

Elizabeth J Arrabalde & Isabelle K Arrabalde

The Hon. Justice IJK Ross, President
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

By email: chambers.ross.j@fwc.gov.au, amod@fwc.gov.au

18 April 2018

Dear Justice Ross,

**RE: 4 yearly review of modern awards—Award stage—Group 4 awards—Substantive claims
AM2014/266 Educational Services (Teachers) Award 2010
AM 2014/263 Children’s Services Award 2010**

We thank you for the opportunity to provide further comment (Decision [2018] FWCFB 154).

We refer to our substantive claims submissions dated 11 November 2015 and would like to take the opportunity to address outstanding matters, provide additional information and clarify our drafting proposal.

AM2014/266 Educational Services (Teachers) Award 2010

Proposed substantive change 1

Extension of applicability of 15.2 Leadership Allowance to teachers with educational leadership responsibilities in early childhood education and care settings.

- 1.1 We submit that the work of educational leaders in early childhood education and care settings is of equal or comparable value to the work of educational leaders in school settings and that this role should also be compensated through an allowance.
- 1.2 Educational leaders in early childhood education and care settings do not receive equal remuneration to educational leaders in school settings as this role is not currently recognised within the *Educational Services (Teachers) Award 2010*.
- 1.3 The omission of recognition of educational leadership in early childhood education and care settings is inconsistent with Modern Awards Objective 1(e) “the principle of equal remuneration for work of equal or comparable value”.

- 1.4 The *Educational Services (Teachers) Award 2010* was introduced prior to the introduction of the *Education and Care Services National Regulations*. Regulation 118 mandates that every early childhood education and care setting in Australia appoints an educational leader. The role and responsibilities of the educational leader is akin to the role of an educational leader in a school.
- 1.5 We believe that a universally applicable allowance through the award is necessary to ensure teachers receive fair remuneration. Peer-reviewed academic research suggests that teachers in early childhood education and care settings are not being fairly or consistently remunerated for their work in this role.
- 1.6 The substantive changes we propose are detailed below. For clarity we have applied our proposed substantive changes to clauses of the existing version of the Award (the *Educational Services (Teachers) Award 2010*). The same changes may also be applied to the exposure draft of the *Educational Services (Teachers) Award 2016* in clause 18.3 with dollar values rather than percentage values for consistency with the format of the exposure draft.

15.2 Leadership allowance

[15.3 renumbered as 15.2 by [PR561478](#) ppc 05Mar15]

~~This clause applies only to a teacher in a school.~~

(a) Eligibility

- (i) A leadership allowance will be paid to an employee where the employer requires the performance of administrative, pastoral care and/or educational leadership duties additional to those usually required of teachers by the employer.
- (ii) An allowance is linked to a position of leadership rather than tied to an individual employee.
- (iii) The principal of the school ~~or Approved Provider of the early childhood education and care setting~~ determines who holds a position that is eligible for a leadership allowance.

(b) Notification

- (i) The principal/~~Approved Provider~~ will provide written advice to an employee in receipt of an allowance of the position, its tenure, the duties required and the allowance to be paid.
- (ii) ~~In school-based settings~~, the principal will advise the employee of the level to which the position equates.

(c) Structure of leadership allowances

Leadership allowances will be determined by student numbers and the level of responsibility undertaken, as follows:

(i) School size

Category	School with more than 600 students or early childhood education and care setting with
A	60 or more places.

Category B School with between 300–600 students or early childhood education and care setting with 40-59 places.

Category C School with between 100–299 students or early childhood education and care setting with no more than 39 places.

(ii) Level of responsibility

The level of additional responsibility can be categorised as either administrative, pastoral care or educational leadership, or a combination of these, as follows:

Level 1 Positions of leadership such as responsibility for the management of a major department or a pastoral care or educational leadership position of equivalent status.

Levels 2 and 3 Positions of leadership such as small learning area department heads, additional responsibilities such as co-ordination of a school publication, sports co-ordinator or similar responsibilities.

Level 4 Position of educational leader in an early childhood education and care setting.

A school will apply these allowances to positions of responsibility which are appropriate to its structure.

(d) The assignment of a position to a particular level in this clause will reflect the graduation of responsibilities exercised in each school, whether, administrative, pastoral care or educational leadership, with Level 1 being the most significant level of responsibility.

(e) Positions of leadership will be available in both primary and secondary schools.

(f) A school with less than 100 students will determine positions of responsibility and allowances which are appropriate to its structure.

(g) Amount

The allowances are based on a percentage of the standard rate.

(i) The following allowances apply:

Category % of standard rate

	A	B	C
Level 1	8.00	7.00	6.30
Level 2	5.50	4.75	4.00
Level 3	2.75	2.35	1.60
Level 4	3.00	2.50	2.00

(ii) Where the position of leadership is shared, the payments may also be shared.

Proposed substantive change 2

Insertion of Responsible Person allowance.

- 2.1 We submit that the work of the Responsible Person in early childhood education and care settings is of comparable value to the work of directors in early childhood education and care settings yet this role is not recognised within the *Educational Services (Teachers) Award 2010*.
- 2.2 The omission of recognition of the role of Responsible Person in early childhood education and care settings is inconsistent with Modern Awards Objective 1(e) “the principle of equal remuneration for work of equal or comparable value”.
- 2.3 The *Educational Services (Teachers) Award 2010* was introduced prior to the introduction of the *Education and Care Services National Regulations*. Regulation 150 mandates that one physically present employee at every early childhood education and care setting in Australia is the Responsible Person at any time. In settings where there are shift workers there may be more than one Responsible Person over the course of a work day.
- 2.4 Historically, a director would have generally assumed responsibility for the day-to-day operations of an early childhood education and care setting and this provides part of the rationale as to why the role of director has a dedicated allowance. This role is reflected in the definition of director in the exposure draft of the *Educational Services (Teachers) Award 2016* which states, “director means the employee appointed by the employer to be responsible for the overall management and administration of a service in which an early childhood/preschool teacher is employed.” With the introduction of new legislation an additional tier of responsibility was introduced meaning that employees who are not directors may be appointed as the Responsible Person and therefore have these responsibilities. As the title implies, the Responsible Person has responsibility for the daily operations of a setting at a given point in time.
- 2.5 We believe that a universally applicable allowance through the award is necessary to ensure that teachers who are determined to be the Responsible Person receive fair remuneration for their work.
- 2.6 The substantive changes we propose are detailed below. For consistency we have applied our proposed substantive changes to clauses of the existing version of the Award (the *Educational Services (Teachers) Award 2010*). The same changes may also be applied to the exposure draft of the *Educational Services (Teachers) Award 2016* under clause 18.2 (as 18.2a) with dollar values rather than percentage values for consistency with the format of the exposure draft.

15.1a Responsible person allowance

This clause applies only to an early childhood/preschool teacher who is appointed as a Responsible Person.

(a) An employee who is appointed as Responsible Person will be paid, in addition to the amounts payable pursuant to clause 14—Minimum salary, an hourly allowance based on a percentage of the standard rate, and calculated on the basis of the number of places in the centre for which they are responsible where:

(i) Level 1 refers to a centre with no more than 39 places;

(ii) Level 2 refers to a centre with 40–59 places; and

(iii) Level 3 refers to a centre with 60 or more places.

Level % of standard rate per hour

1 11.50

2 14.25

3 17.30

AM2014/263 Children's Services Award 2010

Proposed substantive change 1

Insertion of Educational leadership allowance for employees with educational leadership responsibilities in early childhood education and care settings.

- 3.1 We submit that the work of educational leaders in early childhood education and care settings is of equal or comparable value to the work of educational leaders in school settings and that this role should also be compensated through an allowance.
- 3.2 Educational leaders in early childhood education and care settings do not receive equal remuneration to educational leaders in school settings as this role is not currently recognised within the *Children's Services Award 2010*.
- 3.3 The omission of recognition of educational leadership in early childhood education and care settings is inconsistent with Modern Awards Objective 1(e) "the principle of equal remuneration for work of equal or comparable value".
- 3.4 The *Children's Services Award 2010* was introduced prior to the introduction of the *Education and Care Services National Regulations*. Regulation 118 mandates that every early childhood education and care setting in Australia appoints an educational leader. The role and responsibilities of the educational leader is akin to the role of an educational leader in a school.
- 3.5 We believe that a universally applicable allowance through the Award is necessary to ensure employees in early childhood education and care settings receive fair remuneration. Peer-reviewed academic research suggests that educational leaders hold a range of qualifications and are not being fairly or consistently remunerated for this work in in early childhood education and care settings.
- 3.6 The substantive changes we propose are detailed below. For consistency and fairness, we submit that the changes we propose to the *Educational Services (Teachers) Award 2010* are also applied to the *Children's Services Award 2010* as the work required for this role is the same. We propose an Educational leadership allowance be inserted as 15.9 (in the current version of the Award). Alternatively, the following clauses may be inserted into *Exposure draft – Children's Services Award 2016* as 17.2e.

15.9 Educational leadership allowance

(a) Eligibility

(i) A leadership allowance will be paid to an employee where the employer requires the performance of educational leadership duties.

(ii) An allowance is linked to the appointed position of educational leader.

(iii) The Approved Provider of the early childhood education and care setting determines who holds a position that is eligible for a leadership allowance.

(b) Notification

The Approved Provider will provide written advice to an employee in receipt of an allowance of the position, its tenure, the duties required and the allowance to be paid.

(c) Structure of leadership allowances

Leadership allowances will be determined by the number of places and the level of responsibility undertaken, as follows:

(i) Setting size

Category A Early childhood education and care setting with 60 or more places.

Category B Early childhood education and care setting with 40-59 places.

Category C Early childhood education and care setting with no more than 39 places.

(g) Amount

The allowances are based on a percentage of the standard rate.

(i) The following allowances apply:

	% of <u>standard rate</u>		
	A	B	C
Allowance	3.00	2.50	2.00

Proposed substantive change 2

Insertion of Responsible Person allowance.

4.1 We submit that the work of the Responsible Person in early childhood education and care settings is of comparable value to the work of co-ordinators or directors in early childhood

education and care settings yet this role is not recognised within the *Children's Services Award 2010*.

- 4.2 The omission of recognition of the role of Responsible Person in early childhood education and care settings is inconsistent with Modern Awards Objective 1(e) "the principle of equal remuneration for work of equal or comparable value".
- 4.3 The *Children's Services Award 2010* was introduced prior to the introduction of the *Education and Care Services National Regulations*. Regulation 150 mandates that one physically present employee at every early childhood education and care setting in Australia is the Responsible Person at any time. In settings where there are shift workers there may be more than one Responsible Person over the course of a work day.
- 4.4 Historically a co-ordinator or director would have generally assumed responsibility for the day-to-day operations of an early childhood education and care setting. This provides part of the rationale as to why the role of co-ordinator/director has dedicated classifications in the *Children's Services Award 2010* (see Schedule B). This role is reflected in the indicative duties listed in B.1.10. With the introduction of new legislation an additional tier of responsibility was introduced meaning that employees who are not co-ordinators or directors may be appointed as the Responsible Person and therefore have these responsibilities. As the title implies, the Responsible Person has responsibility for the daily operations of a setting at a given point in time.
- 4.5 We believe that a universally applicable allowance through the award is necessary to ensure that employees who are determined to be the Responsible Person receive fair remuneration for their work.
- 4.6 The substantive changes we propose are detailed below. For consistency and fairness, we submit that the changes we propose to the *Educational Services (Teachers) Award 2010* are also applied to the *Children's Services Award 2010* as the work required for this role of Responsible Person is the same. We propose a Responsible Person allowance be inserted as 15.10 (in the current version of the Award). Alternatively, the following clauses may be inserted into *Exposure draft – Children's Services Award 2016* as 17.2f.

15.10 Responsible person allowance

This clause applies only to an employee who is appointed as Responsible Person.

(a) An employee who is appointed as Responsible Person will be paid, in addition to the standard rate, an hourly allowance based on a percentage of the standard rate, and calculated on the basis of the number of places in the centre for which they are responsible where:

- (i) Level 1 refers to a centre with no more than 39 places;
- (ii) Level 2 refers to a centre with 40–59 places; and
- (iii) Level 3 refers to a centre with 60 or more places.

Level % of standard rate per hour

1	11.50
2	14.25
3	17.30

We are grateful for the opportunity to participate in this process as individuals who are employed in the early childhood education and care sector under Award conditions.

We are more than happy to provide further information or clarification as well as peer-reviewed research and anecdotal accounts to support our suggestions.

Kind regards,



Isabelle Arrabalde



Elizabeth Arrabalde