

**IN THE FAIR WORK COMMISSION**

**AT SYDNEY**

**EQUAL REMUNERATION CASE (C2013/6333)**

**SUBMISSION BY THE**

**AUSTRALIAN COUNCIL OF TRADE UNIONS**

**IN SUPPORT OF AN APPLICATION FOR LEAVE TO INTERVENE**

1. The Independent Education Union of Australia (IEU) has made an application for an equal remuneration order pursuant to Part 2-7 of the *Fair Work Act 2009* (Cth) (the Act) to increase the remuneration of early childhood teachers who are employed to work in long day care centres and preschools across Australia. The application has been listed for hearing by a Full Bench of the Fair Work Commission in Sydney, commencing on 26 July 2018.
2. If the application is successful, orders arising from the application would require such teachers to be paid the same as primary school teachers in NSW.
3. The Australian Council of Trade Unions (ACTU) intends to apply for leave to intervene in the proceedings on 26 July 2018 and will seek to rely on these submissions in support of that application.
4. The Commission has a broad discretion to determine how it may inform itself in any particular proceedings<sup>1</sup>, including by determining who it may hear from in the course of proceedings and on what terms. This is also the case for matters brought under Part 2-7.<sup>2</sup>
5. The ACTU consists of affiliated organisations of employees and state and regional trades and labour councils. The organisations of employees affiliated to the ACTU represent employees across a wide range of industries, sectors and occupations, including employees in both the private and public sector workforce. The ACTU represents the interests of affiliated unions in various fora, including the Fair Work Commission.

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<sup>1</sup> Section 590 of the Act.

<sup>2</sup> *Equal Remuneration Decision* [2015] FWCFB 8200 at [176]

6. The ACTU is a peak council within the meaning of s 12 of the Act and the only peak body of trade unions in the country. The applicant is affiliated to the ACTU.
7. The subject matter and outcome of the present proceedings are of significant interest to the ACTU and its affiliates. There have been only a limited number of proceedings brought under Part 2-7 of the Act and whilst there has been detailed consideration of these provisions in the matters that have been brought, the Commission has recognised that the apparent simplicity of the provisions ‘masks a considerable degree of complexity’<sup>3</sup>. Previous matters under Part 2-7 have been long-running and have highlighted the complexity of the provisions including in relation to evidentiary requirements which might form the basis of equal remuneration orders under the Part. In the circumstances, it is desirable that the Commission hear from a wide range of parties regarding the application/operation of these provisions.
8. Employee organisations are one of only three categories of persons with standing to make applications for equal remuneration orders under the Act.<sup>4</sup> The ACTU is concerned to ensure that employee organisations are able to have recourse to Part 2-7 with a clear understanding of the requirements of those provisions so that proceedings can be conducted efficiently and the remedial nature of the Part in ensuring equal pay for work of equal value can be given effect to.
9. The conduct and outcome of the present matter is likely to have a significant bearing on any future matters brought under Part 2-7 by ACTU affiliates.
10. If leave is granted, the ACTU does not propose to actively participate in the evidentiary stage of the proceedings. Thus, a grant of leave will not extend the time required to hear the evidence or require additional resources by the other parties or the Commission. Rather, the ACTU would, in close consultation with its affiliate the IEU, maintain a ‘watching brief’ in relation to the matter and may seek to make submissions at an appropriate time should that be considered necessary having regard to the issues raised by the proceedings or in the event that the Commission seeks the views of the ACTU as the peak council.

ACTU

25 July 2018

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<sup>3</sup> *Equal Remuneration Decision* op cit at [183].

<sup>4</sup> Section 302(3)(b).