

Advice on the operation of the *Educational Services (Schools) General Staff Award 2010*, in relation to the Outdoor Recreation Sector.

PART 2.

Introduction:

The Outdoor Council of Australia (OCA) represents a diverse group of organisations distributed throughout the Commonwealth. Some are in the *'not for profit sector'*, whilst others operate with significant volunteer support.

OCA is endeavouring to assist member organisations in relation to the operation of the *'Fair Work Act 2009'*, including the appropriate Modern Award(s) which are relevant to Sector.

HMT Consulting has been requested to address the following:

"Is it possible under the current legislation to apply for an industry wide enterprise flexibility agreement or would it be a process of an individual organisation getting an agreement approved and then it setting precedent for other organisations to invoke the same conditions?"

The nature and intent of EFAs:

Enterprise Flexibility Agreements (EFA) are intended to provide a degree of flexibility in the working conditions of one employee. They amend either the terms of the appropriate Modern Award, or the terms of an Enterprise Agreement (EBA) that both the employee and their employer are parties to.

EFAs relate only to matters prescribed in the Modern Award that would otherwise apply to the employee. In the case of the *'Educational Services (Schools) General Staff Award 2010'*, clause 7 (Award Flexibility) dictates:

"The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) Arrangements for when work is performed;*
- (b) Overtime rates;*
- (c) Penalty rates;*
- (d) Allowances; and*
- (e) Leave loading."*

Concurrently, it is a mandatory requirement of the *Fair Work Act 2009*, that all Enterprise Agreements contain an Enterprise Flexibility Agreement provision, however, the list of matters that must be contained in the body of the provision is not limited to those appearing in the underpinning award. Therefore, an advantage of establishing an EBA is the ability to increase the range of matters pertaining to the employment conditions of staff that may be dealt with in an EFA.

EFA's may be terminated by either party with the giving of 30 days written notice. They therefore lack a degree of certainty of outcomes that would otherwise be gained through developing a clearly identified set of rates and conditions in the form of a binding EBA.

Concurrently, each EFA entered into must become part of the employment records of the individual staff member, and be kept for a period of seven years. In time this would become a considerable administrative burden, particularly in relation to an organisation using a large pool of casual employees to meet its Client requirements.

The use of *Template EFA's* whilst possible, in the view of this Consultant, is not practical in the context of the nature of the activities and requirements of the *Outdoor Recreation Sector*.

EBAs:

It is possible to construct so called *templates* for the creation of Enterprise Agreements in the sector.

A template is useful in as far as, properly constructed, it can address seventy to eighty percent of matters routinely encountered by employers. The remainder being either the subject of 'fine tuning' to meet the stated wishes of the employer, and or, the outcomes of actual "bargaining" between the workforce and their employer, or be addressed on a one to one basis with an EFA.

This consultant is anticipating the completion of the approval of an EBA covering a NSW based employer, within a matter of days. The document involved could provide inspiration for the creation of a document capable of being used across the sector, as key components relate to addressing the requirements of the current Fair Work Act. It is, however, not underpinned by the *ESSGS Award*.

Options and Recommendations:

1. Given the interest expressed by some OCA members in using the *ESSGS Award* as the basis for setting rates of pay and conditions of employment, at least in those states or territories in which there is significant curriculum based Outdoor Education modules, such as Victoria and NSW, there is great merit in the making of an application to vary the award to expand the relevant definitions and classifications to remove any uncertainty or ambiguity in relation to Outdoor Leadership activities;
2. As previously discussed, the *ESSGS Award* is unlikely to satisfy the needs of many operators, delivering 'Non Educational Outcomes' within clearly defined curriculum or co-curriculum frameworks. In the absence of a truly national Outdoor Leader Award, a template EBA could/should be created, underpinned by either the *Fitness Industry Award* or the *Miscellaneous Award 2010*.
3. The use of EFA's in 'template' form is not to be encouraged, due to the shortcomings identified.

Michael Taylor
Principal Consultant
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