

EB9 SBU Meeting #5

Tuesday 16 July 2019 9:30am – 3.30pm

MINUTES

1 Welcome

1.1 Attendance and apologies

Employee Representatives:

Terry Burke

Ian Hughes

Monique Roosen

Nicole Kapernick

Brad Hayes

Marie Sellin

Terri-an Nolan

Kevin Collins

Paul Giles

Mark Harris

Mark Rieken

Daryl Bathe

Employer Representatives:

Ray Kelly

Peter Chapman

Andrea Alchin

Alyn Cooper

Alison Terrey

Nicole Spohn

Julie Payne

Deb Crotty

Jennifer Elvery

Colin O'Neill

Gary Cooper

Julia Cassidy

Apologies:

Melissa Goodingham

Andrew Elphinstone

Kerry Esmond

Jo-Anne Desailly

Meeting commenced 10:00am following caucus of employee representatives.

1.2 Prayer

Prayers offered by attendees.

2 General Business

2.1 Minutes of the previous meeting

2.1.1 Confirmation of the Minutes of 11 June 2019

- a. Draft minutes of the SBU meeting #4 on 11 June 2019 were exchanged prior to the meeting.
- b. The exchanged Minutes of Meeting #4 (11 June 2019) were confirmed.
- c. Employer representative advised that Julie Payne will be attending future SBU meetings in place of Lindsay Hawkins from the Toowoomba Diocese and Deb Crotty will be attending future SBU meetings in place of Sally Towns from the Cairns Diocese.

2.2 General Business

2.2.1 Procedural Matters

a. Status of Negotiations/Form of Agreement

Employee representatives noted they are attending these meetings in the context of the Single Interest Employer Authorisations (SIEA) and are attending for the purposes of negotiating separate agreements with each employing authority.

b. Scope of Agreement

Employee representatives noted that the scope of any agreement is itself subject of negotiation consistent with the decision of the FWC regarding Stuartholme and others.

c. Communications

- i. It was noted that the minutes will be made available on the EB9 website.
- ii. Employee and employer representatives confirmed they had communicated with members and employees respectively.

d. Sub-committees

- i. Claim Item 7.2.6 Technical Amendments
 - Employer representative noted there have been two meetings of the technical amendments sub-committee on 26 June and 12 July 2019. Meetings were productive and items progressed with a view to avoiding issues with the “better off overall test” (BOOT) as part of the Fair Work Commission agreement approval process. Employee and Employer representatives will arrange future meeting dates.
 - Employee representative wished to note the following issues from the meetings are unresolved:
 - *National Employment Standards (NES)* – Employee representatives did not agree to the proposed employer clause for the enterprise agreement (EA) regarding the application of the NES. A further employee clause was tabled for employer consideration. Employer representative noted the employer proposed wording is consistent with the relevant legislative section and did not agree that it would not be accepted by FWC. Employee representatives for their part noted that the language of the tabled provision is language as provided by the FWC.
 - *Proposed clauses linking legislative provisions* –
 - Employee representatives are opposed to the replacement of elaborated clauses by proposed clauses in the EA that would include hyperlinks to relevant legislative provisions (eg. flexible work arrangements pursuant to NES). Their view is that the document needs to be readable and usable at a school level and that links (provided by a third party) are fragile leading to possible levels of frustration among employees and issues unresolved.
 - The employer representative explained the links are embedded within the document to the Austlii legal website. Therefore staff at the school will not be responsible for updating the links. The EA will be formatted to allow employees to access a contents page with internal links to relevant clauses and search functionality by key terms to find relevant references and entitlements. This is intended to make the EA more user friendly for employees and included in the proposed EA that will be approved and accessible on the FWC public website.
 - Employee representatives noted the intentions, but still want comprehensive provisions for employees rather than links to legislation (eg. NES) providing the entitlements.

- Employers are keen to pursue links in the EA as it is believed current technology is reliable and it saves the parties having to update the EA when legislative changes occur. It enables employees to access up to date information. Employers advised they could do a presentation at the next SBU meeting to display how the formatted document could work as it is understood there is concern about the change. Employers' view is that the current EA is a long and difficult document for employees to navigate and read and this is trying to be improved.
 - Employee representatives do not agree with the employer view that the EA is complex or difficult to read.
- *Boarding house supervisor rates* - Employee representatives stated in the last round of bargaining (EB8) there were, minimum and aspirational wage rates outlined, on the basis of financial difficulties of unnamed schools who would pay the minimum while schools that could afford the aspirational rates would pay those rates. Employee representatives wish to regularise the rates in the EA using the current aspirational rates and are seeking the employers' view on that issue. Employer representatives initially indicated that there are some who are paying the minimum and some that are paying the aspirational rates. It was noted that one Catholic employing authority is paying a combination of the two different rates, as a result of employee's decision at the local level and the application of penalty rates.
 - *Part time Minimum Engagement* - Employee representatives noted that during the meetings, there was discussion about maximum hours for part-time employees as part of BOOT, but employers also sought review of current minimum weekly engagement of 12 hours. Employee representatives advised they are open to discussing a review of minimum part-time hours, but this would be on the basis of a maximum engagement on any one day. This was acknowledged by employer representatives.
- Further meetings of this sub-committee will be arranged between the parties.
- ii. Insecure Work.
- Employer representatives stated there have been three meetings of the parties to discuss issues regarding maximising continuing employment and reducing prevalence of fixed term contracts. Employers believe this requires provisions that allow employers to be able to reasonably respond to constant changing requirements of schools that impacts on required hours to be worked. Such conversations are ongoing, with issues to be further clarified in attempts to take account of the legitimate interests of parties.
 - Employee representatives do not accept reducing fixed term engagements is tied to an issue of flexibility of hours and stated they are two separate issues. Employee representatives confirm their position already tabled that increased regulation is required regarding fixed term contracts. However, in the context of negotiations, they will consider the issues being raised by employers, but note one major employer has a quarter of staff on fixed term contracts and confirms further regulation of fixed term provisions is required. In terms of any proposed clause by employers, it needs to be clear about:
 - scope of who the provisions apply to;
 - process of varying hours needs to be clear and transparent with several levels to protect individual employees:
 - clearly outline in writing the need and reason for change;
 - employee has access to advice about the change;
 - if a proposed reduction of hours, then partial redundancy payment made irrespective of how big the reduction is;

- if a proposed increase change is unreasonable to an employee, then the employee can access full redundancy payment.
- Employee representatives will engage with further sub-committee meetings, but also seeking further regulation of fixed term provisions. In the absence of negotiated outcome, there is currently no ability for employers to alter hours of ongoing employees without agreement. If this occurs, then any breach would be pursued by employee representatives.
- Employer representatives noted comments, but still believe the ability to identify and transition fixed term contracts to ongoing employment opportunities is linked to ability to reasonably vary hours based on future changing school requirements. Employers commit to undertaking annual reviews of fixed term contracts to be able to identify continuing employment opportunities
- Parties will undertake further discussions.

iii. Nursing Provisions.

Employer representatives have met and teleconferenced with the QNMU and making progress through proposed employer changes to EA. There is a need for further clarification regarding some clauses, but it is believed these will be resolved in a timely way and not delay negotiations generally. Employer representatives indicated that there would be an update at the next meeting regarding this matter.

2.3 Business Arising

2.3.1 Education Queensland – Negotiated Outcomes (IEUA Item)

- a. Employee representative noted finalising negotiations would be more difficult if employers were not aware of details of employee claims or public sector outcomes were unknown. Now, employers have all employee claims and 'in principle' agreement has recently been reached by Education Queensland (EQ) and the Queensland Teachers' Union (QTU). It is important to note that the in principle agreement is subject to employee approval.
- b. Employee representatives stated they intended to identify certain aspects of the known EQ outcomes (tabled EQ FAQ document). Employee representatives stated there was no intention today to provide further claims based on EQ outcome, but that claims may be amended by employee representatives in light of the public sector outcomes.
- c. Employee representatives noted the following matters from the EQ outcome:
 - i. Wage increase of 2.5% per annum from 1 July 2019 consistent with Queensland Government wages policy that if in-principle agreement reached during a month, then back is payable to the first day of that month.
 - ii. HALT rates from 1/7/2019 are unchanged from 2018 rates, however, percentage increases will apply in 2020 and 2021. From 1/7/2021 rates for HAT and LT will be \$117,381 and \$128,151 respectively.
 - iii. \$1,250 one off lump sum cash payment for classroom teachers (pro rata for part time teachers), for those employed on the date of tribunal approval.
 - iv. Changes to Heads of Program (equivalent to Middle Leaders) have seen the lower classification (HOCs) removed and top classification (SG and HOSES) removed. The previous 3 levels becoming 2 with 3 paypoints becoming 2 paypoints within each of those levels. Increases applied between 10-16% over life of agreement with new Level 2, paypoint 2 salary comparable to LT rate from 2021. HOD rates in 2021 are \$126,644 and \$128,148 in the respective paypoints.
 - v. From 2022, a new step for classroom teacher who has been an Experienced Senior Teacher for 3 years will receive a payment of \$110,500, subject to a process.
 - vi. Non-contact time from 2022 – primary school teachers provided an additional 30 mins non-contact time covered by science allocation/ specialist science teachers – EQ have also

indicated that they are looking to recruit 600-800 additional teachers to enable this provision.

- vii. Part-time teachers to increment annually irrespective of hours worked.
 - viii. Remote area payments – continuation of payments with any changes to be specified in a future review.
 - ix. One off \$1,000 payment to early career teachers agreeing to teach in remote areas;
 - x. Early career teacher – additional designated non-contact time – 60 minutes per week for primary and 70 minutes per week for Secondary, from 2021.
 - xi. Reference primary carer leave rather than parental leave.
 - xii. Easter Vacation - Reduction of professional development requirement in lieu from 15 hours to 10 hours per annum.
 - xiii. Consultative provisions to deal with workload issues
- d. Employee representative confirmed that relevant considerations are now known and the onus is on the parties, and in particular, employer representatives, then negotiations should be able to be finalised around early term 4. Employer representatives believed that timeframe is reasonable, but queried details of any amended employee claims. Employee representatives are to consider their position on EQ outcomes, eg. HALT.

3 Matters under Negotiation

3.1 Employer Representatives – Items for Tabling

3.1.1 Boarding Supervision Staff (Employer: Claim Item 1) – clause tabled

- a. Employer representatives tabled proposed draft clause containing proposed changes to Board and Lodgings provisions and ordinary hours clause for non-averaging boarding supervisors.
Re Board and Lodgings
- b. Employer representatives explained the changes are consistent with legislative provisions regarding deductions for board and lodgings required to be reasonable in the circumstances, particularly taking into account the different types of accommodation available across schools and even within a school.
- c. Employee representative stated it reverses the fundamental concepts in the existing provisions that have been argued previously in that no wages are payable for capped hours of work if board and lodgings are provided. Employee representatives will provide a response, but noted proposed changes are problematic.
Re ordinary hours –
- d. Employer representatives outlined that changes sought to enable ordinary hours to be averaged over a 2 week period, such as payroll cycle (rather than current maximum of 38 hours in a week). This aligns with some employees preferred schedule (eg. employee may wish to work additional hours one week with reduced number the following), but also for employers.
- e. Employee representatives noted the proposed clause does not identify which two weeks, although a pay cycle was referenced in discussions. It could mean a week at the end of one term and the first week of the next term. There are concerns and a response will be provided.

3.2 Responses to Employee Log of Claims:

3.2.1 Parental Leave – clause tabled

- a. Employer Representatives noted current provisions are outlined in 3 separate parts of the EA and tabled a draft replacement parental leave clause outlining separate provisions in relation to unpaid and paid parental leave as follows:
 - i. the unpaid parental leave provision provides hyperlinks to the NES and also a summary of the provisions on the Fair Work Ombudsman site (federal regulator), which would replace the majority of provisions in the current Family Leave Schedule (10 and 9 of respective EAs)
 - ii. the paid provisions would be outlined in a Schedule (replacing current Family Leave Schedule), which included the employer’s proposal to extend paid leave on the basis of being the primary carer, rather than gender. The draft has attempted to streamline current provisions into one schedule without removing any current entitlements.
- b. Employee representative queried the confidence that no current entitlements in the Schedule will be lost by hyperlinking the NES. Employer representative advised that this should be the case and some of the current Schedule provided entitlements are less than the NES, but encouraged the employee representatives to consider the document and identify if there are any issues in this regard.
- c. Employer representative outlined the proposed changes to paid parental leave as follows:
 - i. Additional provision requiring notice periods to be complied with (10.1.2(c))
 - ii. Definitions as outlined in current provisions with a new definition of “full week” (10.1.3)
 - iii. Eligibility clause including the extension of primary carers up to maximum of 14 weeks after birth (10.1.4(c)). There is now a change to employers’ previous position to offset paid parental leave with paid paternity leave that may have been received. After considering views of employee representatives an employee couple will be able to access up to 16 weeks between them. This change was acknowledged by employee representatives.
 - iv. Paid primary carer parental leave will be a maximum of 14 weeks between employee couples of Catholic employers (ie. whether covered by Religious Institute or Diocesan EA) (10.1.5)
 - v. Other provisions are those outlined in the current EA (eg. half-pay provisions etc), but just streamlined into one part of the EA.
- d. Employee representatives acknowledged attempts to streamline provisions, but queried the following:
 - i. Reference to “continuing” employee – Employee representative noted this is same as current EA as fixed-term employees are treated as “continuing” employees subject to contract period.
 - ii. Deletion of “date of confinement” and replaced with “birth” – Employee representatives being consistent with NES and considered more understandable.
 - iii. Inclusion of a provision for an employee to agreed for accrual of leave at half rate is odd and unnecessary (10.1.11) – Employee representative noted the change was to be consistent with NES and acknowledged reference to “agrees” may be unnecessary, but claimed it is not unusual to be included in an EA.
 - iv. Inclusion of agreement for dates to access paternity/spousal (non-primary carer) leave (10.1.6) – Employers are seeking to ensure there is some clarity about notice and when the leave is to be taken so that reasonable interests of employer may need to be considered due to operational impacts allowing potential alternatives to be discussed
 - v. Addition of “for teachers” in 10.1.16(c) is appropriate for exclusion of school vacations, but reference to paid public holidays being inclusive of the leave should be for all employees – Employer representatives acknowledged this needs to be considered

- vi. Deletion of reference to paid adoption/parental leave in 10.1.16(e) – Employer representatives stated this was amended to exclude paternity leave for both adoption (as is currently the case) and the new spousal primary carer parental leave
- vii. Was the removal of clause relating to the “Payment for Leave” intentional (eg. S12.4.2(a), (b), (c))? – Employer representative stated it was an oversight and should have been included
- e. Employee representatives will be in a position to respond to parental leave draft clause at the next SBU meeting to be held on 30 July.
- f. Employer representatives agreed to provide electronic copies to employee representatives of all draft employer clauses tabled at this meeting.

3.2.2 Compassionate Leave – clause tabled

- a. Employer representatives tabled a draft clause and outlined the following changes:
 - i. Intention to remove current compassionate leave clause from Family Leave Schedule and place in body of EA;
 - ii. Removing the differentiation between “long term” and “short term” casuals and just referencing casual employees in line with NES.
- b. Employee representatives queried the following:
 - iii. Does reference to casuals being unpaid need to be clearer? – Employer representatives thought it is clear, but open to suggestions
 - iv. The wording in proposed 6.8.4 is based on current EA wording but is still not clear – Employer representatives agree and should read “or sustains a personal injury”.
- c. Employee representatives to consider and respond.

3.2.3 RI/PJP Schools - Proportion of Salary – clause tabled

- a. RI/PJP Employers are open to employee representatives’ claim to redefine “one standard year” to align with actual school terms and tabled a clause with adjustments to wording and definition of “Number of weeks”.
- b. Employee representatives queried whether the inclusion of days in the definition of “Number of weeks” also outline that those days should be identified at the beginning of school year as included in their proposal. Employers will consider this further.
- c. Employee representatives to consider draft clause.

3.2.4 Flexible Working Arrangements – clause tabled

- a. Employer representatives tabled a draft clause in response to employee representatives proposed clause that made numerous references to the NES. Employer clause seeks to streamline provision and hyperlink the relevant provisions of the NES.
- b. Employee representatives believe the proposed clause removes some entitlements that are in excess of NES (eg. caring for elderly parents and grandchildren). Employer representatives noted the clause can supplement the NES if necessary.
- c. Employee representatives to respond at the next SBU meeting on 30 July.

3.2.5 Consultation – clause tabled

- a. Employer representatives tabled a draft clause in response to employee representatives proposed clause. Changes include the following based on *Fair Work Act/Regulations* model consultation clause (model term):
 - i. inclusion that employees may be represented as part of consultation process and that such representation must be recognised;

- ii. inclusion that information about change will be provided in writing for purposes of consultation
- iii. as well as querying whether current clause 2.2.7 is necessary as this would be included as major change for clause 2.2.1 anyway.
- b. Employer representatives also believed the employee representative clause about requiring notification and consultation when “considering” a change was subjective and provided confusion as to when the requirements are triggered – ie. considering a change is a very broad and unclear notion. Employers are not open to that change and adopt current wording based on model term (ie. when definite decision is made).
- c. Employee representatives believe the model term is confused as it suggests the decision is already made by the employer making consultation with employees meaningless. The consultation process should provide ability for employer to review its initial decision and model term has not been working in this sector.
- d. Employer representative stated there is considerable case law about obligations pursuant to model term.
- e. Employee representatives to consider and formally respond.

4 Employee Log of Claims for Ongoing Consideration

- a. The employer representative queried remaining items proposed by employee representatives for the meeting agenda as it includes items that employers have provided a response.
- b. Employee representatives noted the “no” response to positions, but those responses are not accepted. Employee representatives would revisit arguments with a view to changing the employers’ positions. This is consistent with bargaining principles.
- c. The employer representatives stated they have provided considered responses in accordance with legislative good faith bargaining obligations. If employers are expected to continually revisit those items at every meeting, then negotiations will never be resolved in an efficient and timely manner. The expected approach of employee representatives to require all 40 items, over 90 pages and 170 amendments that have been tabled to be continually revisited, would make it very difficult for employers to appropriately consider and respond to the key issues.
- d. Employee representative stated the detail of their positions have been on the table for 5-9 weeks and the above comments are a distraction and smokescreen for employer delay. Employee representatives advised that over half of the employee claims have not been responded to by the employers.
- e. Employee representatives acknowledge that Public Sector is an issue. Some of these issues need to be responded as a whole.
- f. Employer representative acknowledged that there are claims that have not been responded to and wish to prioritise and concentrate on those matters without having to continually revisit matters that have already received a response by employers.
- g. Employee representative advised that members are making it clear that employer positions are unacceptable, claims need to be reconsidered, or members will need to resort to the Act’s provision in light of such an employer response and consider taking protected industrial action. Also, items regarding ML/SL have not received a response.
- h. Employer representative stated that ML/SL are important to employers also and issues have been actively and consistently considered by employers.
- i. Employee representatives commented it appears to be a slow process, employees in schools are looking for a response and there is frustration felt that these issues are not being dealt with, and this is not a new issue.
- j. Employer representative stated on behalf of employer principals, they really want to address and think about it carefully, working really hard to respond appropriately and working with all employers. The issue needs to be considered as part of a total package to be offered to employees.

- k. Parties agreed for employer representatives to caucus to determine agenda items for next SBU meeting on 30 July 2019.

Caucus

- l. Following the caucus, employer representatives advised that at the next SBU meeting it planned to focus on and provide responses to a number of claims, which are intended to be part of total package response to relevant items. Those items are as follows:
 - i. Wage increases
 - ii. ML/SL
 - iii. HALT
 - iv. Teacher hours
 - v. IPRASS

5 Next Meeting

5.1 Agenda

- 5.1.1 Employee Representative to chair and provide prayer for next meeting
- 5.1.2 Agenda items as discussed above

5.2 Confirmation of future meeting dates

- a. Tuesday 30 July 2019
- b. Wednesday 21 August 2019
- c. Thursday 12 September 2019
- d. Wednesday 16 October
- e. Wednesday 6 November 2019
- f. Wednesday 27 November 2019

6 Other Business

7 Close of meeting: 3.00pm