

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

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:

"Does the Educational Services (Schools) General Staff Award 2010 offer coverage for outdoor education and camping sector"?

"Most of the business of the current sector (approximately thought to be 85%+) is derived from school bookings and paid for by the schools. It is also thought that all camps provided offer an educational experience rather than a fitness or amusement/recreational based approach to programming. Does this award therefore offer full (my emphasis –M.T) coverage for our staff?"

In short the answers are:

Yes – albeit arguably in some tightly defined circumstances; and

No – *"full coverage"* being used by me to mean "in the overwhelming situations usually incurred during the operation of the Outdoor Recreation Sector for most, if not all employees".

Rationale:

Traditionally awards have covered either 'industries', 'callings or occupations' or been specific to 'enterprises'. The Modern Award network is structured exclusively on the concept of 'industry' coverage.

Therefore the *'Educational Services (Schools) General Staff Award 2010 (ESGSA)*, *"covers employers in **the school education industry** throughout Australia and their employees employed in the classifications contained in Schedule B to the exclusion of any other modern award."* (clause 4.1, Coverage).

Before moving on, the expression, *"to the exclusion of any other modern award"*, must not be construed to mean that under the new IR System that an employer or an individual employee can only be covered by one award for ever and a day 'amen'. The intention is that the work performed by an individual, **in the circumstances** comprehended **in the totality** of the award provisions is exclusively covered by that award to the exclusion of all others.

This point is underscored in clause 4.5, which reads:

“This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This sub-clause operates subject to the exclusion from coverage in this award.”

Equally, organisations may wish to be known as ‘*Educational Institutions*’, and the services they offer as being “*educative*”, and their staff to be called *teachers, tutors, educators, trainers or coaches*. The final test is how the broader community, including legislators, industrial tribunals, courts and consumers, views their operations that determines their actual status in society.

“School education industry” *“means the provision of education including preschool or early childhood education in a school, registered and/or accredited under the relevant authority in each state or territory or in an early childhood service operated by a school, including all operations of the school. Where the provision of school education is directed, managed and/or controlled by a central or regional administration of a system of schools it may also include persons involved in providing such services to schools.”* (clause 3(i) Definitions and interpretation).

I construe the wording in the last sentence to relate only to ‘*early childhood service*’, as opposed to providing services generally to schools, on a contract basis.

Concurrently, certain specially qualified individuals, with the appropriate mix of Outdoor Recreation and Educational skills and experiences, could be engaged by an employer in the ‘*School education industry*’, to provide ‘**instructional services**’ (defined at clause 3.1 (d)) as “- *being an employee, other than a qualified teacher whose principal duties are to develop the framework for and provide instruction to students (within a structured learning environment) under the general supervision of a member of the teaching staff”.*

Such employees could undertake the tasks ascribed to the roles in Schedule B – Classifications:

Instructional services grade 1

*Instructing individual students as part of an extra-curricula instrumental music program
Providing assistance in the training and coaching of individuals and teams in various sporting disciplines*

. Occupational equivalent: instrumental music tutor, sports coach.

Instructional services grade 2

. preparing instrumental music students for external examination in their discipline as part of an extra-curricula program

. Coaching and trains sporting teams for external competition

. Occupational equivalent: music tutor, sports coach, trainer

Instructional services grade 3

. conducting and co-ordinating a school choir, band or musical ensemble or more than one of these

. supervising other coaching staff and managing sporting facilities

. Occupational equivalent: choir master, conductor, head coach.

In the absence of a specific set of competencies, knowledge, and experience, criteria in the form of a Position Description; together with the details of the relationship and terms between the client organisation and the service provider, it is difficult to venture a definitive opinion on the impact of this award.

A Case Study - The Outdoor Education Group (OEG).

To put the above interpretations into context it is useful to look at an actual operator .

OEG is a Victorian and N.S.W based organisation that provides Outdoor Education to Clients, comprised largely of schools within both state's education systems. It is therefore opportune to look at the nature of its operation, as it presents itself to the public on its website, to examine to what degree the ESGSA relates to that particular *'not for profit'* organisation. In doing so, it is expected to provide guidance to others undertaking similar activities.

OEG promotes the benefits of its services, and by extension, Outdoor Education in the following terms:

"Outdoor Education can support and reinforce pastoral curriculum in the most practical settings. Students working together in small, professionally facilitated groups deal directly with concepts such as leadership, (and equally importantly, fellowship), inclusiveness, the value of working towards a common goal and the recognition of the unique attributes each individual can bring to the team."

"a vital element of the experience is the transfer of learning into everyday contexts."

"..on the most basic level, Outdoor Education provides simple physical exercise, healthy living and an opportunity for staff and students to interact and build strong relationships on 'neutral ground' away from the normal classroom environment."

These series of quotes amended marginally, and with the deletion of the references to *'Outdoor Education'*, *'students'* and in lieu incorporating *'Outdoor Leadership'*, *'Executives'* and *'staff/employees'*; with staff of OEG using the same skill sets and working in the same environment, would be describing a *'Corporate Training/Team building exercise'*. Activities that would not come within the scope of the ESGSA.

Under the heading ***'OEG Educational Framework'***, on the website, is found a breakdown of the various programs available; here terminology is important to put the organisation's operations into context. *'Core Curriculum'*, *'Specific Competency'*, and other *'educational/training'* terms are used, followed by the statement that:

"For each program, an OEG Senior Manager will work with our partner Schools to select a number of target learning outcomes from the Educational Framework."

The activities cited above, in the view of this Consultant, come closest to the intended coverage of the ESGSA. However, I again stress that in the absence of a detailed Position Description a definite determination cannot be made by me.

Moving further into the website;

Programs;

"The Outdoor Education Group, OEG, offers two styles of programs – Centre Based, where students return to a hardtop facility each evening and Journeys, where students travel generally from point 'A' to 'B' and camp out each night."

Centre Based Programs

"OEG Centre Based Programs use a range of facilities from fully serviced cabins, supported camping areas with dining and bathroom facilities, through to our own purpose built property

'Biloela'. Biloela bridges the gap between camping and hard top facilities by using 'huts' without 'doors' as small community bases in pristine Wingecarribee River Valley in N.S.W".

As presented, the Centre Based Programs could be marketed as an 'Eco Tourism Experience', in which context the award regulating the majority of the support, maintenance, and administration personnel would be the *'Hospitality Industry (General) Award 2010'*, not the ESGSA.

Journey Based Programs

"Journey Based Programs can be one of, or a combination of, activities such as rafting, hiking, kayaking, mountain biking, skiing, canoeing, rock climbing, high and low ropes. Journeys can be supported (for example cycle touring with vehicles carrying gear and provisions) or independent (such as walking the Overland in Tasmania)."

"All specialist equipment, catering and transport can be provided on OEG programs. We run programs from 1 to 30 days in conjunction with our colleagues at Antipodeans Abroad."

"OEG Programs offer extensive support, educational focus and innovative designs accumulated through more than 20 years experience in Outdoor Recreation."

Again, as presented, the descriptions fit snugly within the parameters of the *Outdoor Leaders Award 2005 (Qld)*, with all staff under the one document. This, unfortunately, is not an award that can be applied here. Overwhelmingly the emphasis is on 'Fitness' and 'the Environment', education being the adjunct not central consideration.

Whilst not ruling out the ESGA in relation to 'coaching' functions, the Program Teams would likely be comprised of persons routinely covered by a cluster of awards including:

- *Hospitality Industry(General)*
- *Fitness Industry*
- *Amusement, Events and Recreation – in relation to food preparation, maintenance of facilities, transportation, guides, OH&S, or office administration*
- *Clerks – Private Sector.*

Other Materials

Also on the website is an article entitled "Research: The Way Forward", appearing in the *October 2005 'Outdoor Outlook'*.

In the article, the author seeks to explain the development of OEG's programs and goals. I quote it in part:

"Once seen as largely extra-school experiences, then extracurricular, then co-curricular experiences,(my added emphasis –M.T), they are now regarded by many of us as vital parts of an holistic curriculum."*

"The central theme and core purpose of all secondary education remain the development of adolescents into complete, purposeful, well directed, self-motivated, community minded adults, whose physical intellectual, aesthetic, social and spiritual lives make a complete whole."

"Increasingly education has become outcomes driven.....In its own sphere the Outdoor Education Group sums up these outcomes under the headings of self, others and the natural world. There are thirteen specific competencies in the area of self, nine..... Each has a description and all OEG activities and programmes, in partnership with schools are assessed against these desired outcomes."

“ACER has been asked to validate the 23 competencies, deciding whether they are relevant in the context of contemporary curriculum around Australia. They are being tested in terms of national and state curricular guidelines.”

“The Outdoor Education Group is committed to the idea that outdoor education contributes to the whole person. It helps young people to consolidate the way they think and how they solve problems”.

** **Extracurricular activities** are activities performed by students that fall outside the realm of the normal curriculum of school or university education. Extracurricular activities exist at all levels of education.....*

Such activities are generally voluntary as opposed to mandatory, non-paying, social, philanthropic as opposed to scholastic, and involve others of the same age. Students often organise and direct these activities under faculty sponsorship, although student-led initiatives are common.

***Co-curricular activities (CCAs)**, previously known as extracurricular activities (ECAs) are activities that educational organisations in some parts of the world create for school students.....are a means to enhance social interaction, leadership, healthy recreation, self-discipline and self-confidence. At higher levels of education, CCA participation may even translate into academic points. (both definitions are sourced from Wikipedia –M.T).*

Conclusions drawn from the sources quoted:

It is apparent that the field of Outdoor Recreation has a multiplicity of components viz, pure recreation, fitness, eco tourism, and education (both scholastic and corporate). Individual employees, depending upon their qualifications, experiences and location can conceivably find work in most, if not all, of these facets of the Industry.

For the ESGA to have relevance to an organisation like OEG, the following circumstances should be in play:

1. The OEG operatives must be involved principally in duties to develop the framework for, and provide instruction to students, (within a structured learning environment), whilst being under the general supervision of a member of the teaching staff.
2. The case for the award being relevant is strongest if the program is part of a recognised curriculum, or at the very least that the competencies involved are externally validated.
3. The company (OEG) is contracted directly by an individual school or a ‘*central or regional administration of a system of schools*’, as opposed to payments being directly received by the company from the parents of individual participants.
4. The roles performed by the staff are limited to those defined for ‘*Instructional services Grades 1,2 or 3 operatives*’, as defined in Schedule B of the Award.

The further removed from the points outlined, above, in my view, the less compelling is the case that the ESGA is the appropriate industrial instrument to use in relation to the setting of fair and equitable rates of pay and minimum conditions of employment.

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