

HR/Industrial Relations Advice?

Contact ELAA's Member Solutions Team

Email us: membersolutions@elaa.org.au.

Phone us: (03) 9489 3500 (Press 2), **10 am – 3pm, Monday – Friday.**

Request a consultancy from our consultancy partners:
<https://elaa.org.au/resources/consultancy-services/>

Responding to Workplace Conflict

Workplace mediation

The experience of working in early childhood can be enriching and rewarding for teachers, educators and committee or EYM managers alike. Sometimes, however, there may be a difference of opinion or approach amongst staff, in which case the committee or EYM management team have a duty of care to respond.

Workplace conflict can often be resolved by the two parties coming together to discuss and resolve their differences in a respectful manner with a nationally accredited mediator. VECTEA 2020 provides early childhood employers the option of mediation to address grievances or disputes (clauses 10.3(i) and 13.6). Statistically, workplace mediation has a success rate of over 85% (source: Australian Mediation Association).

ELAA's preferred consultancy partner, EC Workplace, is available to provide members with a nationally accredited workplace mediator to facilitate a confidential and respectful resolution to staff conflict.

Reportable Conduct

Understanding your CCYP reporting and investigation obligations

The Commission for Children and Young People (CCYP) require early childhood services to lodge a notification of any alleged conduct that falls under the CCYP Reportable Conduct Scheme (see: <https://ccyp.vic.gov.au/reportable-conduct-scheme/>).

Any notification to CCYP of reportable conduct, as per the Reportable Conduct Scheme, will include the employer providing mandatory details to CCYP and investigating associated allegations (see: <https://ccyp.vic.gov.au/reportable-conduct-scheme/about-reporting-allegations/#TOC-4>).

Any workplace investigation must be procedurally fair, including no actual or perceived bias on the part of the person investigating. For this reason, it is recommended that an external independent and licenced investigator is appointed. ELAA's preferred consultancy partner, EC Workplace, retains licenced and independent investigators who specialise in reportable conduct allegations and CCYP obligations.

Case study – investigation into alleged Reportable Conduct

Parent A contacted the Employer to allege that her child had been subject to inappropriate physical contact. The Employer contacted ELAA, who advised that the alleged conduct may be subject to the Reportable Conduct Scheme overseen by the Commission for Children and Young People (CCYP).

The Employer was also advised that CCYP require an investigation to be undertaken to determine the facts, and that they be notified of the outcome.

ELAA connected the Employer with EC Workplace, who then provided initial advice and assigned an independent licenced investigator who specialises in Reportable Conduct investigations.

The investigation was then conducted according to the legal principles of 'procedural fairness' and 'natural justice'. This ensured the rights of each party were respected, all relevant evidence was gathered and reviewed, and the investigation was free of any bias or perceived bias. The investigator provided the Employer with a full report, including an analysis of all relevant evidence and findings of fact were made on the 'balance of probabilities

This service was obliged to keep CCYP updated regarding the progress as well as the outcome of the investigation. Contact ELAA for further information on how our consultancy partners can support you.

The VECTEA Teacher Capability Assessment - All the information you need.

Understanding your employer obligations

The Victorian Early Childhood Teachers and Educators Agreement (VECTEA) recognises eligible teachers and their ability to progress from Level 2.5 to Level 3.1 in its career structure. Under the VECTEA 2020, these experienced and eligible teachers will now be able to validate their skills via the Capability Assessment.

Using the DET Capability Assessment Guide for Approved Providers

What is the DET Capability Assessment Guide?

The Capability Assessment Guide has been developed by the Department of Education and Training (DET) and and Catharine Hydon (Early Childhood Consultant, Hydon Consulting) with extensive consultation from Early Learning Association Australia (ELAA), the Australian Education Union (AEU) and the Municipal Association of Victoria (MAV).

The Guide is a best-practice framework for the sector that aims to support teachers and employers under the 2020 Early Childhood Enterprise Agreements. While the VECTEA does not prescribe a specific process; the Guide provides a five-step procedure for employers.

The Guide also provides 13 supporting 'tools', accompanying documents and templates to assist Approved Providers. ELAA recommends that Approved Providers download both the Guide and the tool attachments.

Download your DET Capability Assessment Guide:

Download by following this link: [Early childhood teacher professional standards and supports \(education.vic.gov.au\)](https://education.vic.gov.au/early-childhood-teacher-professional-standards-and-supports).

Word versions of the supporting tool attachments will shortly be available. A version is also available from the ELAA website: <https://elaa.org.au/resources/free-resources/det-capability-assessment-guide/>

Teacher eligibility criteria - clause 50.3

Early childhood teachers must meet all of the below criteria to be eligible to conduct the Capability Assessment. An eligible Level 2.5 teacher must:

- have a minimum of 5 years teaching experience
- have been at Level 2.5 for a minimum of 12 months in accordance with clause 49.7.
- hold full Victorian Institute of Teaching registration;
- hold an approved four-year early childhood teacher training qualification (*or if a three-year qualification approved by ACECQA or VIT; was employed before 17 February 2006*).
- not have been the subject of any disciplinary outcome by the employer that is related to their professional practice and/or conduct in the 12 months prior to the date of progression.

Clarification: meaning of 12 months service

ELAA has received recent enquiries regarding the clarification of the meaning of '12 months service' for the teacher eligibility criteria to undertake the Capability Assessment under the VECTEA 2020.

Under clause 49.7(a) (salary increment progression), **'progression to the next increment level will occur upon the completion of twelve months service since the last incremental anniversary date.'**

Teaching service means the total period a person has been employed as a teacher by any employer in the school education industry or the children's services and early childhood education industry.

Service within the **early childhood industry** under clause 49.4, includes:

- teaching experience in preschools, kindergartens, multi-purpose centres,
- early intervention services, long day care centres and other similar services;
- teaching experience with children from four to eight years in a school
- registration and/or accreditation under the relevant authority in each state or territory.
- service as a university lecturer in a degree course, leading to a qualification in early childhood education or child development; or
- service in any occupation for which an early childhood teaching degree was a mandatory qualification.

Meaning of service (section 22 of the Fair Work Act)

Service is a period during which an employee is employed by an employer, but does not include certain excluded periods. **A period of service does not have to be continuous and includes:**

- All paid hours (ordinary hours and overtime).
- Any form of paid leave under the National Employment Standards or the VECTEA (e.g. compassionate leave, long service leave, annual leave, personal/carer's leave).
- Community service leave (Including Jury Duty)
- Employer paid parental leave (under clause 30.3).
- A stand down permitted under an enterprise agreement or a contract of employment.
- A period of absence prescribed by the Fair Work Regulations.

It does not include (an excluded period):

- Any period of approved unpaid absence (leave without pay) (clause 39.4).
- Any unauthorised absence
- Unpaid parental leave (exclusive of paid parental leave under clause 30.3 of the VECTEA).

An excluded period does not break a national system **employee's continuous service** with his or her national system employer, but does not count towards the length of the employee's continuous service.

Fixed term teachers (clause 49.7(f))

In determining the total time to qualify as service for the next increment periods of employment of less than four weeks in any one service shall not be considered.

Absence from teaching (clause 42.2)

An employee who has been absent from teaching shall be engaged at the salary classification level at the time of their resignation.

Determining 3-year and 4-year qualifications

A list of all accredited ITE programs delivered throughout Australia can be found on the Australian Institute for Teaching and School Leadership (AITSL). See: <https://www.aitsl.edu.au/deliver-ite-programs/apl>

For qualifications that are no longer current, ACECQA has a checker for NQF approved teaching qualifications: <https://www.acecqa.gov.au/qualifications/nqf-approved>.

Conducting the Capability Assessment (clause 50.4)

Teachers who satisfy the eligibility requirements in clause 50.3 shall be subject to a Capability Assessment based on the following criteria:

- The teacher demonstrates a clear understanding of, and contribution and commitment to the Quality Improvement Plan of the service.
- The teacher must demonstrate a well-developed level of understanding of and developing

capabilities relevant to the roles and responsibilities and professional standards of a Level 3 teacher in the following areas:

- Pedagogical excellence and expert teaching skills;
- Comprehensive knowledge and practice in developing innovative programs and curriculum;
- An ability to respond to emerging trends and issues within early childhood education, their service and community;
- Provision of leadership and role modelling to other early childhood staff within the service;
- Provision of expert advice and support to parents and the broader community;
- Actively pursues opportunities to advocate on behalf of children and the development and delivery of early childhood education;
- Plays a significant role in leading and supporting programs determined by state and federal authorities.

Outcome of the Capability Assessment

Successful outcome

A successful teacher who completes the Capability Assessment should be notified in writing.

Unsuccessful outcome - Adverse findings (clause 50.7)

In the event that a teacher is determined not to meet all of the requirements of the Capability Assessment, the teacher will be notified in writing. The teacher may also provide further evidence and information for consideration by the employer or access the provisions of clause 13 - Dispute Resolution.

Request for re-assessment after an adverse finding (clause 50.8)

A teacher who does not meet the Capability Assessment requirements shall not be eligible to be reassessed for 6 months from the date of the decision of the adverse finding.

Refresher: Public holidays

With the Easter break coming up, it is essential to know how to pay your staff for public holidays. Under the *Fair Work Act 2009* (section 114) and the VECTEA (clause 29.1), your employees are entitled to be absent from work on a public holiday.

Annual leave (term break leave) on public holidays

Under section 89 of the Fair Work Act, an employee is not taken to be on annual leave on a public holiday.

However, the standard industry practice in the early childhood sector is that VECTEA employees under the 10-week leave model substitute their Easter public holidays, which are used during the Christmas break.

What are employees paid if it is a public holiday not worked (PHNW)?

Under clause 29.5 of the VECTEA 2020, if your employee is absent from their employment on a day or part day that is a public holiday, you must pay the employee at their base rate of pay for the employee's ordinary hours of work (exclusive of allowances).

Clause 29.5 - Payment for Public Holidays

Employee	Paid for the public holiday not worked (PHNW)?
Full-time employees	Yes
Part time employees (includes fixed-term)	Yes, if regularly rostered to work on that day (as per employee's contracted roster)
Casual (relief) employees	No - see clause 29.1 of the VECTEA 2020.

Can I substitute the public holiday for another day?

Yes, after consultation and with agreement from the majority of employees at your work location, you can substitute a public holiday for another day (clause 29.4).