



**uniting
church**
in Australia,
Synod of NSW & ACT

Congregation and Presbytery Guide to Employing Lay Ministry Workers

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1. Introduction

This guide is designed to provide potential and current employers based within the Synod of NSW and the ACT (“the Synod”) with a simplistic overview of what they need to consider when employing lay people.

To access the full range of employment policies and procedures applicable within the Synod or to obtain further employment advice and assistance please contact Employment and Industrial Relations, Risk and Compliance Uniting Resources (“EIR”)

EIR contact details are:

[p] 8267 4365
[f] 8267 4225
[e] vickir@nsw.uca.org.au or
[w] www.nswact.uca.org.au

2. Employer Identity

The Synod is comprised of multiple unincorporated associations who are, in their own right, employing entities.

Depending upon the constitution and/or by-laws of an individual Board, body, agency or institution, Presbytery or Congregation within the bounds of the Synod, the members of the relevant Board, Management Committee or Church Council of that organisation are legally viewed to be the employer.

3. Definition of Employee

“Employees” are generally defined as being persons who:

- are paid for time worked
- receive paid leave (for example, sick, annual, or long service leave)
- are not responsible for providing the materials or equipment required to do their job
- must perform the duties of their position
- agree to provide their personal services
- work hours set by an agreement or award
- are recognised as part and parcel of the organisation’s operation; and
- do not take commercial risks and cannot make a profit or loss from the work performed.

4. Industrial Jurisdiction

Employing entities within the bounds of the Synod, regardless of whether they are incorporated entities or not, fall within the federal industrial jurisdiction effective from 1 January 2010.

Federal Modern Awards have application to all employers within the bounds of the Synod. This is not an opt in or out alternative.

The ten (10) National Employment Standards (“NES”) apply to all employees regardless of whether they are covered by an award or not. These standards cover:

- Maximum weekly hours
- Requests for flexible working arrangements
- Parental leave
- Annual leave
- Personal, carer’s and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination; and
- Redundancy pay.

5. Categories of Employees

Within the Synod there are two categories of employee – award and award free employees.

5.1 Award Employees

“Award employees” are defined as employees whose occupation or the industry in which they work is specifically identified as being covered by the area, incidence and duration of an award or industrial agreement.

The award or industrial agreement stipulates the minimum remuneration payable and conditions of employment applicable to employees covered by the particular award. Remuneration levels and conditions of employment vary from award to award.

Such positions would include, but are not limited to, any of the following if the person is receiving any payment for the services they provide;

- Supervisors
- Accountants payable and receivable and book keepers
- Administration and Clerical support including reception
- Cleaners
- Ground maintenance
- Social workers and counsellors
- Payroll
- Cooks
- Childcare and aged care workers
- Sports and Conference Centre workers
- Shop and Restaurant assistants
- Wait staff
- Drivers including bus drivers

- Storemen and Packers

While all these positions are covered pursuant to awards, some positions are exempt from certain award provisions due to levels of remuneration paid or other relevant criteria and are classified as being award free.

Federal Modern Awards will only apply to employees, who are captured by an award classification, if their remuneration is less than \$129,300 per annum (2013/2014). This threshold is indexed annually and does not include:

- Commissions;
- Overtime;
- Superannuation;
- Bonuses; or
- Any other payments which do not form part of the base salary

5.2 Award Free employees

“Award free employees” are defined as any employee who is not covered by an Award or Industrial Agreement.

The terms and conditions of employment for award free employees are found in common law and prevailing employment and industrial legislation and are normally detailed in a contract of employment known as a letter of offer.

Within the Synod there are two sub categories that fall within the scope of the definition of award free employee.

- (a) Employees who are employed to perform tasks that would normally fall within the criteria of an award employee as defined in 5.1 above, but are exempt from said provisions due to levels of remuneration being paid or other relevant criteria. These roles may be found in any organisation and do not involve a predominately pastoral content.

Such positions may include, but are not limited to, any of the following if the person is receiving any payment for the services they provide:

- Executive Directors
- Directors and Regional Directors
- Managers and Regional Managers
- Accountants including Chief Financial Officers and Financial Controllers
- Supervisors
- Administrators
- IT
- HR
- Executive and Personal Assistants

(b) Lay Ministry Workers

Presbytery and/or Synod approval, as applicable, must be obtained before any organisation within the bounds of the Synod commences the process to recruit a Lay Ministry Worker.

“*Lay Ministry Workers*” mean those people who are either:

- (i) not ordained within the Uniting Church, or another denomination formally recognised by the Uniting Church and are employed to perform tasks in an organisation or on behalf of an organisation that are predominately pastoral or missional in nature and work as part of a Ministry team under the oversight of a Ministry Leader

Such positions may include, but are not limited to, any of the following if the person is receiving any payment for the services they provide:

- Music
- Children, Youth or Family
- Pastoral duties associated with a particular service or congregation etc.
- SRE Teachers

- (ii) not ordained within the Uniting Church, or another denomination formally recognised by the Uniting Church and are employed to perform tasks in an organisation or on behalf of an organisation that:

- would normally be expected to be performed by an ordained Minister in an approved placement within the Uniting Church in Australia; or
- require the person to exercise certain levels of authority in relation to matters of ministry on behalf of the Church and act as the Church's authorised representative in said matters.

Such positions may include, but are not limited to, any of the following if the person is receiving any payment for the services they provide:

- Lay Chaplains
- Ministry or Pastoral leadership positions including those falling within the scope of the lay specified ministry of Pastor;
- Those positions that would have fallen, in the past, within the scope of the ministry of:
 - Accredited Youth Worker
 - Lay Pastor

Such positions would in the normal course of events, be recognised as being an approved placement and may also fall within the scope of the lay specified ministry of Pastor.

Where such roles are identified as meeting the requirements of the regulations in respect to the lay specified ministry of Pastor, employees occupying these roles may, as an adjunct to their employment, be appointed to this lay specified ministry conditional upon them meeting certain criteria including remaining employed in the specific role.

Where the employee does not meet the criteria for appointment to the lay specified ministry of Pastor there is no prohibition to employing the employee in the role providing that the employee is offered employment on the understanding that they do not meet the requirements and therefore cannot be commissioned into the lay specified ministry.

Employees employed in such positions may be eligible to receive the benefits of the “Religious Practitioner Tax Exemption”, providing all the following elements are met and legislative requirements for Fringe Benefit exemption status is satisfied:

- “Recognised Officially” implies some formal commissioning or dedication service through a Presbytery and or Synod;
- The appointment must be approved by Presbytery or Synod Board and recognised by the Synod;
- The inherent duties of the role and the position description must reflect this “authority”;
- Some level of recognition of authority within the faith community including authorisation of ministry by the Presbytery or Synod Board.
- Meet the criteria for a religious practitioner as defined by the ATO.
- Receive non cash benefits from a religious institution as defined by the ATO.

It is expected that all such positions will receive or will be eligible to receive an “approval to fill” through the Placement Process and be appointed by either Synod or Presbytery, as applicable. In all instances the employee must meet the following criteria:

- Be a member of a church with at least twelve months standing;
- Be a person who accepts the Doctrine, Polity and Discipline of the Uniting Church in addition to their obligations as an employee;
- Be a person who is actively involved in the life of a church including leadership experience and qualifications appropriate to the position;
- Be a person whose life experiences are seen as appropriate to this ministry;
- Be a person who has satisfied Presbytery and/or a Synod Board as to their profession of faith and call for exercising this ministry;
- Be commissioned by Presbytery, Synod or Assembly as appropriate;
- Have suitable references including the equivalent of a “letter in good standing” from their denomination or congregation;
- Participate in the following courses during their probationary period:
 - Polity;
 - Sexual Misconduct Awareness
 - Other prescribed courses identified by Presbytery or Synod
- Complete reading and or study of appropriately identified material;

- Enter into mutually agreed terms of appointment which acknowledge adherence to:
 - Polity and ethos of the Uniting Church in Australia;
 - Discipline process of the Uniting Church in Australia
 - Code of Ethics and Ministry Practice;
- Commit themselves to a continuing education program which is to be submitted to the Director of Continuing Education and endorsed by Presbytery or Synod Board.
- Subject to the inherent duties of the role, be authorised by Presbytery to conduct sacraments.

6. Conditions of Employment and Remuneration

It is the responsibility of every individual employer within the bounds of the Synod to ensure that the conditions of employment and remuneration for their employees comply with prevailing employment legislation.

Common law contracts of employment, known as letters of offer are required to be issued to every new employee, regardless of their employment status.

These letters of offer detail the conditions of employment and remuneration payable and are legally enforceable documents. The Employment & Industrial relations Division of Uniting Resources provides a contract writing service for employers who need to issue letters of offer.

The minimum conditions of employment and rates of pay for award employees are contained within the relevant award. Award information and award rates of pay are available on the Synod website.

The minimum conditions of employment for award free employees are found in common law and prevailing employment legislation. Remuneration ranges are determined by external factors and vary from position to position and employer to employer. For assistance in identifying conditions of employment and remuneration rates please contact EIR.

Although Lay Ministry Workers are award free employees, it is important that a certain level of parity be maintained across similar roles within the Synod and that the level of remuneration meets prevailing industrial legislation. To guide employers, EIR has prepared Lay Ministry Worker Remuneration Guidelines. This guide is available on the Synod website.

7. Employer Responsibilities

It is strongly recommended that employers make prior reference to the Synod Employment Manual, which is available on the Synod website before considering commencing any recruitment process. This will assist the employers to understand and meet their obligations under prevailing employment legislation.

Employers within the bounds of the Synod who are proposing to employ an individual shall:

1. Seek guidance and assistance from EIR or their internal HR resource if they have one prior to commencing the recruitment process. This is to ensure that the position description,

conditions of employment including remuneration and draft recruitment advertisement meet prevailing employment legislation.

2. Seek Presbytery and Synod approval as applicable, before commencing the process to recruit a Lay Ministry Worker as defined under 5.2(b) above.
3. Advertise the vacancy.
4. Appoint a selection panel. Where the process involves recruitment of a Lay Ministry Worker, the appointment of a selection panel must also take into consideration the requirements of the Constitution, Regulations and By-Laws including consultation with and the involvement of Presbytery and Synod as applicable.
5. Cull and shortlist applicants based upon their skills and attributes.
6. Interview all shortlisted applicants.
7. Select the most suitable applicant based upon their skills and attributes.
8. Before offering employment to the preferred applicant undertake the requisite employment and working with children checks. Where this involves recruitment of a Lay Ministry Worker, the employer must also seek Presbytery or Synod endorsement of the preferred applicant.
9. Once checks have been completed and satisfactory results have been obtained and Presbytery or Synod endorsement has been obtained, where applicable verbally offer employment.
10. Seek guidance and assistance from EIR or their internal HR resource if they have one, in the drawing up of a common law contract of employment known as a "Letter of Offer".
11. Provide the preferred applicant with two copies of the "Letter of Offer", position description and Fair Work statement before the applicant commences employment. The applicant must execute one set of these documents and return them to the employer before the date their employment is to commence.
12. Ensure current workers compensation insurance cover is held. Where it is not, and to ensure compliance with workers compensation legislation, arrange insurance cover through Workplace Safety Services – Uniting Resources.
13. Where the employment of a Lay Ministry Worker is involved:
 - Ensure that the employee is under the oversight of Presbytery or Synod as applicable;
 - Conduct a commissioning service with Presbytery or Synod as appropriate;
 - Ensure that where the employee is required to undertake SRE functions they have completed a "*Uniting Church SRE Teacher Engagement Form*" which is available from the Board of Education;
 - Comply with such other conditions as the Presbytery or Synod may require;
 - Seek authority from Presbytery or the Synod, if applicable and subject to the inherent duties of the role, to conduct sacraments.