

21 August 2017

Amendment to pay rates for casual AGL's and Educators under VECTEA and backpay arrangements

Summary

This bulletin contains important information for services operating under the Victorian Early Childhood Teachers and Educators Agreement 2016 (AE419502) (VECTEA).

On 17 August, the Fair Work Commission released a decision to vary the VECTEA as it relates to the payment of casual educators. This decision comes after a series of discussions between ELAA and the Australian Education Union (AEU) before the Commission during which the parties agreed that the VECTEA was ambiguous concerning the rates of pay that apply to casual employees, and made application to the Commission to vary the agreement to clarify the ambiguity. The Commission has now agreed to the variation and hence determined that casual educators under the VECTEA should be paid at the "52/52" rate plus 25% as per Schedule 2 of the agreement from 1 July 2017.

Background

Clause 17.5 (c) of the VECTEA provides that casual employees will be paid according to Schedule 2 [Salaries] of the agreement with a 25% loading in lieu of leave entitlements. Schedule 2 contains two salary scales, the "52/52" model and the "46/52" model. The agreement does not specify which schedule is to be applied as per 17.5 (c).

Consideration by the Commission

In conference with the parties, the Commission raised two issues that impact on the interpretation of clause 17.5(c):

(1) Backpay

Under section 206 of the Fair Work Act, employers must not pay less than the rates in the relevant modern award. For casual educators and AGLs employed under VECTEA, these rates arise from the Children's Services Award 2010. Casual employees under the award cannot be classified as term time employees so, consequently, the casual rates under VECTEA based on "46/52" rates fall below the comparable rates from the Award. It has therefore been agreed that, in order to comply with section 206 of the Act, employers must offer backpay for the

difference between the rates actually paid to casual employees and the relevant rates from the Children's Services Award. *See below for information on how to calculate.*

(2) Varying the agreement to remove ambiguity

The Commission highlighted a further issue of significance to the parties arising from a Full Bench decision of the Commission in *Hart v Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Ltd* [2016] FWCFB 2887. In this decision, it was found that a small group of employees were not better off under the agreement than under the relevant modern award, and hence the Commission did not approve the agreement. In discussions, the Commission noted that the VECTEA could be similarly vulnerable to challenge were this issue not to be resolved.

Throughout the course of discussions with the Commission, ELAA and the AEU have been mindful of resolving the issue of ambiguity relating to casual educators without putting the VECTEA at risk of being challenged or overturned.

Backpay

The parties have also agreed that there is a back-pay component for casual educators, effective from the date of commencement of the VECTEA (i.e. 29 June 2016).

ELAA and the AEU believe the amendment to the clause and resulting back pay adjustment outlined below are ultimately in the best interests of all employers and employees covered by the Agreement.

Backpay for affected employees should be calculated as follows:

1. 29 June 2016 – 30 June 2017:

The difference between the "46/52" rate plus 25% and the applicable casual rate under the Children's Services Award.

and

2. 1 July 2017 – 31 July 2017:

The difference between the "46/52" rate plus 25% and the higher of either:-

a) the applicable casual rate in the Children's Services Award plus 25%

or

b) VECTEA 52/52 rate as at 1/02/2017 plus 25%

and

3. 1 August 2017 – current:

The difference between the VECTEA 1 August 2017 “46/52” rates plus 25% and the VECTEA 1 August 2017 “52/52” rates plus 25%.

ELAA has developed an Excel worksheet for ELAA members, to assist with backpay calculations and this is available on our website ([link](#)).

ADP Users

Employers who use ADP will need to manually amend rates of pay for casual staff to reflect the change to the 52/52 rates.

Conclusion

Going forward casual educators and Activity Group Leaders will be paid according to the 52/52 pay scales with a 25% loading in lieu of leave entitlements as below:

Educators	Casual hourly rate (incl 25% loading)
Level 1.5	\$29.64
Level 1.4	\$29.08
Educators must complete Certificate III in Children’s Services to access Levels 1.4 and 1.5	
Level 1.3	\$28.53
Level 1.2	\$27.96
Level 1.1	\$27.40
Diploma Qualified Educators	Casual hourly rate (incl 25% loading)
Level 2.1	\$30.20
AGLs	Casual hourly rate (incl 25% loading)
Level 3	\$32.41
Level 2	\$31.94
Level 1	\$31.46

Further information

Should you have further questions regarding this matter please do not hesitate to contact our Member Services team on (03) 9489 3500, 1300 730 119 (rural services) or email elaa@elaa.org.au