rules 9 and 10 deal with service.

THIRD SECOND FURTHER AMENDED ANNEXURE 'A'

THE APPLICATION

1. The Applicants seek an equal remuneration order pursuant to section 302(1) of the *Fair Work Act 2009* (Cth) (the "FW Act").
2. The Applicants seek an equal remuneration order for employees who perform work ~~are employed in a long day care centre or preschool(s) the long day care sector~~ ("the Sector") ~~of the children's services and early childhood education industry~~ covered by:
 - a. the Children's Services Award 2010 (the "CS Award"); or
 - b. the Educational Services (Teachers) Award 2010 (the "EST Award"); or
 - ~~c. the Local Government Industry Award 2010 ("LG Award");~~
 - c1. the Educational Services (Schools) General Staff Award 2010 (the "ESG Award")or
 - d. the CS Award, the EST Award, ~~the EST Award or the LG Award~~ to whom an enterprise agreement applies.("the Employees").

2A. The order would not apply to any employees:

- ~~a. employed by and working in a long day care centre operated by an independent school; or~~
 - ~~b. employed by a local government authority who does not work solely at a long day care centre and/or a preschool.~~
3. A long day care centre is defined in the CS Award as a childcare establishment which usually provides services over a period of approximately eight hours or more each day for approximately 48 weeks or more during the year.
- #### 3A. A preschool is a defined in the CS Award and ESG Award as a service in the children's services and early childhood education industry which usually operates during hours and terms which approximate those of a recognised school, and includes a kindergarten, day school or nursery school and will include:
- a. a full day care centre which means an establishment which does not operate on a sessional basis, but which usually operates during hours and terms which approximate those of a recognised school.
 - b. a sessional care centre which means an establishment which operates on the basis of morning and/or afternoon sessions and which usually operates during hours and terms which approximate those of a recognised school.
4. The Applicants are employee organisations which are entitled to represent the industrial interests of employees in the Sector.

GROUNDS

5. For the reasons set out below, the Employees do not receive equal remuneration for work which is of equal or comparable value to work performed in other occupations and/or other industries.

Features of the Sector

6. The Sector is highly gender segregated and the overwhelmingly majority of employees in the Sector are women.
7. There is a disproportionately high number of employees in the Sector in part-time, casual and temporary work compared with employees in the workforce overall. The use of “long hours” part-time contracts where employees are employed for marginally less than the ordinary full time hours is widespread.
8. There is a high turnover of staff in the Sector compared with other occupations and/or other industries.
9. There is an acute shortage of appropriately qualified staff in the Sector.
10. The workforce is younger compared to the Australian workforce overall.
11. There is low union density in the Sector because of the difficulty in organising workers with these demographic characteristics. This is compounded by the high number of small or disparate workplaces in the Sector.
12. The employers in the Sector are not-for-profit organisations and/or operate with small profit margins because of the nature of the service and funding arrangements. The main source of revenue for employers is fees charged to parents. There are constant pressures to minimise the fees charged to ensure accessibility to child care.

Nature of the work performed

13. The majority of the workforce is made up of employees who work in direct care and education roles.

Type of work

14. The main roles performed in the Sector are:
 - a. Support Worker;
 - b. Educator;
 - c. Group Leader;
 - d. Early Childhood Teacher;
 - e. Assistant Director/Coordinator; and
 - f. Director.

Skills and responsibilities

15. The skills typically used by employees when performing these roles are:

Support Worker

16. Support Workers are employed in roles that support the delivery of high quality child care services. This requires:
 - a. ensuring safety, health and wellbeing of children in performing the specific role;
 - b. assisting in the running of the centre and compliance with policies and regulatory standards;

- c. interacting with parents and children to discuss the services provided and improvements to the service;
- d. supervising the work of employees at lower classifications; and
- e. application of formal qualifications.

17. Support Workers may possess a Certificate III qualification relevant to their role.

Educator

18. Educators work independently or under the supervision of a Group Leader in providing care and development to children in their care. This requires:
- a. providing care, comfort and development to children in a diverse range of ages, developmental stages and abilities;
 - b. providing development and learning for children in accordance with an educational program in the areas of:
 - i) cognitive skills;
 - ii) language skills;
 - iii) literacy skills;
 - iv) numeracy skills;
 - v) nutrition;
 - vi) social skills;
 - vii) motor skills; and
 - viii) creative skills.
 - c. tailoring the delivery of care and development to suit the individual needs of each child;
 - d. recording and evaluating the care, education and development of individual children or groups;
 - e. communicating, interacting with and moulding the behaviour of children;
 - f. communicating and interacting with families and community support agencies;
 - g. ensuring hygiene, health, nutrition and safety of children;
 - h. completing multiple and demanding tasks at once;
 - i. exercising physical dexterity and strength;
 - j. applying knowledge of the regulatory requirements of the Sector; and
 - k. participating in quality assurance.

Group Leader

19. Group Leaders coordinate the care and development of a group of children. In addition to the tasks performed by Educators this requires:
- a. programming, planning and implementing an educational program tailored to the developmental needs of each child;
 - b. engaging parents and families in the education program;
 - c. evaluating the program's results;
 - d. developing, implementing and evaluating daily care routines;
 - e. providing appropriate supervision to ensure safety for children and staff;
 - f. ensuring records are accurately maintained for children in their care;
 - g. ensuring adherence to the centre's policies and procedures;
 - h. supervising and supporting Educators in the performance of their duties; and
 - i. supervising students on placement.

Early Childhood Teacher

20. Early Childhood Teachers are degree qualified teachers who run a preschool and/or transition to schooling program. The work performed by Early Childhood Teachers is comparable to the work performed by Group Leaders but utilising their tertiary qualification. Further, from 1 January 2014 long day care centres were required to have access to an Early Childhood Teacher or have an Early Childhood Teacher in attendance at the Centre. In addition, Early Childhood Teachers:
- a. develop the curriculum applying their tertiary levels skills and knowledge;
 - b. are often the pedagogical leader at the centre; and
 - c. professionally develop and support the delivery of education by Educators.

Assistant Director / Coordinator

21. Assistant Directors are usually contact educators (with Group Leader responsibilities) or in larger centres, act solely as the assistant to the Director. In addition to the skills and responsibilities of the Group Leader, this requires:
- a. coordinating the activities of Educators and Group Leaders in implementing and evaluating developmentally appropriate programs;
 - b. managing, training and developing staff;
 - c. contributing to the centre's policy development;
 - d. coordinating centre operation including occupational health and safety, program planning and staff training;
 - e. day to day management of the centre in the absence of the Director;
 - f. ensuring compliance with licensing, statutory and quality assurance requirements;
 - g. supervising all employees in the centre; and
 - h. assisting the Director in carrying out their role.

Director

22. The Director is responsible for the overall running of the centre and compliance with all regulatory requirements. The work requires:
- a. pedagogical leadership;
 - b. overall management, administration and leadership of the centre;
 - c. account and financial management;
 - d. administration;
 - e. recruitment and human resources management;
 - f. communication and engagement with staff members, children, parents, business contacts, community or local leaders and other stakeholders;
 - g. supporting and participating in management committees or other groups;
 - h. ensuring quality assurance and improvement requirements;
 - i. professional leadership and staff development; and
 - j. developing and maintaining the centre's policies and procedures.

Qualifications

23. The majority of employees the Sector are currently required to hold formal training qualifications or equivalent experience to perform the work in the Sector.
24. These qualifications are:
- a. Certificate II relevant to role;
 - b. Certificate III relevant to role;
 - c. Certificate III in Children's Services;
 - d. Certificate IV in Children's Services;

- e. Diploma in Children's Services;
- f. Advanced Diploma in Children's Services;
- g. Bachelor of Education (Early Childhood);
- h. Tertiary level early childhood education qualifications relevant to role.

25. The current mandatory qualifications or equivalent experience for each role are:

Role	Award	Classification	Qualification
Support Worker	CS Award	Support Worker Level 3	Cert III
Educator	CS Award	Children's Services Employee Level 2	Cert II
Educator	CS Award	Children's Services Employee Level 3	Cert III Children's Services
Educator Group Leader	CS Award	Children's Services Employee Level 4	Dip. Children's Services
Group Leader Assistant Director Coordinator	CS Award	Children's Services Employee Level 5	Dip. Children's Services
Director	CS Award	Children's Services Employee Level 6	Bachelor Degree Early Childhood Education Qualification Advanced Dip. Children's Services Dip. Children's Services
Early Childhood Teacher	EST Award	All levels	Bachelor Degree

26. The number of qualified employees is rapidly increasing because of new mandatory minimum qualification requirements (see paragraph 61). After 1 January 2014, all employees working directly with children will be required to hold, or be working towards, at least a Certificate III qualification.
27. Over time, the content of the courses for each of the qualifications has become more complex and required a higher degree of knowledge.
28. The increased attainment of formal qualifications in the Sector and increasing complexity in the course content has resulted in increased:
- a. professionalism of the work;
 - b. knowledge and skills of employees in the Sector; and
 - c. supervisory responsibilities for employees holding these skills.

Environment

29. The work of employees in the Sector is performed in an environment that is:

- a. intense;
- b. noisy;
- c. requires dealing with human waste;
- d. physically and emotionally demanding; and
- e. likely to lead to higher levels of illness.

Social benefit

- 30. The Sector delivers significant social and economic benefits to the Australian economy, society, families and individuals.
- 31. High quality early childhood education and child care environments lead to:
 - a. positive intellectual and cognitive development and later-life learning outcomes in children;
 - b. improved social, health and behavioural outcomes in children; and
 - c. better work/life balance for parents.
- 32. The workforce participation of women, and the consequent economic benefit, is directly linked to quality and accessible child care.

Pay in the Sector

- 33. The majority of employees in the Sector are award reliant. Award reliance in the Sector is significantly higher than in the workforce overall.
- 34. The award wages are minimum rates and, for the majority of employees in the Sector, particularly those covered by the CS Award, are the actual rates of pay received by employees.
- 35. The creation of the CS Award and associated pay structure has occurred with limited assessment of work value.
- 36. While there has been some assessment and recognition of work value through previous pay equity decisions which were incorporated into the CS Award during the award modernisation process, these gains have been eroded or stagnated over time.
- 37. The incidence of over-award payments in the Sector is low.
- 38. The majority of over-award payments are paid to employees in high classifications and are as a result of individual employment contracts.
- 39. There has been limited collective bargaining in the Sector.
- 40. Where over-award payments are made through collective agreements or individual contracts they are rarely significantly above the Award rates.
- 41. There is a high incidence of unpaid work performed in the Sector.
- 42. There are insufficient sick leave and other non-wage entitlements for employees having regard to the environment of the work.

43. The career structure does not recognise the increased skill and responsibility that results from increased qualifications. This acts as a disincentive for employees to progress in the career structure or undertake further study.
44. There are limited opportunities for employees to undertake further skill development, training or study in paid time.
45. Employees are provided with inadequate paid time to undertake educational programming work required by their roles.

A COMPARATOR FOR THE SECTOR

46. Section 302 of the Act provides that the Fair Work Commission (“FWC”) may make any order (an equal remuneration order) it considers appropriate to ensure that, for employees to whom the order will apply, there will be equal remuneration for work of equal or comparable value.
47. The Act defines the expression ‘equal remuneration for work of equal or comparable value’ as meaning equal remuneration for men and women workers for work of equal or comparable value.
48. Section 302(5) provides however, that the FWC may make the equal remuneration order only if it is satisfied that, for the employees to whom the order will apply, there is not equal remuneration for work of equal or comparable value.
49. In the *Equal Remuneration Order – Jurisdictional Decision* [2015] FWCFB 8200 at [290] the Full Bench stated:

“In summary, in order for the jurisdictional prerequisite for the making of an equal remuneration order in s.302(5) to be met, the Commission must be satisfied that an employee or group of employees of a particular gender to whom an equal remuneration order would apply do not enjoy remuneration equal to that of another employee or group of employees of the opposite gender who perform work of equal or comparable value. This is essentially a comparative exercise in which the remuneration and the value of the work of a female employee or group of female employees is required to be compared to that of a male employee or group of male employees. We do not accept that s.302(5) could be satisfied without such a comparison being made. Section 302(5) could not be satisfied on the basis that an employee or group of employees of a particular gender are considered not to be remunerated in accordance with what might be considered to be the intrinsic or true value of their work.
50. On 13 January 2004 a Full Bench of the Australian Industrial Relations Commission (constituted by Vice President Ross, Senior Deputy President Marsh and Commissioner Deegan) determined applications to vary the *Childcare Industry (Australian Capital Territory) Award 1998* and the *Children’s Services (Victoria) Award 1998* in relation to wages, classification structure, new allowances and the award title (see print PR954938).
51. As part of the above applications the Commission concluded at [367]-[368]:

“The second broad conclusion concerns the proper fixation of rates for the key classification levels in the child care awards. In our view the rate at the AOF Diploma level should be linked to the C5 level in the *Metal Industry Award*. Further, it is appropriate that there be a nexus between the CCW level 3 on

commencement classification in the ACT Award (and the Certificate III in the Victorian Award), and the C10 level in the Metal Industry Award.

We accept that aligning these key classifications in the manner proposed will, of itself, result in significant wage increases.”

52. The above conclusion was arrived at having regard to the work value of the respective positions.
53. The determination made in the above decision, to align the Certificate III rate in the Children’s Services (Victoria) Award with the C10 rate in the Metal Industry Award has continued since that time. An employee presently engaged in classification 3.1 of the Children’s Services Award 2010 is paid at the same minimum hourly wage as a person employed in classification C10 in the Manufacturing and Associated Industries and Occupations Award 2010.
54. Employees in the Sector (as defined at 2 above) are overwhelmingly female.
55. Employees employed under the Manufacturing and Associated Industries and Occupations Award 2010 are overwhelmingly male.
56. In the circumstances set out at paragraphs 46 – 55 above a proper comparator for the Diploma level and Certificate III classifications under the Children Services Award are the C5 and C10 classifications respectively in the Manufacturing and Associated Industries and Occupations Award 2010, with consequential adjustment for other classifications.

GENDER BASED UNDERVALUATION

57. The wages paid to employees in the Sector do not adequately reflect the:
 - a. skills, responsibilities and qualifications required to perform the work;
 - b. environment in which the work is performed; and
 - c. social and economic benefit arising from the work,

when compared to work requiring equal or comparable skills and responsibilities in other occupations and/or other industries.

58. This is caused by factors including:
 - a. structural undervaluation of the work;
 - b. changes to the work value which have not been recognised in wages because of the Employees’ poor bargaining position and failure of the industrial landscape to keep pace with increased skills and responsibilities required by government regulation of the work; and
 - c. loss of the outcomes of previous equal remuneration orders.

Structural undervaluation

59. The undervaluation of the work performed in the Sector has been caused by a variety of structural factors that result from the predominance of women working in the Sector including:
 - a. social undervaluation of the skills and responsibilities required to perform the work as:
 - i) “soft” skills;

- ii) an extension of the unpaid work performed by women in the domestic sphere;
- iii) skills that “naturally” occur in women rather than are learnt or developed;
- b. a history of industrial regulation characterised by consent awards without adequate assessment of work value or correction of external award relativities; and
- c. limited bargaining power of employees in the Sector to achieve recognition of the skills, responsibilities, qualifications and benefit of the work through enterprise bargaining.

Changes to work value

- 60. Previous work value assessments of the work in the Sector only addressed the work value issues identified at the time of those assessments.
- 61. The Sector has underdone significant changes since those assessments. The current wages and conditions do not reflect the changes to the value of the work over time.

Changes to utilisation and clients

- 62. There has been a rapid growth in use of long day care services because of changes to government funding and increased participation of women in paid employment. This has resulted in skills and labour shortages in the Sector.
- 63. The attributes of the children in care has changed over time. Employees have been required to expand their skills ~~provide~~ of providing care and development for children:
 - a. with special needs/(dis)abilities/disadvantage/medical requirements;
 - b. from diverse cultural, ethnic and language backgrounds; and
 - c. with issues arising from shared parenting arrangements or family court or social services orders.
- 64. Families of children in care have increased expectations of service and professionalism due to the increased awareness of the importance of education and development in the early years of a child’s life.

Regulatory and policy changes

- 65. There are significant changes to the operational requirements in the Sector as a result of government policy shift to increase the quality of the care and a focus on educational and development outcomes for children in child care.
- 66. The National Quality Framework (“NQF”) was implemented from 1 January 2012 and is the most significant change to the children’s services industry since its inception. The NQF creates national standards to maintain and improve quality early childhood education and care.
- 67. The NQF mandates service standards, the National Quality Standards (“NQS”).
- 68. The NQS requires service providers and their employees to adhere the standards in each of seven Quality Areas:
 - a. educational program and practice;
 - b. children’s health and safety;

- c. physical environment;
 - d. staffing arrangements;
 - e. relationships with children;
 - f. collaborative partnerships with families and communities; and
 - g. leadership and service management.
69. The introduction of the NQS has increased the level of skill and responsibility required to perform the work including by requiring:
- a. increased interaction with children in the delivery of non-educational services (Support Workers);
 - b. mandatory reporting obligations related to health and safety incidents and child protection;
 - c. the management of medical conditions and the administration of medication;
 - d. increased child supervisory requirements;
 - e. increased relationship building with families and communities;
 - f. increased policy formation and administration to effect service improvement;
 - g. dedicated supervisory and educational leader positions;
 - h. constant quality improvement; and
 - i. record keeping associated with the above.
70. The NQS also requires:
- a. the development and delivery of tailored education programs in accordance with a nationally mandated curriculum; and
 - b. minimum qualifications for all employees working with children.
71. The new national curriculum, the Early Years Learning Framework, has fundamentally shifted the methods and approach of early childhood education delivery from teacher based and structured learning to individualised child-centred learning. This shift has increased the level and complexity of skill and knowledge required to deliver education in accordance with the curriculum.
72. From 1 January 2014, there will be mandatory minimum skills requirements for employees in the Sector depending on the size of the centre. This will require:
- a. at least 50% of the workforce to hold a Diploma or Degree qualification or be working towards one; and
 - b. the remaining 50% of the workforce to hold a Certificate III qualification or be working towards one; and
 - c. depending on the number of children at the centre, one or more Early Childhood Teachers to be in attendance for a minimum number of hours.
73. There are also mandatory first aid qualifications required at each service as follows:
- a. at least one educator who holds a current approved first aid qualification; and
 - b. at least one educator who has undertaken anaphylaxis management training; and
 - c. at least one educator who has undertaken emergency asthma management training;
74. These changes to the skills, responsibilities and qualifications required to perform the work constitute a significant net increase in work value. This work value is not recognised in the present pay of employees in the Sector compared to the wages and entitlements of employees in other occupations and/or other industries with comparable skills, responsibilities and qualifications.

75. The changes to work value cannot be addressed through enterprise bargaining because of the characteristics of the workforce, and the Sector, referred to in paragraphs 6 to 12 above.

Loss of previous pay equity gains

76. Historical equal remuneration gains employees in the Sector have received have been eroded over time with changes to industrial regulation and legislation.

77. Prior to the commencement of the *Workplace Relations Amendment (Work Choices) Act* ('WorkChoices') in March 2006, and the consequent 'federalisation' of industrial relations, equal remuneration recognition for employees in the Sector had been sought and achieved to some degree across various jurisdictions through equal remuneration and work value cases. In some cases, these equal remuneration orders were not in place before the commencement of WorkChoices or were to be phased in over a period of time after the commencement of WorkChoices.

78. The WorkChoices legislation substantially excluded the operation of state-based equal remuneration orders for work of equal or comparable value. At this point, any equal remuneration gains for employees in the Sector obtained in the pre-WorkChoices landscape stagnated, or for orders that were phased in, never applied at all.

79. The introduction of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* saw the minimum rates under previous state-based awards (i.e. Notional Agreements Preserving State Awards [NAPSAs] and pre-reform awards) transitioned to federal Pay Scales. Again, some of the equal remuneration gains were not translated into the Pay Scales associated with the NAPSAs.

80. During the award modernisation process, some attempt was made by the industrial parties to preserve equal remuneration gains via the insertion of non-standard 'transitional provisions' in the Modern Awards however not all equal remuneration gains were captured. As a consequence, historical equal remuneration gains have been eroded.

Impact of undervaluation on wages outcomes

81. As a result of the above, the actual wages of employees in the Sector are less than the actual wages of employees in other occupations and/or other industries who perform equal or comparable work.

82. The effect of low wages on employees in the Sector are numerous and undermine the move towards professionalism of the Sector and increased educational and developmental outcomes for children.

83. Low wages and poor conditions cause economic and personal hardship for employees and their dependents. Many employees cannot obtain mortgages, travel or start a family because of their low income.

84. It is extremely difficult to retain quality educators in the Sector because the pay does not correspond to the high level of skills and responsibility of the work. Many qualified educators leave the Sector to obtain higher paying, less stressful jobs in other occupations or industries. Qualified employees use working in the

Sector as a “stepping stone” to further study or entry into other professions with higher pay.

85. The low wages and poor industrial conditions result in job vacancies remaining unfilled or under-qualified employees being appointed to perform the work.
86. The disruption to services caused by high staff turnover has adverse impacts on remaining staff members who are required to take on additional work and reduces staff morale.
87. Children’s developmental outcomes and emotional wellbeing are affected by the shortage of appropriately qualified staff and the lack of continuity of educators.

NO SUITABLE ALTERNATIVE REMEDY

88. There is no suitable alternative remedy to an equal remuneration order to address the gendered undervaluation of the work performed by employees in the Sector.
89. A low paid authorisation pursuant to s.243 or a low paid workplace determination pursuant to Part 2-5, Division 2 of the FW Act would not adequately address the historical gendered undervaluation of the work performed in the Sector. ~~Any such authorisation could only compel parties to meet to negotiate an enterprise agreement. The parties would be under no compulsion to address the gendered undervaluation of the work.~~
90. An application to vary the modern award pursuant to s.158 of the FW Act could not result in increases to the award wages comparable to actual rates earned in other occupations and/or other industries and would therefore not meaningfully address the gendered undervaluation of the work.
91. The structural undervaluation and lack of recognition of work value cannot be adequately addressed without an assessment of the undervaluation of the work and an equal remuneration order.

RELIEF SOUGHT

92. The Applicants seek relief in the form of the draft order attached as Annexure “B”.

AMENDED ANNEXURE 'B'

(NOTE: Annexure B as annexed to the Second Further Amended Application is replaced by this annexure)

Fair Work Act 2009

s.302 – Equal remuneration order

Equal Remuneration Case

United Voice and Australian Education Union

CHILDREN'S SERVICES AWARD 2010

EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

EDUCATIONAL SERVICES (SCHOOLS) GENERAL STAFF AWARD 2010

Draft Order

1. Title

This Order is the Children's Services and Early Childhood Education Industry Equal Remuneration Order [**insert year**].

2. Commencement and obligations

- 2.1** This Order shall commence on [**insert date**] and shall continue in force and effect until further order of the Fair Work Commission.
- 2.2** The monetary obligations imposed on employers by this Order may be absorbed into overaward payments. Nothing in this Order requires an employer to maintain or increase any overaward payment.
- 2.3** Where agreed between the employer and a full-time or part-time employee, an employer may introduce remuneration packaging in respect of the monetary obligations imposed by this Order. The terms and conditions of such a package must not, when viewed objectively, be less favourable than the entitlements otherwise available under the Award and this Order.

3. Definitions and interpretation

In this Order, unless the contrary intention appears:

Act means the *Fair Work Act 2009* (Cth)

children's services and early childhood education industry means the industry of long day care, occasional care (including those occasional care services not licensed), nurseries, childcare centres, day care facilities, family based childcare, out-of-school hours care, vacation care, adjunct care, in-home care, kindergartens and preschools, mobile centres and early childhood intervention programs

CS Award means the *Children's Services Award 2010*

EST Award means the *Educational Services (Teachers) Award 2010*

ESG Award means the *Educational Services (Schools) General Staff Award 2010*

long day care centre means a childcare establishment which usually provides services over a period of approximately eight hours or more each day for approximately 48 weeks or more during the year

preschool means service in the children's services and early childhood education industry which usually operates during hours and terms which approximate those of a recognised school, and includes a kindergarten, day school or nursery school and will include:

- (a) a full day care centre which means an establishment which does not operate on a sessional basis, but which usually operates during hours and terms which approximate those of a recognised school.
- (b) a sessional care centre which means an establishment which operates on the basis of morning and/or afternoon sessions and which usually operates during hours and terms which approximate those of a recognised school.

Relevant Award means the CS Award for an employee covered by the CS Award, the EST Award for an employee covered by the EST Award, and the ESG Award for an employee covered by the ESG Award.

4. Coverage and application

4.1 This Order covers employers throughout Australia operating long day care centres and/or preschools in the children's services and early childhood education industry and their employees who perform work in a long day care centre or preschool:

- (a) in the classifications listed in Schedule B of the CS Award; or
- (b) in the classifications listed in clause 13 of the EST Award; or
- (c) in the classifications listed in Schedule B of the ESG Award.

4.1A The order would not apply to any employees:

- (a) employed by a local government authority

4.2 This Order covers any employer which supplies labour on an on-hire basis to long day care centres and/or preschools in the children's services and early childhood education industry in respect of on-hire employees in classifications covered by:

- (a) Schedule B of the CS Award; or
- (b) clause 14.1 of the EST Award; or
- (c) Schedule B of the ESG Award.

and those on-hire employees, while engaged in the performance of work for a business in those centres.

5. Equal Remuneration Payment

5.1 The payments in clause 5.3, 5.4 and 5.5 of this Order shall be referred to as the "Equal Remuneration Payment".

5.2 In addition to the wages required by the Relevant Award, the employer must pay an employee an Equal Remuneration Payment as follows.

5.3 From the first full pay period on or after **[insert date]**, the employer must pay an employee employed in a long day centre and/or preschool in a classification listed in Schedule B of the CS Award, an Equal Remuneration Payment equal to the following percentage of the applicable minimum wage in clause 13 of the CS Award:

Classification in Schedule B of the CS Award	Equal Remuneration Payment Percentage
Support worker level 1.1	35%
Support worker level 2.1	35%
Support worker level 2.2	35%
Support worker level 3.1	35%
Children's services employee level 1.1	35%
Children's services employee level 2.1	35%
Children's services employee level 2.2	35%
Children's services employee level 3A.1	35%
Children's services employee level 3A.2	35%
Children's services employee level 3.1	35%
Children's services employee level 3.2	35%
Children's services employee level 3.3	35%
Children's services employee level 3.4	35%
Children's services employee level 4A.1	35%
Children's services employee level 4A.2	35%
Children's services employee level 4A.3	35%
Children's services employee level 4A.4	35%
Children's services employee level 4A.5	35%
Children's services employee level 4.1	35%
Children's services employee level 4.2	35%
Children's services employee level 4.3	35%
Children's services employee level 5A.1	35%
Children's services employee level 5A.2	35%
Children's services employee level 5A.3	35%
Children's services employee level 5.1	35%
Children's services employee level 5.2	35%
Children's services employee level 5.3	35%
Children's services employee level 5.4	35%
Children's services employee level 6A.1	35%
Children's services employee level 6A.2	35%
Children's services employee level 6A.3	35%
Children's services employee - director level 6.1	35%
Children's services employee - director level 6.2	35%
Children's services employee - director level 6.3	35%

Children’s services employee - director level 6.4	35%
Children’s services employee - director level 6.5	35%
Children’s services employee - director level 6.6	35%
Children’s services employee - director level 6.7	35%
Children’s services employee - director level 6.8	35%
Children’s services employee - director level 6.9	35%

5.4 From the first full pay period on or after **[insert date]**, the employer must pay an employee who:

- (a) is covered by the EST Award; and
- (b) is employed as an early childhood teacher in a long day care centre and/or preschool,

an Equal Remuneration Payment equal to the following percentage of the applicable minimum wage in clause 14.1 of the EST Award:

Classification in clause 14.1 of the EST Award	Equal Remuneration Payment Percentage
Level 1	35%
Level 2	35%
Level 3	35%
Level 4	35%
Level 5	35%
Level 6	35%
Level 7	35%
Level 8	35%
Level 9	35%
Level 10	35%
Level 11	35%
Level 12	35%

5.5 From the first full pay period on or after **[insert date]**, the employer must pay an employee employed in a long day care centre and/or preschool in a classification listed in Schedule B of the ESG Award, an Equal Remuneration Payment equal to the following percentage of the applicable minimum wage in clause 14.1 of the ESG Award:

<u>Classification in Schedule B of the ESG Award</u>	<u>Equal Remuneration Payment Percentage</u>
1.1	35%
1.2	35%
1.3	35%
2.1	35%
2.2	35%

<u>Classification in Schedule B of the ESG Award</u>	<u>Equal Remuneration Payment Percentage</u>
3.1	35%
3.2	35%
4.1	35%
4.2	35%
5.1	35%
5.2	35%
6.1	35%
6.2	35%
7.1	35%
7.2	35%
7.3	35%
8	35%

5.6 The payments in clauses 5.3, 5.4 and 5.5 of this Order shall be regarded as part of the ordinary rate of pay for all purposes.

6. Non-contact time

6.1 In addition to the non-contact time provided for in clause 2.15 of the CS Award, an employer must provide an employee in a classification listed in Schedule B of the CS Award an additional minimum of two hours per week during which the employee is not required to supervise children or perform other duties directed by the employer, for the purpose of planning, preparing, evaluating and programming activities.

6.2 In addition to the non-contact time provided in Clause B.3.2 of Schedule B of the EST Award an employer must pay an employee listed in 14.1 of the EST Award an additional minimum of two hours per week during which the employee is not required to teach or supervise children or perform other duties directed by the employer, for the purpose of planning, preparing, researching and programming activities.

6.3 An employer must pay an employee in a classification listed in Schedule B of the ESG Award a minimum of two hours per week during which the employee is not required to supervise children or perform other duties directed by the employer, for the purpose of planning, preparing, evaluating and programming activities.

7. Paid staff meetings

An employer must pay an employee in a classification listed in:

- (a) Schedule B of the CS Award; or
- (b) clause 14.1 of the EST Award; or
- (c) Schedule B of the ESG Award,

for a minimum of one hour per fortnight for the purpose of attending staff meetings outside of the ordinary hours of work.

8. Payment

Payments made by an employer in accordance with this Order must be paid weekly or fortnightly by cash, cheque or electronic funds transfer into the bank or financial institution account nominated by the employee, unless other arrangements are made in an enterprise agreement approved under the Act.

9. Access to the Order

The employer must ensure that copies of this Order are available to all employees to whom it applies either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.