

Form F17—Employer's statutory declaration in support of an application for approval of an enterprise agreement

Fair Work Act 2009, s.185; *Fair Work Commission Rules 2013*, rule 24 and Schedule 1

This is a declaration in support of an application to the Fair Work Commission for approval of an enterprise agreement in accordance with Part 2-4 of the *Fair Work Act 2009*.

I,

Name	Shane Lucas		
Postal address	3/145, Smith Street		
Suburb	Fitzroy		
State or territory	Victoria	Postcode	3065
Occupation	Chief Executive Officer		

Make the following declaration under the *Statutory Declarations Act 1959*

Part 1—Preliminary

1.1 What is the name of the employer?

Legal name	Early Learning Association Australia (Duly appointed bargaining representative of the employers listed in Schedule 1 to this declaration)
Trading name	Same as above

1.2 What is the name of the agreement (write the name *exactly* as it appears in the title clause of the agreement)?

Victorian Early Childhood Teachers and Educators Agreement 2016.
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1.3 Are you aware of any other agreement(s) that has been filed or dealt with by the Commission that has identical or substantially identical terms?

Yes

No

If you have answered "Yes" to question 1.3—specify the name of the identical agreement, the name of the employer covered by the identical agreement, the agreement ID number, the date of the Commission's decision and the name of the Commission Member who dealt with such agreement.

Early Education Employees Agreement 2016 [PR579294] approved on 19 April 2016 by Commissioner Bissett.
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1.4 Was that agreement approved with undertakings?

- Yes
 No
 Don't know

1.5 Has a scope order, a low paid authorisation or a majority support determination been issued in relation to this agreement?

- Yes
 No

If "Yes"—Provide the unique print number (PR) and the date the order was made

Print number	
Date of order	

Part 2—Requirements for approval**Nominal expiry date****2.1 What is the nominal expiry date of the agreement? Provide the clause number in the agreement that specifies the date.**

Clause number	Clause 6.2
Expiry date	31 July 2019

Scope of the agreement**2.2 Does the agreement cover all the employees of the employer (other than senior executives)?**

- Yes
 No

If "No"—what group(s) of employees are covered by the agreement. Explain why you think the Commission should be satisfied that this group(s) was fairly chosen. If appropriate, describe any geographical, operational or organisational qualities that make the group(s) distinct.

The employees who will be covered by this agreement are the teachers and educators who hold an early childhood degree, diploma or certificate III qualifications to deliver a kindergarten program approved by the government. Such kindergarten programs are delivered in different settings such as stand-alone, cluster-managed, or integrated facilities.

The early childhood educational environment is heavily regulated by the Australian Children's Education and Care Quality Authority and a State regulatory body, which set the educational qualifications, educator to child ratios, and parent access arrangements. The employees covered by this agreement are teachers, and educators who are operationally and organisationally distinct from other employees such as cleaners and administration employees who do not deliver an approved educational program for children.

The scope of this agreement does not extend beyond this group of employees.

2.3 Did the employer take all reasonable steps to give notice of their right to be represented by a bargaining representative to each employee who will be covered by the agreement?

- Yes—please attach a copy of the notice given to employees
- No

Describe the steps that were taken to give employees notice of their right to be represented by a bargaining representative.

On 8 March 2013, the applicant, as the bargaining representative of the employers listed in schedule 1, mailed a circular advising the employers to provide a notice of employee representational rights in the form provided (see Attachment 1) to their employees by the specified date.

Agreement genuinely approved

2.4 What steps were taken by the employer and on what date were they taken to ensure that the relevant employees were either:

- a. given a copy of the written text of the agreement and any other material incorporated by reference into the agreement (must be provided during the 7 days before the start of the voting process), or
- b. had access to the above materials (must have access throughout the whole 7 day period)?

Describe the steps taken	Date
Early Learning Association Australia (ELAA) issued a voting pack to all employers listed in Schedule 1 providing detailed information and guidance on how to conduct the ballot at their services. (Please see Attachment 2). This pack also contained material that employers could use to put together an employee voting pack.	29 January 2016
Eligible employees were provided their individual voting packs by the employers. The employee voting pack provided clear advice to eligible employees that they could access an online copy of the proposed agreement and summary document on the ELAA website, and access a printed copy at the service premises, thereby enabling them to be fully informed of the matters dealt with in the agreement. The “Summary Document” provided with the copy of the proposed agreement explained the key differences between the 2009 agreement and the proposed agreement. This document was jointly developed by ELAA and the Australian Education Union (Please see attachment 3).	19 February 2016
ELAA sent regular electronic communication to all employers subsequently on several occasions advising them about the voting process, and the availability of the proposed agreement and summary document on the ELAA website.	From 2 February 2016 to 16 March 2016
In consultation with the unions, the voting period was extended until 15 April 2016 to enable more employees in rural/remote areas who may have been affected by postal delays, to exercise their vote.	18 March 2016

ELAA communicated this extension of time for voting to all Schedule 1 employers.	21 March 2016
Further electronic communication with Schedule 1 employers regarding the voting process, and closing of ballots.	24 March 2016 and 11 April 2016

2.5 When did you notify the relevant employees of the date and place at which the vote was to occur and the voting method to be used?

19 February 2016.

Employers issued a notification to all eligible employees as to the date and place at which the vote was to occur, and the voting method used.

The timelines set for the commencement of voting on 16 March 2016 allowed for 25 clear days for employees to access a copy of the proposed agreement and the summary before casting their votes.

2.6 What steps were taken by the employer to explain the terms of the agreement, and the effect of those terms, to the relevant employees?

A document clearly summarising all the changes in the proposed agreement compared to the current agreement was issued to all employees, and the employers were provided contact details for ELAA officers who were available to provide advice and clarification on any matters arising.

2.7 When you explained the terms of the agreement to the employees, what did you do to take into account the particular circumstances and needs of the relevant employees?

Throughout the lengthy negotiation process, the AEU provided updates to members on progress being made and the status of outstanding issues. The union provided advice and support to members during this process on relevant matters to ensure there was a sufficient level of understanding in relation to the proposed agreement. Member briefings and bulletins were provided specifically in the three weeks prior to the ballot.

ELAA also conducted employer briefings providing similar updates throughout the process, and through special EBA electronic news letters, to ensure that employers were fully informed on the status of the negotiations, and to also ensure that they were able to in turn inform and hold discussions with eligible employees.

This support from both the union and ELAA continued to be available during the voting process.

2.8 Please provide the following dates:

Event	Date
The date of notification time (that is, either the date that the employer initiates or agrees to bargain or the date of a majority support determination, scope order or low paid authorisation).	26 October 2012
The date of the last notice of representational rights given to an employee who will be covered by the agreement.	Between 14 March 2013 and 7 October 2015

The date voting for the agreement commenced (voting commences on the first date that an employee is able to cast a vote).	16 March 2016
The date that the agreement was made (that is, the date on which the voting process by which the employees approved the agreement concluded).	22 April 2016

2.9 Is the agreement lodged within 14 calendar days of the date the agreement was made?

Yes

No

If you have answered "**No**" to question 2.9— Please provide details of the circumstances the Commission should take in to account in deciding if it is fair to extend the time for lodging this application.

2.10 Please provide the following details about the vote on the agreement:

How many employees will be covered by the agreement?	5,819 employees approximately
How many employees cast a valid vote?	3,558 employees
How many employees voted to approve the agreement?	3,372

Interaction with the National Employment Standards

2.11 List any terms of the agreement that exclude in whole, or in part, the National Employment Standards?

None

2.12 List any terms of the agreement that are detrimental to an employee in any respect when compared to the National Employment Standards.

None

Right of entry

2.13 Does the agreement contain any terms that deal with the rights of officials or employees of employee organisations to enter the employer's premises?

Yes

No

If you have answered "**Yes**" to question 2.13—Please identify the clauses in the agreement dealing with right of entry.

Unlawful terms

2.14 Does the agreement contain any of the following:

- discriminatory terms—s186(4), s194(a), s195
- objectionable terms—s12, s186(4), s194(b)
- terms dealing with employee rights in relation to unfair dismissal—s186(4), s194(c)-(d)
- designated outworkers terms—s186(4)
- terms that deal with the taking of industrial action that are inconsistent with Part 3-3 of Chapter 3 of the *Fair Work Act 2009*—s186(4), s194(a)
- a term that does not comply with the superannuation contribution requirements for default fund employees—s194(h)

If you have selected any of the above please identify the relevant terms of the agreement.

Required terms

2.15 Please provide the clause numbers in the agreement for these required terms:

Dispute resolution procedure—s186(6)	15
Flexibility term—s202(1), s203	21
Consultation term—s205(1) s205(1A)	12

Particular types of workers

2.16 Can shift workers be employed under the agreement?

- Yes
- No – Go to question 2.17

Please identify the clause(s) in the agreement that define shift workers for the purpose of the NES.

Please advise if the agreement provides for an additional week of annual leave for shift workers and identify the relevant clause(s) number of the agreement.

2.17 Does the agreement?

- cover any pieceworkers—s197
- cover any outworkers—s200
- contain terms for school based apprentices or trainees that provide for loadings in lieu of paid leave—s199

Part 3—Better off overall test**Reference instruments**

- 3.1 List the modern award(s), if any, that currently cover the employer and any of the employees covered by this agreement.**

Children's Services Award 2010
Educational Services (Teachers) Award 2010

- 3.2 List the pre-reform award(s) or NAPSA(s) that covered the employer and any of the employees covered by this agreement as at 31 December 2009.**

Early Childhood Teachers Interim Award 1999 (AP780883CRV)
Educational Services – Early Childhood Assistants – Victoria – Award 1999 (AT 780459CRV)

Translating classifications

- 3.3 Are any of the classifications in the agreement different from the classifications in any of the reference instrument(s) listed in questions 3.1 and 3.2?**

Yes. Please refer to Attachment 4.

No

If you have answered "Yes" to question 3.3—Please attach a table that identifies how the classifications in the agreement relate to the classifications in the reference instrument(s).

Improvements and reductions

- 3.4 Does the agreement contain any terms or conditions of employment that are *more beneficial* than equivalent terms and conditions in the reference instrument(s) listed in questions 3.1 and 3.2 and/or does the agreement confer any entitlements that are not conferred by those reference instruments?**

Yes

No

If you have answered "Yes" to question 3.4—Identify the terms and conditions of the agreement that are **more beneficial** than, or are **not conferred** by the reference instruments. Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected.

Common terms and conditions:

Clause 16 – Excessive or unreasonable work
Clause 20 – Redundancy
Clause 22 – Salary packaging
Clause 24 – Accident pay
Clause 31 – Parental Leave
Clause 35 – Organisational Days
Clause 36 – Models of Employment/Attendance
Clause 37 – Annual and additional leave

Terms and conditions - Early Childhood Teachers:

Clause 43 – Salaries (Early Childhood Teachers)

Clause 45 – Professional development

Clause 47 – Teacher work and workload index

Clause 48 – Other leave

Clause 50 – Payment for pre-service training

Terms and conditions – Diploma qualified educators and Cert III educators:

Clause 61 – Salaries

3.5 Does the agreement contain any terms that are *less beneficial* than equivalent terms and conditions in the reference instrument(s) listed in questions 3.1 and 3.2 and/or does the agreement confer any entitlements that are not conferred by those reference instruments?

Yes

No

If you have answered “Yes” to question 3.5—Identify the terms and conditions of the agreement that are **less beneficial** and are **not conferred** by the reference instruments. Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected.

Early Childhood Teachers Interim Award 1999:

a) Clause 16 – Hours of Work:

Clause 47(6)(a) of the agreement specifies teaching time as a maximum of 25.5 hours (67%) and non-teaching time as a minimum of 12.5 (33%) hours per week for a full time teacher. This is less than the 40 minutes non-teaching time for each hour of teaching provided in the award.

b) Clause 17.2 – Break from teaching duties

The award prescribes a meal break after no longer than 5 hours from commencement of work with a break of 45 minutes. Clause 34 of the agreement provides for meal breaks to commence no later than 5.5 hours from commencement of rostered work with a meal break of not less than 30 minutes.

Educational Services (Teachers) Award 2010

Clause 20 – Breaks

Clause 20.1 of the award prescribes an unpaid meal break of 30 consecutive minutes no later than five hours after commencing work.

Clause 20.2 of the award requires that where a teacher employed at an early childhood service is required to remain on the premises during the meal break, they will be entitled to a paid meal break of no more than 30 minutes and no less than 20 minutes no later than 5 hours after commencing work.

Clause 34 of the proposed agreement provides for meal breaks to commence no later than 5.5 hours from commencement of rostered work with a meal break of not less than 30 minutes, and where required by Regulations for the employer to remain on the premises, such break will be paid and allocated as non-teaching/non-contact time. The clause also allows for the break to be either free of all duties and consequently unpaid, or be concurrent

with non-teaching duties and included in the employee's non-teaching time.

Children's Services Award 2010

Clause 22 – Meal Breaks

Clause 22.1(a) of the award prescribes that an employee will not be required to work in excess of five hours without an unpaid meal break of not less than 30 minutes and not more than one hour. Provided that employees who are engaged for not more than six hours continuously per shift may elect to forego a meal break.

Clause 22.1(b) of the award prescribes that the meal break must be uninterrupted and where there is an interruption to the meal break occasioned by the employers, overtime will be paid until an uninterrupted break is taken with the minimum overtime payment for 15 minutes and for any time in excess of 15 minutes being paid in minimum blocks of 15 minutes.

Clause 22.1(c) of the award prescribes that where an employee is required to remain on the employer's premises the employee will be entitled to a paid meal break of not less than 20 minutes or more than 30 minutes.

Clause 34 of the proposed agreement provides for meal breaks to commence no later than 5.5 hours from commencement of rostered work with a meal break of not less than 30 minutes, and where required by Regulations or the employer to remain on the premises, such break will be paid and allocated as non-teaching/non-contact time. The clause also allows for the break to be either free of all duties and consequently unpaid, or be concurrent with non-teaching duties and included in the employee's non-contact time.

Clause 22.2 – Rest pauses

Clause 22.2(a) prescribes paid rest pauses for an employee working four hours or more on any engagement for a period of 10 minutes.

Clause 22.2(b) prescribes that an employee working for seven hours or more will be entitled to two such paid rest periods of 10 minutes each unless the employee agrees to forego one of these rest periods.

The proposed agreement does not contain a provision for rest pauses.

Exceptional circumstances (where the agreement fails the better off overall test)

3.6 Do you think that the agreement passes the better off overall test?

I think the agreement **does pass** the better off overall test

I **don't think the agreement passes** the better off overall test

If the employer considers that the Agreement **does not** pass the better off overall test—Identify any exceptional circumstances that the Commission should consider when deciding whether approving the Agreement would not be contrary to the public interest.

Part 4—Statistical information

4.1 What is the primary activity of the employer?

Children's Service Providers

4.2 What states and territories will this agreement be operating in?

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia

4.3 Please provide the following details about the vote on the agreement:

Precise statistical information of the kind required in this section has not been obtained from the 405 participating employers. The applicant seeks relief from the rules in so far as this statistical information is required.

To assist the Commission, the following statistics are provided based on a National Workforce Census undertaken by the Federal Department of Education in 2013:

- 94 per cent of the early childhood education and care workforce was female
- 65.5 per cent of the workforce engaged in preschools was over 40 years of age
- Across the ECEC sector, the hours worked were distributed as follows:
 - full-time - 33 per cent working 35 to 40 hours
 - part-time 27.4 per cent working up to 19 hours, and 31.3 per cent working between 20 to 34 hours.

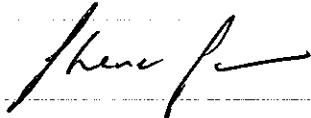
Demographic group	Number of employees
Female	-
Non-English speaking background	-
Aboriginal or Torres Strait Islander	-
Disabled	-
Part-time	-
Casual	-
Under 21 years of age	-
Over 45 years of age	-

4.4 Please list the full and precise name of all collective agreement(s) (including ID numbers) that covered any employees covered by this agreement immediately prior to the time this agreement was made.


Victorian Early Childhood Teachers and Assistants Agreement 2009
 AE873229
 PR992644
 AG 2009/21953

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

Signature of person making the declaration

Signature	
Declared at (place)	MELBOURNE, VICTORIA
on (day) of (month) (year)	FIFTH OF MAY, 2016

Before me,

Signature of person before whom the declaration is made	
Full name of person before whom declaration is made	Charles Power
Qualification of person before whom declaration is made	Lawyer admitted to practice
Address of person before whom declaration is made	555 Bourke St Melbourne
Suburb	Melbourne
State or territory	Vic Postcode 3000
Phone number	03 9321 9999

Note 1: A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment of which is imprisonment for a term of 4 years—see section 11 of the *Statutory Declarations Act 1959*.

Note 2: Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959*—see section 5A of the *Statutory Declarations Act 1959*.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS