



# BACKGROUND DOCUMENT 2

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards—Award stage—Group 4—Children’s Services Award 2010—Educational Services (Teachers) Award 2010—Substantive claims**

(AM2018/18 AND AM2018/20)

MELBOURNE, 5 JULY 2019

*This is a background document only and does not purport to be a comprehensive discussion of the issues involved. It does not represent the view of the Commission on any issue.*

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ACA	Australian Childcare Alliance
ABI	Australian Business Industrial
ABS	Australian Bureau of Statistics
ACECQA	Australian Children’s Education and Care Quality Authority
AFEI	Australian Federation of Employers and Industries
ANZSIC	Australian and New Zealand Standard Industrial Classification
Census	Census of Population and Housing
Children’s Services Award	Children’s Services Award 2010
CoE	Characteristics of Employment
ECEC	Early Childhood Education and Care Sector
EEH	Survey of Employee Earnings and Hours
I and E Arrabalde	Isabelle Arrabalde and Elizabeth Arrabalde (or the Individuals)
IEU	Independent Education Union of Australia
June 2018 Report	Early Childhood and Childcare in Summary June Quarter 2018 Report
National Law	Education and Care Services National Law
National Regulations	Education and Care Services National Regulations
NOSHSA	National Outside School Hours Care Association
NQF	National Quality Framework
NQS	National Quality Standard
NSWBC	New South Wales Business Chamber
Productivity Commission Report	Childcare and Early Childhood Learning – Productivity Commission Inquiry Report 31 October 2014
Teachers Award	Educational Services (Teachers) Award 2010
UV	United Voice

[1] A number of substantive claims that have been made to vary the *Children's Services Award 2010* (Children's Services Award) and the *Educational Services (Teachers) Award 2010* (Teachers Award) as part of the 4 yearly review of modern awards (the Review).

[2] Witness evidence was heard on 6, 7 and 8 May 2019, and after those hearings the parties were directed to file written submissions setting out the findings they seek to have made based on the evidence, by 4.00 pm on Wednesday 29 May 2019. The following parties filed submissions in response to those Directions:

- ACA, ABI and the NSWBC<sup>1</sup>
- UV<sup>2</sup>
- IEU<sup>3</sup>
- Australian Federation of Employers and Industry<sup>4</sup>
- I and E Arrabalde<sup>5</sup>

[3] This document sets out the findings sought by the parties.

## **1. Findings of General Application**

[4] There are a number of findings of general application which ACA, ABI and NSWBC (with the support of NOSHSA and JAG) (collectively, the ECEC Employers) submit should be made by the Full Bench.

### ***Characteristics of the ECEC Sector***

1. ECEC is a place for young children to be 'cared for' and/or 'educated' when their parents are unable to care for them in the home because they are at work.<sup>6</sup>
2. The ECEC sector supports Australian families and has the power to facilitate workforce participation leading to better outcomes for the economy and employment growth.<sup>7</sup>
3. Current government programs, (including the current subsidy arrangements) encourage both parents (and particularly mothers) to work because it is good for the economy.<sup>8</sup>
4. Affordability and accessibility of childcare for Australian families are current issues facing the ECEC sector generally.<sup>9</sup>
5. Accessibility and affordability of childcare are extremely important factors that, if not provided, can discourage parents, particularly women, from working.<sup>10</sup>
6. Greater access to flexible working arrangements is likely to increase workforce participation, particularly among women. There are broad economic and social benefits associated with increased female workforce participation.<sup>11</sup>

## ***The National Quality Framework***

7. There is a degree of confusion as to the legal effect and status of the elements of National Quality Framework (NQF) amongst the participants in the ECEC sector, including whether responsibilities arising from the NQF also arise from other sources. Some examples from the evidence in the proceedings include:

(a) Evidence of Dr Fenech:

- (i) In respect of Responsible Persons, (TN at [630]-[639]), Dr Fenech stated that s168 of the National Law requires Responsible Persons to oversee educational programs. Upon review of that section, this appears to be incorrect. As was put to Dr Fenech, being in day-to-day charge of a service (i.e. a Responsible Person who is not an Approved Provider or Nominated Supervisor) does not place any additional legal responsibilities on a person under the National Law (see p 408 of Exhibit 1 – guide to the National Quality Framework and Dr Fenech’s own evidence TN at [624]).
- (ii) In respect of the ‘overlap’ between the NQF and modern awards, Dr Fenech was not aware whether any of the responsibilities arising for Responsible Persons in the NQF existed only in the NQF (at TN [650]).

## **Question for the ECEC Employers**

*Q.1 The ECEC Employers are invited to expand on the import of the point made at [7](a)(ii) above.*

(b) Evidence of Ms Warner

- (i) Ms Warner’s evidence was that her responsibilities as Educational Leader (as set out in paragraph 19 of her Statement (Exhibit 17) came from the NQF.<sup>12</sup> However, when asked whether she could identify the relevant part of the standard against the responsibilities listed she replied that she could not do that.<sup>13</sup>
- (ii) Ms Warner also claimed that her duties as a Responsible Person brought with it additional legal responsibilities (TN at [1528]); this was contradicted by Dr Fenech’s evidence (TN at [624]).
- (c) In her evidence Ms Hennessey (TN at [279]-[286]) acknowledged that, despite evidence in her statement at [17] (Exhibit 6), she was not responsible for making sure policies dictated by the NQF are considered and integrated into programming and curriculum.
- (d) Ms Wade’s evidence (TN at [772]-[773], [782]) was that she considered the NQF not to fall within the meaning of ‘relevant regulations and statutory requirements’ and that her responsibilities as a Director did not require her to comply with the NQF.<sup>14</sup>

## Question for other parties

*Q.2 Which of the findings sought by the ECEC Employers (at [4] above) are contested?*

[5] IEU seeks the following general findings:<sup>15</sup>

1. The National Law prescribes minimum staff ratios, being both:
  - (a) the minimum number of educators that must be present at any given time, which can include teachers; and
  - (b) the specific numbers of teachers who must be present (or in the case of smaller services, available) at any time, relative to the number and ages of children present, which vary slightly state to state.
2. The overwhelming majority of teachers and educators employed in ECEC services are:
  - (a) female;
  - (b) low paid; and
  - (c) members of what ACA describes as ‘working families’ who need support and flexibility.<sup>16</sup>
3. There is a shortage of qualified and suitable teachers and educators in the ECEC sector, and services can find it difficult to both recruit and retain staff.<sup>17</sup>
4. These difficulties in recruiting and retaining suitable staff:
  - (a) inhibits the ability of the services to provide continuity of care for the children;<sup>18</sup>
  - (b) is bad for business, in that parents do not like to see high staff turnover;<sup>19</sup>
  - (c) are in part caused by poor wages and conditions in the sector;<sup>20</sup> and
  - (d) will likely be exacerbated by further reductions in conditions.
5. Many workers, particularly permanent part-time employees, in the for-profit ECEC industry:
  - (a) are not currently advised of their permanent start and finish times on commencement;<sup>21</sup>
  - (b) instead are rostered week to week, with varying volatility from service to service (in some cases, being provided with less than 7 days notice);<sup>22</sup>
  - (c) in the case of part-time workers, are engaged on minimum hours contracts which purport to permit the employer to either:

- (i) not pay overtime rates for any hours worked in excess of the agreed hours; or
  - (ii) in reality engage workers on close to full-time hours but reduce those hours of work at will.<sup>23</sup>
6. In at least some cases, permanent part-time staff are employed on contracts which do not even involve a minimum number of guaranteed hours.<sup>24</sup>
  7. Some for-profit ECEC services do not pay overtime rates, whether by:
    - (a) offering time off in lieu instead;<sup>25</sup>
    - (b) incorporating an overtime component into above-award rates;<sup>26</sup> or
    - (c) simply not paying overtime without explanation.

[6] UV seeks the following general findings:

1. The NQF has occasioned industrially significant change in the nature of the work within the sector and the current system of regulation is not reflected in any sense within the Awards.
2. The introduction of the NQF represented a significant regulatory change, with ongoing and significant obligations concerning how work under the Awards is conducted and that the Awards do not in any meaningful sense reflect the regulatory regime that now governs the sector.<sup>27</sup>

### **Question for all other parties**

*Q.3 Other interested parties are invited to comment on the findings sought by IEU (at [5] above) and UV (at [6] above).*

## **2. Ordinary Hours Claim**

[7] The ACA, ABI and NSWBC have made a claim to vary the ordinary hours under the Awards. Currently the Awards provide that ordinary hours may be worked between 6.00am and 6.30pm; the Employers' claim seeks a variation such that ordinary hours may be worked between 6.00am and 7.30pm.

[8] The ECEC Employers seek the following findings:<sup>28</sup>

1. Childcare is an extremely competitive industry in which affordability, opening hours and compliance with an increasingly complex regulatory regime determine the viability of a business.<sup>29</sup>
2. Limited childcare operating hours restrict the working hours of working parents, particularly those with greater caring responsibilities (i.e. women).<sup>30</sup>

3. The nature of childcare is that working parents must drop off their children before commencing work and pick-up their children following the completion of their work.<sup>31</sup>
4. Parents who utilise childcare services work in all industries.<sup>32</sup>
5. Parents routinely choose childcare providers close to their homes so that they can drop off children before travelling to work, and pick-up children on the way home from work. This means that parents must finish work with enough time to travel to the childcare centre to pick-up their child 'on time'.<sup>33</sup> This can be a source of stress:
  - (a) Ms Wade provides evidence of the difficulty her staff (with children) have when their out of school care arrangements finish at 6pm (which is earlier than their employer's close time of 6:30pm). Ms Wade describes this as 'really hard' (TN at [883]):
 

'They have to ask friends within the - their school friends, so the children's school friends, parents and ask upon them to pick up children and look after them. They have to get babysitters, they need to look family members travelling from out of town up to half an hour to an hour out of town to pick up their children. So yes, it's just a lot of pressure externally on them.'<sup>34</sup>
  - (b) See Exhibit 32 Annexure LJ-2 to Statement of James at p 52: At the end of the day, parents likewise struggled if their formal care closed at a time that was earlier than needed.
6. The cessation of ordinary hours at 6:30pm in the ECEC industry means 'overtime has begun' at a point where many working parents are still completing 'ordinary hours' in other industries (or travelling to pick-up their children).<sup>35</sup>
7. Unlike employers in other industries, childcare employers do not have unilateral control on when centres can close. If parents do not attend 'on time' to collect children, childcare centres are required to stay open, incurring unplanned overtime liability.<sup>36</sup>
8. It is an experience of childcare centres that, notwithstanding a clearly defined closure time of 6:30pm, parents can be late necessitating the payment of overtime.<sup>37</sup>
9. Extending ordinary hours until 7:30pm may increase the hours of operation of certain centres.<sup>38</sup>
  - (a) Mr Mahoney advised he supported the claim for an extension of the ordinary hours from 6:30pm to 7:30pm.<sup>39</sup> In response to being asked whether it would make it cheaper for him to keep his centres open he responded: *'in that hour we may have outside of the current customer base, people who would want care for their children because of their own work requirements, but who we can't currently attract because we are in a position where the extra overtime hours would have to be actually paid.'*<sup>40</sup>

- (b) Ms Paton said she might extend the hours of her centre if the ordinary hours were extended: *'the more flexibility I can provide the better.'*<sup>41</sup>
10. While there is relatively little evidence before the Full Bench in these proceedings as to the extent of parental demand for later operating hours, extending the ordinary hours until 7:30pm will increase access to ECEC service allowing parents to work longer or later hours.<sup>42</sup>
- (a) Ms Wade provided evidence (TN at [885]) that her employees had requested her centre closes earlier so they can collect their children.
- (b) Ms Maclean provided evidence that *'we have had possibly in the last four years, again, anecdotally, possibly five families ask if there was any chance of staying open a little bit later because they start work a little later and finish it. So they rush to achieve a 6:30 pick-up time.'*<sup>43</sup>
11. The increase of the ordinary hours span from 6.30pm to 7.30pm is unlikely to have any material effect on secondary employment, given the extension is for one hour only: Ms Hennessy (TN at [344]) acknowledged that her current pattern of work to 6.30pm (in line with the current award) prevented her from obtaining shifts in her secondary employment in any event. An extension to 7.30pm would have no effect on this situation.
12. Specific findings as to weight of evidence are:
- (a) Annexure LJ-7, referred to at [47] of Ms James' supplementary statement (Exhibit 33), apparently containing feedback from members as to the ECEC Employer's proposed claims is of absolutely no probative weight. The 'feedback' is anonymous and untestable.
- (b) Ms Bea's evidence in her supplementary statement (Exhibit 9 at [5]) as to the effects of working until 6.30pm and 7.30pm should not be accepted. Under cross-examination (TN at [420]-[425]) Ms Bea's evidence was that she had never worked until 6.30pm. This directly contradicts Exhibit 9 at [5].

### **Question for other parties**

*Q.4 Which of the findings sought by the ECEC Employers (at [8] above) are contested?*

**[9]** UV seeks the following findings:<sup>44</sup>

1. Late pick up of children is infrequent and extending the span of ordinary hours within the Awards would not genuinely address this issue.
2. There is no genuine need across the sector for an increased ordinary span of hours under the Awards.
3. The ordinary hours variation sought is unnecessary.



4. The ordinary hours variation sought would have a detrimental impact on the ability of employees to meet their caring responsibilities.
5. The ordinary hours variation sought would have a detrimental impact on the ability of employees to undertake secondary employment.
6. The ordinary hours variation sought should be rejected.

**[10]** IEU seek the following findings:

1. There is no real demand for childcare centres to be open until 7:30 pm at night.<sup>45</sup> For example, a 2016 survey conducted at two of Ms Tullberg's services – the closest thing to data contained in the evidence – 98.4% of respondent parents at one service and 100% at another responded 'very satisfied', 'satisfied' or 'neutral' to a question about the convenience of the current opening hours.<sup>46</sup> No ACA witness has performed any market testing, conducted a cost/benefit analysis, undertaken extensive calculations or otherwise given the matter any apparent serious thought.
2. The current potential additional (i.e. planned overtime) costs under either the Teachers Award or the Children's Services Award of rostering a worker to work until 7.30pm are minimal.<sup>47</sup> For example, in the case of Ms Llewellyn – the only witness about whose service there is financial information in evidence - the additional wage cost would represent less than 1% of the services' last net annual profit.<sup>48</sup>
3. Late pickups are:
  - a. generally uncommon;<sup>49</sup> and
  - b. where they do occur, involve parents arriving less than 15 minutes late, and no more than 30 minutes except in the most unusual circumstances.<sup>50</sup>
4. Employers do not, and would not in the future, roster ECEC workers to work significantly past closing time just in case a parent was late.<sup>51</sup>
5. Current unplanned overtime costs:
  - a. are predominantly incurred in respect of late pickups;
  - b. can be, and often are, defrayed in whole or in part by late fees;
  - c. are minimal; and
  - d. would not in any event necessarily be reduced by the ACA's claim.<sup>52</sup>
6. Teachers are almost always rostered in the middle of the day (8.30-4.30), when the most children are present at the service, because of the particular nature of their role as teachers.<sup>53</sup>
7. Shifts finishing at 6:30 pm:

- a. can be difficult for employers to fill voluntarily;
  - b. have a detrimental impact on the work-life balance of ECEC workers;
  - c. are generally regarded as undesirable, and a ‘late finish’ compared to ordinary working hours.<sup>54</sup>
8. An ordinary hours shift finishing at 7:30 pm:
- a. would require an employee to start at 11:30 am;
  - b. is significantly outside the usual hours that day workers work;
  - c. would cause disruption to many workers’ lives, including their family and caring responsibilities; and
  - d. would likely be regarded as undesirable.<sup>55</sup>
9. Many ECEC workers, in particular part-time workers, are effectively engaged as shiftworkers, in that their start and finish times and days of work rotate and are not properly fixed.<sup>56</sup>
10. There is no evidence (or, indeed, argument) justifying an alteration to the shift loadings prescribed by either Award.

### **Question for the ECEC Employers and AFEI**

*Q.5 Which of the findings sought by UV (at [9] above) and IEU (at [10] above) are contested?*

### **3. Rostering Claim**

A claim by ACA, ABI and NSWBC to vary the rostering arrangements in the Awards so that an employer is exempt from having to provide employees with 7 days’ notice of a variation in roster in circumstances where:

- (i) another employee has provided less than 7 days’ notice of their inability to perform a rostered shift; and
- (ii) in order to comply with its statutory obligations in respect of maintaining staff to child ratios, the employer is required to change an employee’s rostered hours so as to replace the absent employee.

[11] The ECEC Employers seek the following findings<sup>57</sup>:

- 1. Roster changes with less than 5 days’ notice are common in the ECEC sector and that:
  - (a) Ms Wade, who acknowledges that she has to change the rosters frequently, ‘*it can happen five days a week*’ (TN at [895]);
  - (b) Ms McPhail at (TN at [3017]); and

- (c) Mr Mahoney at (TN at [3969]).
2. Roster changes within the ECEC sector currently largely occur by agreement and staff are generally accommodating
    - (i) Ms Viknarash (TN at [1102], [1114]);
    - (ii) Mr Fraser (TN at [1795]-[6]);
    - (iii) Ms Chemello (TN at [2719]);
    - (iv) Ms Hands (TN at [4698]).
  3. The maintenance of ratios required by legislation is complex and difficult, particularly in regional areas.<sup>58</sup>
  4. There is no evidence before the Full Bench that ECEC employers are likely to arbitrarily or unfairly utilise a rostering provision amended by the Rostering Claim. To the contrary, much of the ECEC employer evidence focused on a preference for employee agreement:
    - (i) Mr Fraser at TN [1812], [1816].<sup>59</sup>
    - (ii) Ms Chemello at TN [2727]:
 

*‘I don’t think it’s good for our team to force anybody to do anything, so we work collaboratively so we have a good working partnership.’*
    - (iii) Ms Tullberg at TN [3564]:
 

*‘We wouldn’t force a staff member to change their shift within seven days, and we don’t have need to change someone’s roster within a seven day period at present. It would be nice to be able to give them some more flexibility to be able to change it but it’s not – we’re not asking – I’m not asking to change the provisions of the seven day roster for a need to do to be nasty to staff.’*
    - (iv) Mr Paton provided evidence that she would *‘always seek to request something of someone before demand it, as a human,’*<sup>60</sup>
    - (v) Mr Mahoney at TN [3973]:
 

*‘You wouldn’t force someone who wasn’t rostered to come in? Oh, gosh, no. There’s no coercion. We’ve a very teamly (sic) group of people and we work together closely and respect each other’s needs.’*
  5. Notwithstanding a general reluctance from employers to ‘force’ employees to undertake work without their agreement, the legislative requirements placed on the ECEC sector mean that, in some circumstances, late changes to the roster are required.

### **Question for other parties**

*Q.6 Which of the findings sought by the ECEC employers (at [11] above) are contested?*

[12] UV seeks the following findings:<sup>61</sup>

1. The variation sought is unnecessary. Both Awards contain provision for varying rosters by agreement<sup>62</sup> and there was a clear consensus that employees covered by the Awards are generally willing to agree to roster changes (except where it may conflict with their own caring or other responsibilities).
2. Overwhelmingly the employer witnesses were not seeking the ability to make late roster changes without employee agreement.<sup>63</sup>
3. If the rostering claim was granted, it would create difficulties for employees in respect of caring responsibilities and attending to medical matters and would have a detrimental impact on the ability of employees to plan for outside of work responsibilities.
4. The majority of employees in the sector are willing to agree to roster changes unless it conflicts with caring responsibilities or other appointments.
5. The current Awards already provide employers with sufficient flexibility to address rostering issues.<sup>64</sup>

[13] IEU seeks the following findings:<sup>65</sup>

1. Employers can, and do, maintain adequate staffing ratios in the face of unexpected absence by:
  - (a) employing, and rostering, sufficient staff to manage the risk of an employee requiring personal or other short-notice leave;
  - (b) directly engaging a pool of casual employees;
  - (c) utilizing agency casuals;
  - (d) requesting that staff change their start and finish times;
  - (e) offering part-time staff additional shifts, up to eight hours of which under the Award may be paid at ordinary time rates;
  - (f) offering part-time and full-time staff overtime; and
  - (g) using managerial staff to cover absences.
2. There is no evidence that any ECEC Centre has, as a result of short notice staff absences or for any other reason, fallen under the minimum staffing ratios. One centre came 'close' on one occasion due to a gastro outbreak, but was still able to operate.<sup>66</sup>
3. Stable rostering patterns such that the same employees are present at the service at the same times on the same day:

- (a) enable ECEC services to provide better continuity of care for children;
  - (b) are particularly important in respect of teachers, to enable them to best deliver the educational program;
  - (c) provide improved educational outcomes for children;
  - (d) are preferred by parents and correspondingly provide a benefit to the business; and
  - (e) provide greater stability and certainty for ECEC workers.
4. It is impossible to predict when an employee will require personal leave.
  5. When an employee takes personal leave, it is usually at very short notice.
  6. Of the ten Employer witnesses who gave evidence in respect of this claim, seven – Ms Viknarasah, Ms Maclean, Ms Chemello, Ms McPhail, Ms Tullberg, Mr Mahoney and Ms Llewellyn – did not in fact agree that they should be able to unilaterally change their employee’s hours and days of work at no, or short, notice.<sup>67</sup> The claim that these witnesses believed they were giving evidence in favour of – changing hours of work on a one-off basis by agreement – is currently permitted by the Awards. In the case of the Children’s Services Award, there is no evidence that the requirement to record this agreement in writing is unnecessarily onerous.
  7. The reactions of these 7 Employer witnesses to the proposition that they should, as employers, be able to force a person to change their hours with no notice – surprise, confusion, and usually adamant disagreement – should be taken as a reflection of community norms. Notably, even Ms Paton - who (belatedly) professed support for the ACA’s claim – did not, as a person, consider it fair.

### **Question for the ECEC employers and AFEI**

*Q.7 Which of the findings sought by UV and IEU (at [12] and [13] above) are contested?*

#### **4. Responsible Person Allowance**

[14] A claim by UV to introduce a new allowance for employees assigned to be the Responsible Person at a service.

[15] UV seeks the following findings:<sup>68</sup>

1. The National Law requires that providers designate a person on the premises of a centre while it is operating as a Responsible Person and this requirement is observed and considered an important element of the current scheme of regulation.
2. The requirement to designate a person as the Responsible Person is a novel explicit requirement introduced by the NQF.

3. Generally, the evidence indicated that great care was taken to ensure that the Responsible Person was a senior experienced employee and frequently paid a salary in excess of the award minimum.<sup>69</sup> The decision to allocate the role to an employee was considered and often incorporated into the roster. The evidence broadly reflected that provider practice concerning who is designated the Responsible Person reflected the intended significance of the role: the preference is to have a person in the role with experience and seniority.
4. A defining characteristic of the Responsible Person under the National Law is that the person must be present at a centre based service at all times that the service is educating and caring for children.<sup>70</sup> A number of witnesses readily conceded that while a director and an assistant director had management responsibilities these duties did not necessarily require the person to be on the premises to fulfil these duties.<sup>71</sup>
5. The contention that the role of Responsible Person is subsumed within general management duties or for that matter any of the classifications of employment within the Awards is nonsensical in light of the role not being appurtenant to any classification and that no classification within the Awards require responsibility or management to be connected to being present on the premises at all times. The fact that a person other than the director or an assistant director can and will be the Responsible Person indicates the independence of this role from the current classifications of the Awards.
6. The role of Responsible Person is distinct from the status given to the approved provider as the person principally legally liable for compliance with the National Law. An approved provider would not be a person that would be an employee and paid an award based allowance. Further, an approved provider can be a body corporate<sup>72</sup> and a Responsible Person must be a natural person.<sup>73</sup>

*A broad range of employees can be a responsible person and are in practise*

7. Who can be a Responsible Person is very broad<sup>74</sup> and evidence indicated that relatively junior and ostensibly unqualified staff performed the role often at the beginning and end of the day.
8. The contention that the allowance would be administratively oppressive has little or no substance:
  - (i) the allowance would not impose an additional record keeping requirement on providers. The National Law already requires that the approved provider must maintain a record of who is the Responsible Person at all times that the service is operating.<sup>75</sup> Many providers incorporated designation of a responsible person into their roster process, and
  - (ii) the employer witnesses conceded that their payroll and human resource system were capable of accommodating ad hoc unanticipated changes occasioned by illness and other absences, one off payments and other allowance payments which necessitated frequent adjustments to the payroll.

9. Responsible Persons are often the proprietor, approved provider (if the approved provider is a natural person) or a senior employee in receipt of above award payments who would be ineligible for an allowances paid to an award reliant employee.
10. The allowance sought is one that will be paid by employers to employees that are award reliant. The allowance will not be payable to the employer, corporations, agreement covered employees or to employees paid a significant increment above the Awards.
11. A great deal of the evidence given by the ACA witnesses about the proposed Responsible Person allowance was irrelevant as these witness pay the employee that is usually the Responsible Person well above the award.<sup>76</sup> Four ACA witnesses directly addressed the cost of the Responsible Person allowance in the evidence: Fraser, Maclean, Tullberg and Mahony.<sup>77</sup> All these witnesses, with the exception of Mr Mahony, paid the employee who was usually the Responsible Person an above award salary.<sup>78</sup>
12. The totality of the evidence indicates that there a number of beneficial ways that employers can absorb the cost of the allowance by ensuring that experienced and well paid staff perform the role.
13. The legal liability of approved providers under the National Law is distinct from the role of the Responsible Person.
14. The Awards classifications do not recognise the role of the Responsible Person.
15. The role Responsible Person entails significant responsibility and additional duties in addition to any duties required of an employee by virtue of their classification under the Awards.
16. Providers would have significant capacity to reduce or absorb the cost of the allowance by reinforcing the existing practise of designating themselves or a person paid above the award the Responsible Person.
17. The imposition of an allowance would reinforce good practise in ensuring that the person who performed the role was more senior and well qualified.

**[16]** I. and E. Arrabalde (the Individuals) seek the following findings:<sup>79</sup>

1. The person who is determined to be the Responsible Person has responsibilities and duties which include:<sup>80</sup>
  - being placed in charge and responsible for the day-to-day operations of a centre;<sup>81</sup>
  - decision-making in relation to immediate issues with children and families;<sup>82</sup>
  - consulting with and overseeing the work of staff;<sup>83</sup>
  - communicating with families;<sup>84</sup>

- being a point of contact for enquiries and concerns<sup>85</sup> (This may include face-to-face conversations, answering phone calls, replying to emails and text messages and accessing various online portals.);<sup>86</sup>
  - making time-sensitive decisions that require a whole centre or unified staff team approach;<sup>87</sup>
  - contacting the director or nominated supervisor and relaying relevant information;<sup>88</sup>
  - being a point of contact for regulatory officers in the absence of the nominated supervisor;<sup>89</sup>
  - physically opening<sup>90</sup> (and closing) centres and overseeing arrivals and departures of children and families;<sup>91</sup>
  - writing or verifying incident reports, communicating incidents to families and inputting information about incidents in a database;<sup>92</sup>
2. The person fulfilling this role is required to be made obvious to families<sup>93</sup> and any other person within the centre.
  3. If owners, directors or persons who are usually the Responsible Person do not have confidence in the designated Responsible Person, this reflects on the work practices and culture within an individual organisation rather than diminishing the role of the Responsible Person.<sup>94</sup>
  4. Being a responsible person requires skills and abilities<sup>95</sup> and those designated as the Responsible Person hold a variety of qualifications.<sup>96</sup>
  5. Employees of any classification may be designated as the Responsible Person.<sup>97</sup> Experience is identified as desirable<sup>98</sup> and the role is not usually assigned to “junior” staff.<sup>99</sup> The evidence suggests that the role of Responsible Person is often determined in order of seniority.<sup>100</sup>
  6. The role and appointment of a Responsible Person is largely contextually specific.<sup>101</sup> A director can be, but is not necessarily, the Responsible Person.<sup>102</sup> The introduction of the National Quality Framework significantly changed the nature of work in early childhood education and care<sup>103</sup> and posed challenges for all those working in the sector.<sup>104</sup> Directors who choose to be the Responsible Person are no longer able to leave the centre without passing on the mantle of Responsible Person, displaying who the current Responsible Person is and making a record of this change.<sup>105</sup>
  7. At some centres, employees who are undertaking the Responsible Person role are being rewarded through above-Award payments.<sup>106</sup>
  8. The proposed Responsible Person allowance would not be administratively complex to pay because:
    - there is only one Responsible Person at any one time;



- an accurate record of the Responsible Person must be made<sup>107</sup> consistent with Regulation 150 and Regulation 177(2) of the Education and Care Services National Regulations;
- the Responsible Person record may be used for payroll purposes<sup>108</sup> without significant administrative burden being imposed on employers;
- the proposed allowance is a fixed percentage of an employee's ordinary rate dependent on the number of licenced places of a centre; and
- many approved providers already use electronic payroll systems<sup>109</sup> and the use of electronic payroll systems will be necessary for all employers from 1 July 2019 to comply with the Australian Taxation Office's Single Touch Payroll requirements.<sup>110</sup>

### **Question for the ECEC employers and AFEI**

*Q.8 Which of the findings sought by UV (at [15] above) and the Individuals (at [16] above) are contested?*

[17] The ECEC Employers seek the following findings<sup>111</sup>:

1. A Responsible Person who is not an Approved Provider or a Nominated Supervisor (an educator in day to day charge) does not have any additional legal responsibilities:
  - (a) See Dr Fenech (TN at [624]) – Do you agree that an educator in day-to-day charge doesn't bring with it any additional legal responsibilities?---Correct.'
  - (b) Mr Fraser's statement (Exhibit 18) at [115]:
 

'... there is not any additional legal requirements and responsibilities as the ultimate responsibility of the centres falls on the Approved Provider. It is important to note that it is the Approved Provider who has liability of the centre, never the Responsible Person.'
  - (c) Ms Viknarash's Statement (Exhibit 13) at [115]:
 

'In my Centres, the "Responsible Person" will only not be the Director or Assistant Director for a short amount of time that day. During that short amount of time there will be a "Responsible Person" who will just be a point of call for the Centres for a short amount of time. This person has no practical additional work such as creating rosters, buying equipment or furniture or programming and planning for the Centres as the UV suggests. The "Responsible Person" is not responsible legally at any point for the other educators or staff members as this is still the ultimate responsibility of the Nominated Supervisor.'
  - (d) Ms Tullberg (TN at [3671]) provided evidence that:
 

'the regulations actually don't put any responsibility onto the responsible person. There's no charges or anything that can actually be placed onto the person, it just stated we actually need to have one. There's no fines that can be imposed on the responsible person like there can be on approved provider or nominated supervisor.'

2. The duties and responsibilities of a Responsible Person are already captured in the Children's Services Award classifications Levels 4-6. It is submitted that this can be established through a review of the awards but was also dealt with in the evidence:
  - (a) Ms Tullberg provided evidence that "Level 4, 5 and 6 have classifications in there which do sort of cover off the same areas as responsible people."<sup>112</sup> Ms Tullberg did concede that it is 'technically' possible for a responsible person to be a Level 3 (that is a Certificate III employee that performs no duties associated with being responsible).
  - (b) Ms Mravunac identified (TN at [4511]) that her duties as Responsible Person were already captured in her role as Director.
  - (c) When asked about the difference between her responsibilities as responsible person and a nominated supervisor, Ms Wade's evidence (TN at [824]) indicated that her role as a nominated supervisor was broader than her responsibility as a responsible person, not vice versa.
3. The evidence suggests that employees who are assigned to be Responsible Person while the Approved Provider or Nominated Supervisor are absent do not make strategic decisions or act with autonomy:
  - (a) Ms Farrant provides evidence (TN at [3361]):

'It's always my practice to make sure that if there are any difficulties that arise, or problems or queries, that my staff who are certified supervisor is now that they can always ring me; or if they can't get on to me, they can always ring our assistant director to get some guidance or some clarity around any situation that may arise.... Any difficulties, they call you? Yes, anything that they don't feel confident about.'
  - (b) Ms Llewellyn gave evidence that a Responsible Person in her absence:
    - (i) did not have any additional duties (TN at [4365]);
    - (ii) would never be required to resolve staffing issues (TN at [4366]-[4372]); and
    - (iii) does not make any independent decisions (TN at [4376]).
  - (c) Ms Mravunac acknowledged receiving calls from Responsible Persons when she was absent from her centre (TN at [4488]) and that before any decisions were made about the centre, she was informed (TN at [4498]). Ms Mravunac's evidence was that:
    - (i) these calls sometimes required her to organise replacement staffing (TN at [4492]-[4494]);
    - (ii) complaints would not be dealt with by 'replacement' Responsible Persons (TN at [4499]);
    - (iii) no changes to policies would be implemented by 'replacement' Responsible Persons (TN at [4500]);

- (iv) formal meetings with parents would not be held by ‘replacement’ Responsible Persons (TN at [4501]).
  - (d) Ms Wade acknowledged (TN at [814]) that should feedback be received by another Responsible Person while she was not at the centre, she would become involved in making a decision about it and Ms Wade (at TN [723]) admits to contacting the centre on her days off regarding critical incidents<sup>113</sup> and debt collecting.<sup>114</sup>
  - (e) Ms Warner (TN at [1519]) acknowledged that she had contacted her director when there had been any incidents, any staffing issues, any parent inquiries and that she was required to implement her directors instructions if instructions are provided (TN at [1520]- [1521]).
4. The evidence suggests that the duties of a Responsible Person claimed by UV are not necessarily unique to Responsible Persons in an ECEC Centre.
- (a) *Communication with parents is not a responsibility limited to Responsible Persons:*
    - (i) Evidence of Ms Tullberg (TN at [3704]):
 

‘[If] an incident happened in the toddler room it wouldn't be the kindergarten teacher that would ring the parent, it would be the room leader in the toddler room, so that person would be the responsible person at the time. So it's not always going to be the responsible person. Would the responsible person have some role in the management of the incident? Maybe, during that time. They may or may not, it depends on the circumstances.’
    - (ii) The evidence at 7.3 above concerning the autonomy of Responsible Persons is also relevant to this finding.
  - (b) *Ensuring safety is also not a responsibility limited to Responsible Persons:*
    - (i) Ms Warner acknowledges that she is “responsible for ensuring a safe environment in maintained for staff and children” even when she is not the responsible person.<sup>115</sup>
    - (ii) Ms Chemello states that Responsible Persons have no additional involvement in relation to critical incidents at her centre. She says: ‘all my staff have got first aids, so anyone can attend an accident within the service, then the protocol is to call the co-ordinator’.<sup>116</sup>
    - (iii) Ms Viknarasah states ‘any educators duties are similar to a responsible person in terms of their duty of care to the children’.<sup>117</sup>
    - (iv) Ms Mravanuc (at TN [4505]) states that all staff are required to ensure a safe environment is maintained.
    - (v) Ms Tullberg’s evidence was that responsible persons do not interact with parents in relation to an incident anymore than a room leader would (at TN [3699]).

(vi) Ms Tullberg (at TN [3708]):

‘The responsible person would have some involvement in ensuring that the child was going home with the right person, you'd agree with that proposition? Parents all have to sign in and out their own children. They have key code access to the service. As long as the parent's been identified by a staff member and knows who that parent is, again I wouldn't necessarily say that the responsible person at the time is the person who identifies that parent. I see where you're going. In general, yes, the responsible person would be the person that would deal with an incident in the service but it's not always going to be the case.’

5. The duties and responsibilities of the Responsible Person role are not new and were not created as a result of the National Laws and Regulations. See Tullberg Statement (Exhibit 35) at [93], Maclean Statement (Exhibit 25) at [102]-[103]; Brannelly Statement (Exhibit 34) at [41]-[42].

6. The creation of a Responsible Person Allowance would be difficult to administer.

(a) Mr Fraser confirmed under cross examination (TN at [1863]) that administering the responsible person allowance would be:

‘complex to administer because the proposed allowance that's been put forward must be multiple payments across multiple people across five days a week. So across the fortnight it's 10. So I could have three responsible people on on one day at one centre, so across seven centres that would be multiple payments across the payroll period at different levels’.

(b) Ms Tullberg advised under cross examination, that in terms of administering an hourly responsible person allowance ‘it would be an actual calculation based on every single day they worked. So it would be more complex than you probably think it may be’.<sup>118</sup> She further acknowledged that:

‘it would be difficult because the way we manage it it's the person who - the person who's responsible is the person - is the most qualified person in the oldest room at the time, until the next most senior person comes in. So say the director arrived at 7 o'clock in the morning one day and didn't arrive until 7.30 the next day, it would be a change every single day on the shift times for that responsible person in the morning.’<sup>119</sup>

Ms Tullberg concluded that ‘It just adds another complexity to having to roster and more paperwork for employers.’<sup>120</sup>

[18] AFEI seeks the following findings:<sup>121</sup>

1. An individual does not have additional legal responsibilities by virtue of being designated as ‘responsible person’.
2. The Director/nominated supervisor of a service will typically fulfil the regulatory requirement to have a ‘responsible person.’
3. Where the Director is designated as ‘responsible person’, the Children’s Services Award already compensates them for this designation. B.1.10 of the Award includes

as an indicative duty of the Director: *‘responsible for the overall management and administration of the service’*.

4. The responsibilities of a ‘responsible person’ other than the Director/nominated supervisor, is already covered in the Award’s classifications. The description of an ‘associate director’ in B.1.8 – Level 5 as *‘responsible for the day-to-day management of the centre or service in the temporary absence of the Director and for management and compliance with licensing and all statutory and quality assurance issues’*.
5. A person who is not a nominated supervisor/associate director, but who performs the role of a responsible person when the nominated supervisor/associate director is absent, does not perform the full ambit of the role of director or associate director.
6. There is no basis to award a responsible person allowance to teachers covered by the Teacher Award, as no evidence is provided in the proceedings of employees covered by that Award who are designated ‘responsible person’.
7. The quantum of the responsible person allowance sought is disproportionate to the level of responsibility of a designated ‘responsible person’ –
  - (a) The difference in minimum wages for a Level 4 educator under the Children’s Services Award, and an Associate Director under the same Award, is \$0.40 - \$1.18 per hour, whereas the responsible person allowance sought would range from \$3.31 - \$5.51 per hour, depending on the number of places in the Centre.
  - (b) The Associate Director is already responsible for day-to-day management of the centre or service in the temporary absence of the Director under the Children’s Services Award.
  - (c) In addition to day-to-day responsibilities, the Associate Director also has ongoing responsibilities for management and compliance with licensing and all statutory and quality assurance issues, and contributing to the development of the centre or service’s policies.

### **Question for UV and the Individuals**

*Q.9 Which of the findings sought by the ECEC Employers (at [17] above) and the AFEI (at [18] above) are contested?*

### **5. Educational Leader Allowance**

A claim by UV to introduce a new allowance for employees assigned to be the Educational Leader at a service.

[19] UV seeks the following findings:<sup>122</sup>

1. Overall, there was clear consensus in the evidence that the Educational Leader is a role that carries real responsibility, including for leading programming and planning

within a service, mentoring other educators, leading critical reflection and undertaking research.

2. The Educational Leader role arose from the implementation of the NQF, which placed an obligation on approved providers to designate an appropriate person as the Educational Leader for a service.
3. The person designated as Educational Leader has a number of responsibilities including leading the programming for the service, mentoring other employees, leading critical reflection and undertaking research.
4. The Educational Leader performs an important leadership role, which is significant in terms of service quality.
5. The Educational Leader provides leadership in programming across the whole service, whereas a Lead Educator (or Room Leader) is responsible for leading programming within the one room.
6. The Educational Leader role is not remunerated within the current classification structure.
7. It is appropriate that employees who are designated as Educational Leader should receive compensation in the form of an allowance for the work performed in this role.

[20] The Individuals seek the following findings<sup>123</sup>:

1. The role of the Educational Leader in practice mirrors the role described in literature. The role of an educational leader includes:
  - Overseeing, enabling and guiding the development and implementation of a quality educational program and curriculum<sup>124</sup>
  - Interpreting the implications for practice of the National Quality Framework<sup>125</sup>
  - Modelling high quality practice<sup>126</sup>
  - Mentoring,<sup>127</sup> supporting<sup>128</sup> and empowering educators<sup>129</sup>, providing feedback on practice<sup>130</sup> and facilitating meetings with educators<sup>131</sup>
  - Ensuring that educational programming across the service meets requirements<sup>132</sup>
  - Holding educators accountable for their actions or inactions with respect to their educational program and practice<sup>133</sup>
  - Leading critical reflection<sup>134</sup>
  - Researching current educational theories and utilising findings to enhance program and practice<sup>135</sup>
  - Collaborating with members of the “learning community”<sup>136</sup>
  - Contributing to the development of the centre’s philosophy<sup>137</sup>

- Accessing inclusion support<sup>138</sup>, leading the development and implementation of an inclusive curriculum and supporting educators to adopt inclusive practices<sup>139</sup> (This means ensuring children of all abilities are able to participate in the educational program and be active members of the learning community.)<sup>140</sup>
  - Developing a reconciliation action plan<sup>141</sup> (This is a strategic plan designed and implemented by an organisation that recognises the capabilities, contributions, capacity and cultures of Aboriginal and Torres Strait Islander people and is designed to further the reconciliation movement.)<sup>142</sup>
  - Promoting continuous quality improvement<sup>143</sup>
2. Educative responsibilities of educators and lead educators differ from the role of the Educational Leader.
  3. The role of an Educational Leader is significant, complex and extensive. The role ‘requires intentionality’<sup>144</sup> and as the role is not rigorously defined Educational Leaders are required to make their own decisions as to what is appropriate for their context (PN 1517 and 2341).<sup>145</sup>
  4. Educational leadership is not the same as positional leadership. The role of an educator (or a lead educator) with respect to educational program and practice relates to a specific group of children and a subset of the staff team. An Educational Leader, on the other hand, has responsibility for the educational program of all of the children attending the centre and the educational practice of the entire team of educators.
  5. Educational leaders have various qualifications. (PN 531) including Certificate III (PN 206), Diploma (PN 1467 – PN 1470), Advanced Diploma (PN 2334) and teaching qualifications (PN 533, PN 3798 – PN 3799).
  6. The proposed educational leadership allowance would provide a “fair and minimum safety net of terms and conditions”.
  7. Paying an educational leadership allowance is not administratively complex, because:
    - the role is performed by one employee on a long term basis (PN 3634 – PN 3635);
    - records of the Educational Leader are required to be kept under Regulation 148 of the Education and Care Services National Regulations;
    - the proposed allowance is a fixed percentage of an employee’s ordinary rate, dependant on the number of licenced places in a centre;
    - many approved providers already use electronic pay roll systems (PN 1834 – PN 1835, PN 3627, PN 3629) and the use of electronic pay roll systems will be necessary for all employers from 1 July 2019 to comply with the ATO’s Single Touch Payroll requirements (see <https://www.ato.gov.au/Business/Single-Touch-Payroll/>);

- Educational Leaders in schools are already being paid an allowance in the Teachers Award and the form of the allowance proposed mirrors this allowance.
8. As 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, this role should be remunerated.
  9. While educational leadership may be a full-time position,<sup>146</sup> for many educational leaders, the role is additional to the duties within their Award classification.<sup>147</sup>
  10. Educational leadership requires significant effort and research reveals the overwhelming majority of early childhood educational leaders do not receive any remuneration for this job role.<sup>148</sup> This is because the role of the educational leader in early childhood education and care settings is not explicitly recognised in the Children’s Services Award 2010 and specifically excluded from the educational leadership allowance in clause 15.2 of the Educational Services Teachers Award 2010.
  11. Educational leaders are paid according to a wide range of classifications in the Children’s Services Award 2010.<sup>149</sup>
  12. While some employers are paying educational leaders according to their interpretation of particular Award classifications, educational leaders in other organisations are paid above-Award payments in recognition of their role.

### **Question for ECEC Employers and AFEI**

*Q.10 Which of the findings sought by UV (at [19] above) and the Individuals (at [20] above) are contested?*

**[21]** ACA, ABI and NSWBC seek the following findings:<sup>150</sup>

1. The NQF does not identify what qualifications, experience or skills are required for a person to be the Educational Leader. There is also no job or role description in the NQF identifying what an Educational Leader is required to do.<sup>151</sup>
2. The only duty of Educational Leaders imposed by the National Law is to “lead the development and implementation of educational programs in the service”, however what this responsibility actually entails is unclear:
  - ACECQA Resources (including the Educational Leader Resource (Exhibit 5) and the Role of the Educational Leader document (Exhibit 2) provide guidance as to the duties of an Educational Leader but these guides do not determine legal responsibilities or entitlements.
3. The ‘skill-set’ identified by Dr Fenech as being required by Educational Leaders is not required in any legal or practical sense,;

Dr Fenech (TN at [538]-[544]) made a claim that Standard 7.2.2 could not be fulfilled with a requisite skill-set identified in the Guide to the National Quality



Framework, notwithstanding that those skills were not itemised anywhere (TN at [545]), not all educational leaders possessed those skills (TN at [557]) and that she was unaware of any ECEC centre not meeting the quality standards on the basis that its Educational Leader did not possess those skills (TN at [567]).

4. Given the lack of definition of the duties of an Educational Leader, the role of an Educational Leader is not clear, with several union witnesses providing evidence of 'Educational Leader duties' which were either not performed by them or also performed by others:
  - (a) Ms Warner listed "preparing observations and photos for each child as a responsibility of the educational leader in her statement (Exhibit 17) at [19(a)]. Under cross-examination, Ms Warner admitted that this was actually the job of the lead educator of each room.<sup>152</sup>
  - (b) Notwithstanding that Ms Hennessy's evidence at 18(f) of her statement (Exhibit 6) was that as educational leader she was required to observe interactions between educators and children and provide feedback (TN at [305]-[308]) she acknowledged that "almost anyone" in a centre did this and that it was a 'team effort'.
  - (c) Ms Hennessy also acknowledged that most educators at the centre communicate with parents about educational programs and children's progress (TN at [291]-[294]) and that this wasn't confined to educational leadership. This is consistent with Ms Viknarasah's evidence which confirmed that every educator has a role in considering and monitoring how children are going from day to day and week to week.<sup>153</sup>
  - (d) Ms Warner provided evidence that her educational leader role under the NQS required her to undertake research (TN at [1495]) however stated that the quantity of that research was not specified (TN at [1514]). It was unclear where this responsibility was derived from.
  - (e) Ms Mravunac provided evidence that, despite not being an Educational Leader, she developed, planned and assessed programming, ensured it was implemented and determined the educational direction of the centre (TN at [4467]-[4472]). Ms Mravunac acknowledged that, despite not being an educational leader, she was the driving force behind educational leadership at her centre (TN at [4484]).
5. The duties of an Educational Leader are already included in the classifications under the relevant Awards:
  - (i) Ms Hennessey's current duties as a Level 3 under the Children's Services Award included the implementation of the children's program under supervision.<sup>154</sup>
  - (ii) Ms Warner admitted that she is "responsible in consultation with the assistant director or director for the preparation of implementation and evaluation of a developmentally appropriate program for individual children or groups" which is a duty specifically itemised in level 4 of the Children's Services Award.<sup>155</sup> Ms

Warner who is an educational leader also admitted that “to a degree” she already mentors educators in relation to their educational practice in her role as 2IC.<sup>156</sup>

(iii) Mr Mahony confirmed orally that he pays his educational leader (who is also the assistant director at one centre but the educational leader at both centres) as a level 5 under the Children’s Services Award.<sup>157</sup> He acknowledges that he does this because, “I believe the award in fact covers that additional work that is related to the educational role”.<sup>158</sup>

6. Even if the duties of Educational Leader were additional to those already found in the relevant awards (which is denied), Educational Leaders are already compensated for this work in that they are provided with non-contact time to perform these duties under the relevant awards.

(a) As Ms Viknarasah explains:

‘In terms of what extra work they would do, it would be in lieu of what - the hours that they'd spend in their work. So if I'm doing the vegetable garden I'm doing that for an hour a week instead of sitting with the children and educating them. If I'm being an educational leader I'm doing that an hour a week instead of sitting with the children and educating them.’<sup>159</sup>

(b) This appears to be the design of the NQF, with Dr Fenech providing evidence that ‘To be effective, the role of an educational leader requires time allocation in addition to and quarantined from other responsibilities.’<sup>160</sup>

7. There is no explicit academic support for the introduction of additional remuneration for Educational Leaders (TN at [612]-[613]), nor is there any support for additional remuneration within the NQF (TN at [614]).

[22] AFEI seeks the following findings:<sup>161</sup>

1. A person designated as an educational leader exists within a hierarchy whereby it is the nominated supervisor/approved provider who has overall responsibility for ensuring the Centre’s compliance with the Education and Care Services National Regulations.
2. An educational leader may exercise limited independent judgement and limited discretion in identifying the tasks which are appropriate/expected by the employer/expected by the regulator in order to perform their function.
3. Certain aspects of an educational leader’s responsibilities are inherent responsibilities of an educator or senior educator.
4. The designation of tasks associated with leading development and implementation of educational programs in a service, whilst codified in the Regulations from 2012, is not a new feature of the industry.
5. The quantum of the educational allowance sought is disproportionate to the level of responsibility required of a person appointed to that role-

- The allowance sought is significantly higher than the differential between a Level 4 and Level 5 under the Children’s Services Award.
- For the purpose of the Children’s Services Award, the indicative duties of a Level 4 include responsibility ‘for the preparation, implementation and evaluation’ of programs, in consultation with the Assistant Director or Director.
- Whereas the indicative duties of a Level 5 include responsibility for co-ordinating and directing the activities of employees who implement and evaluate the programs.
- In respect of the Teachers Award, the allowance sought is between 57% and 63% of the Director’s allowance.
- The Director’s allowance is paid to teachers who are performing the full role of a Director, which includes responsibility for the overall management and administration of a service.

### **Question for UV and the Individuals**

*Q.11 Which of the findings sought by the ECEC Employers (at [21] above) and AFEI (at [22] above) are contested?*

#### **6. Non-contact Time Claim for Educational Leader**

[23] A claim by UV to increase the time off the floor away from children (non-contact time) for Room Leaders and Educational Leaders.

[24] UV seeks the following findings:<sup>162</sup>

1. The person designated as Educational Leader has a number of responsibilities including leading the programming for the service, mentoring other employees, leading critical reflection and undertaking research.
2. The Educational Leader performs an important leadership role, which is significant in terms of service quality and compliance with the NQF.
3. An employee who is an Educational Leader requires specific non-contact time in which to undertake their duties.
4. The 2 hours of non-contact time currently provided under the Awards for employees responsible for the preparation, implementation and/or evaluation of a developmental program is insufficient,
5. The non-contact time sought by United Voice (UV) for Educational Leaders (2 hours per week in centres licensed for no more than 39 places, 3 hours per week for centres licensed for 40-59 places and 4 hours per week for centres licensed for 60 and above places) is an appropriate minimum standard under the Awards.

## Question for the ECEC Employers and AFEI

Q.12 Which of the findings sought by UV (at [24] above) are contested?

[25] The ECEC Employers seek the following findings:<sup>163</sup>

1. The Awards' current provision of 2 hours non-contact time is sufficient within the context of a *minimum* safety net , :
  - (a) The Fraser, Mahony, Llewellyn and McPhail Statements outline that 2 hours is sufficient and that additional time would not add to the quality of programming or the service.<sup>164</sup>
2. Those union witnesses who had complaints concerning insufficient non-contact time appear to not be receiving their requisite time under the relevant Awards.
  - (i) Ms Bea (TN at [481]) gave evidence that she received the minimum 2 hours non-contact time in her role for the first two months in a role. When asked if she was able to complete her necessary duties in that period she responded 'yes'.
  - (ii) Ms Wade's evidence in respect of non-contact time should be treated with caution. Notwithstanding that in response to questioning Ms Wade made the repeated claim that '2 hours was not enough time' (TN at [861], [863], [865]), aspects of Ms Wade's evidence on this point were not clear. By way of example, Ms Wade claimed lead educators in her centre always received 2 hours contact time (TN at [855]) while identifying that whether lead educators were able to complete programming in their allocated time was dependent on child behaviour and whether non-contact time was interrupted due to a requirement to be on the floor (which was apparently 80% of the time) (TN at [848]). Her evidence was that she would 'try to' make up the two hours of non-contact time later (TN at [851]). This evidence, and how it is consistent with a centre which 'always' provides 2 hours contact time was not explained.
3. The programming requirements under the current NQF are no more onerous than historical requirements, with technology making programming easier, and creating less work and less time entering the data.
  - (a) The Full Bench heard evidence concerning 'template' programming methods being used - See Statement of Ms Wade at [55] as well as evidence that development of program or curriculum is not necessarily undertaken by Educational Leaders, but rather management (See evidence of Hennessy at TN at [289]).

[26] AFEI seeks the following findings:<sup>165</sup>

1. Continuity of staff on a day-to-day basis is important for building secure relationships with children, and plays a significant role in promoting their learning and development.

2. There is insufficient evidence to conclude, as a general rule, that educators do not have sufficient time to complete their tasks with the amount of non-contact time already provided in the Award.
3. Should a particular task which cannot be completed during ‘contact time’ require more than 2 hours of work per week, Centres may exercise prerogative in re-distribution of duties (as an alternative to allocating additional non-contact time).

### **Question for UV**

*Q.13 Which of the findings sought by the ECEC Employers and AFEI (at [25] and [26] above) are contested?*

### **7. Training Allowance**

[27] A claim by UV seeking the payment of training courses and time worked at those courses.

[28] UV seeks the following findings:<sup>166</sup>

1. There was general consensus in the evidence that where the employer requires an employee to undertake training, that training should be paid for by the employer.
2. There are employees in this sector that are being required by employers to undertake training without reimbursement of course fees or recognition of the time spent in training as time worked.
3. There are employees in this sector who have to pay for required training themselves and undertake that training on weekends or by taking annual leave.
4. That it is appropriate and fair that where an employer requires an employee to undertake training, that training should be paid for by the employer and that time spent in training should be regarded as time worked.

### **Question for the ECEC Employers and AFEI**

*Q.14 Which of the findings sought by UV (at [28] above) are contested?*

[29] The ECEC Employers seek the following findings:<sup>167</sup>

1. There is insufficient evidence before the Full Bench to establish this claim. That which has been filed appears solely directed at CPR and First Aid course fees.
2. The evidence discloses that some employers pay for all employees to undertake First Aid and CPR qualifications, notwithstanding that this is not required.<sup>168</sup>
3. In the event that employers are required to pay employee time for training, employers would be more selective about who is allowed to attend rather than continuing to pay for the course for all employees.<sup>169</sup>

4. There is no credible evidence that employees are being forced into training which they do not wish to pay for:
  - (a) Ms Wade's first statement at [48] alleges that some staff members struggle to pay for training and have to use rent or groceries money to pay for training - this evidence is unsupported and should be afforded little weight.

[30] AFEI seeks the following finding:<sup>170</sup>

1. There is no basis to insert this clause into the Children's Services Award, as no evidence was produced in the proceedings which supports a finding that employees are required to pay for training courses that their employer has directed them to attend.

### **Question for UV**

*Q.15 Which of the findings sought by the ECEC Employers and AFEI (at [29] and [30] above) are contested?*

### **8. Laundry Allowance**

[31] A claim by UV seeking the laundry allowance be paid in circumstances where employees wash their clothes using the on-site facilities at the workplace.

[32] UV seeks the following findings:<sup>171</sup>

1. Ms Bea gave evidence in support of this claim and her evidence was unimpeached by cross examination.
2. The proposition that ECEC employees need a freshly laundered uniform for each day of work was largely uncontroversial.
3. A number of employers did not pay the allowance as a uniform was optional.
4. The evidence indicates that the problem sought to be cured by the insertion of the definition as proposed is real, that there is utility in the variation in light of working conditions in the sector and that the variation should be made.

### **Question for the ECEC Employers and AFEI**

*Q.16 Which of the findings sought by UV (at [32] above) are contested?*

[33] The ECEC Employers seek the following findings:

1. It is not appropriate to pay employees an allowance to wash their uniforms in situations where:

- (a) the employee is washing their uniform during work time (eg; at a cost to the employer) or the employee's uniform is washed by someone else at the centre (eg; another employee or Director);<sup>172</sup>
  - (b) the employer pays for electricity, water, detergent; and<sup>173</sup>
  - (c) there is no cost to the employee.<sup>174</sup>
2. To the extent that ECEC Centres have laundry facilities onsite, these can be accessed and used by employees.
- (a) Mr Fraser gave evidence that the laundry facilities at his centre were not busy (TN at [1969]).
  - (b) Ms Chemello gave similar evidence (TN at [2829]).
  - (c) Ms Llewellyn advised she has two washers and dryers onsite that her employees can use.<sup>175</sup> In response to questions about employees having difficulty accessing the machines, Ms Llewellyn stated that there is, 'definitely opportune time for them to wash their uniform if needed'.
  - (d) The evidence of Ms Bea in respect of the use of laundry facilities (TN at [437]-[447]) should be dealt with cautiously. Her evidence that two washing machines were in perpetual operation is not consistent with the evidence of other witnesses in the proceedings (with the obvious caveat that those witnesses were located at other centres). Likewise Ms Bea's evidence as to the impossibility of marking a shirt with an identifying mark, a situation apparently leaving her no recourse but to undertake single shirt wash cycles appears to defy common sense.

[34] AFEI submits that there is no basis to vary the Children's Award as proposed, as no evidence was provided in the proceedings which could support an evidentiary finding that employees were neither paid the laundry allowance nor had laundry facilities available to them.<sup>176</sup>

### **Question for UV**

*Q.17 Which of the findings sought by the ECEC Employers and AFEI (at [33] and [34] above) are contested?*

## **9. Clothing Allowance**

[35] A claim by UV to include 'hats and sun protection (including sunscreen)' in the definition of protective clothing and require the employer to either provide these items or reimburse the employee.

[36] UV seeks the following findings:<sup>177</sup>

- 1. There was no real contest in the evidence that sun hats and sunscreen should be provided and/or paid for by an employer. The employer witnesses who were asked

about sun hats and sunscreen indicated that they already provided hats and sunscreen.

2. The Commission is entitled to make the following findings:

- (i) employees in this sector spend a reasonable amount of time outdoors in the course of their duties;
- (ii) sun hats and sunscreen are essential protective equipment in this context; and
- (iii) it is appropriate that employer pay for sun hats and sunscreen or reimburse the cost of purchase.

### **Question for ECEC Employers and AFEI**

*Q.18 Which of the findings sought by UV (at [36] above) are contested?*

[37] The ECEC Employers seek the following findings:

1. ABI seek a finding that some ECEC employers already provide hats and sunscreen to staff.<sup>178</sup>

[38] AFEI submits that there is no basis to vary the Children's Award as proposed, as no evidence was provided in the proceedings which could support an evidentiary finding that employees were required to purchase their own hats.<sup>179</sup>

### **Question for UV**

*Q.19 Which of the findings sought by the ECEC Employers and AFEI (at [37] and [38] above) are contested?*

## **10. Higher Duties Claim**

[39] A claim by UV to vary the exemption in the higher duties clause so that an employee who is required to perform higher duties (to replace a colleague who is attending paid training) is paid higher duties.

[40] UV does not seek any findings in relation to this claim.

- (i) The ECEC Employers submit that there are no relevant evidentiary findings which can be made in respect of this claim and, as such, there is insufficient evidence before the Full Bench to establish this claim.<sup>180</sup>

## **11. Annual Leave Claim**

[41] A claim by UV requiring employers who direct their employees to take leave without pay (annual leave) over Christmas to pay ordinary time to those employees in circumstances where they have not accrued any leave.



[42] As noted in the Background Document published on 13 June 2019 at [161]) the review of clause 24.4 of the Children's Services Award has been referred to the Plain Language Full Bench. The substantive issues Full Bench does not propose to deal with this claim unless it is generally agreed that the matter should be dealt with by it and the President refers the matter from the Plain Language Full Bench.

## TEACHERS AWARD

### 12. Coverage Claim

[43] A claim by IEU to amend award coverage for Directors of childcare centres with teaching degrees, to be covered by the Teachers Award (and not the Children's Services Award).

[44] The IEU seeks the following findings in respect of this claim:

1. Some ECEC services appoint a qualified teacher as the director of the service.
2. The role of Director is more senior to the role of a teacher in an ECEC service.
3. Teachers who have been appointed as Directors:
  - (a) administer the delivery of an educational program;
  - (b) oversee the work of other teachers and educators in the service, including by reviewing their development and delivery of educational programs;
  - (c) can, and from time to time do, directly deliver educational programs;
  - (d) can be, and from time to time are, counted toward a centre's minimum ratios under the National Law; and
  - (e) use their professional skills as teachers in their day to day work.
4. Directors, including teacher directors, are commonly paid a higher salary than that required by the Teachers Award (including the directors' allowance).
5. Where teachers who are qualified as directors are paid award wages, the usual industry practice is to pay them in accordance with the Teachers Award.
6. From time to time, there is a dispute about whether the Teachers Award or the Children's Services Award applies to teachers who have been appointed as Directors.
7. If teachers appointed as Directors are paid under the Children's Services Award, this will almost always lead to the teacher being paid less than they would be if they were paid under the Teachers Award.

### **Question for ECEC Employers and AFEI**

*Q.20 Which of the findings sought by IEU (at [44] above) are contested?*

[45] The ECEC Employers seek the following findings:<sup>181</sup>

1. Aspects of the IEU's evidence that suggested that specific advantages were derived by a director through the completion of a teaching degree should not be accepted. By way of example:
  - (a) A teaching qualification attained prior to 2012 would not have included content on the current legislative system applying in ECEC: See Ms Farrant TN at [3273], [3278], Ms Frennd at [3836].
  - (b) A teaching qualification does not necessarily entitle the holder to knowledge about research undertaken more recently than their degree: See Ms Farrant TN at [3295].
  - (c) Ms Farrant accepted that human resources and recruitment were not part of her teaching qualification and admitted that these were gained through skills obtained during ongoing professional development (see TN at [3280] and [3281]; Farrant Statement (Exhibit 31) at [7.3]).
  - (d) Ms Mravunac (TN at [4461]) accepted that her degree did not, as claimed in her statement, assist in encouraging family input into the 'Net Promoter Score'.
  
2. The mere fact that a Director has a qualification as a Teacher does not necessarily mean their contribution as a Director is more valuable:
  - (a) Mr Fraser gave evidence that an understanding of the early years learning framework is something that any level early childhood educator would gain through their qualifications, whether it's certificate III or diploma or bachelor (TN at [1638]).
  - (b) Mr Fraser also stated:

'I do not agree that a Certificate III or Diploma is unable to provide insight into the needs of children, some of my educators are parents with over 20 years' experience in the ECEC sector and whilst they may only hold a Certificate III or a Diploma, their knowledge and understanding of children and development is significantly deeper than that of a bachelor qualified teacher who has just graduated or even been a teacher for 5-10 years. Hands on experience is incredibly valuable in the ECEC sector.'<sup>182</sup>
  - (c) Ms Viknarasah stated:

'I do not believe that having a teaching qualification allows a greater depth of understanding and the most significant factor I have found is world experience and general knowledge of the individual as well as if the individual has had children of their own and their experiences as a parent. I agree somewhat, that it is generally easier for someone with a degree to potentially articulate issues in writing however I do not believe that this has a significant impact on their role as a Director.'<sup>183</sup>
  - (d) Ms Farrant accepted (TN at [3326]-[3328]) that educators were 'credible', 'knew what they were talking about' and that many had a 'great deal of experience'.

3. Findings as to evidence:
  - (a) The evidence of Ms James at [31] of her statement (Exhibit 32) as to one centre's interpretation of the Children's Services Award is of no probative value and should be afforded no weight in these proceedings.
4. The Commission should not make a finding that the attainment of a teaching degree will necessarily make a director more credible in the eyes of staff or parents:
  - (a) The evidence of teaching qualified directors about the perceptions of staff and parents is self-serving and mostly hearsay. For example:
    - (i) Ms Farrant's statement at [11] is unsupported opinion about the views of other people. Where cross-examined about this (TN at [3314]-[3315]) she qualified her evidence to state that it was her view that it was 'essential' to have at least the same qualification to ensure "best outcomes, best practice". Ms Farrant acknowledged (TN at [3317]) that centres do exist without degree qualified Directors.
    - (b) Ms Mravuanc's evidence at [12] of her statement that 'there is an expectation amongst staff that as Director I should hold tertiary qualifications' should be given limited weight. This is hearsay about her staff's opinion.
    - (c) Likewise Ms Mravunac's evidence at [17] of her statement (Exhibit 42) that:

'Because I am the only tertiary educated early childhood teacher, parents look to me for advice and value my contributions to the child's education. Parents expect consultation in these meetings with a qualified early childhood teacher.'
    - (d) Ms Frend's evidence at 13.12 of her statement (Exhibit 37) that: 'Parents of children within the Preschool are more confident in my ability to run an education organisation knowing that I have a thorough understanding of early childhood education through my teaching degree' should also be given limited weight. This is hearsay about parents' opinion which cannot be tested.
5. The AFEI submits (AFEI Submission on Findings at [23]) that a director should not be covered by the Teaching Award merely by virtue of the fact that they hold a teaching qualification. It is contended that this submission is supported by:
  - (a) the definition of teacher in the Teachers Award, which states that a teacher is 'a person employed as such' who delivers, and performs duties incidental to delivering an educational program;
  - (b) the evidence of Ms Wade and Ms Farrant (PN 937, PN 3259-PN3261) who, despite holding teaching qualifications, are both employed as directors and do not perform teaching duties or work directly with children as part of their role as director; and

- (c) the qualifications listed in B.1.10 of the Children’s Services Award which have been identified as relevant to the role of a Director include ‘a relevant Degree’ or other such qualification deemed by the employer to be appropriate.

### **Question for IEU**

*Q.21 Which of the findings sought by the ECEC Employers (at [45] above) and AFEI (at [5(a)-(c)] above) are contested?*

### **13. Minimum Engagement Claim**

[46] A claim by IEU to confirm the minimum payments of a ‘quarter day’ and ‘half day’ to casual teachers.

[47] IEU seeks the following findings:<sup>184</sup>

1. Teachers are occasionally engaged by ECEC services on a casual basis.
2. From time to time there is a dispute about whether a casual teacher in an ECEC who is engaged for more than a quarter day but less than half a day is to be paid a quarter day or half a day, or some other amount.

[48] The ECEC Employers seek the following findings:<sup>185</sup>

1. Evidence provided in the ACA/ABI witnesses suggests that:
  - (a) Many ECEC employers do not engage casual teachers (as they do not provide continuity of care and are expensive);<sup>186</sup>
  - (b) Those that do employ casuals, are aware of clause 14.5 and how to correctly calculate a quarter day/half day for a casual under that award;<sup>187</sup> and
  - (c) AFEI submits that there is no basis to vary the Teachers Award as proposed as no evidence was provided which could support an evidentiary finding.

### **Question for IEU**

*Q.22 Which of the findings sought by the IEU (at [47] above) and the ECEC Employers (at [48] above) are contested?*

14. APPENDIX 1—List of submissions and reports/articles referred to within

Party/witness	Submissions
<i>Submissions and witness evidence in response to the Directions issued on 11 December 2019</i>	
UV	<p><a href="#"><u>Submission – 15 March 2019</u></a></p> <p><a href="#"><u>ACECQA, Guide to the National Quality Framework, October 2018</u></a> pages 8; 89; 102; 104; 106; 113; 116; 119; 126-127; 131; 134; 149; 166; 192; 194; 231-232; 245; 259; 261; 269; 390; 392; 393</p> <p><a href="#"><u>ACECQA, National Quality Standard: Information Sheet, the role of the educational leader, April 2018</u></a></p> <p><a href="#"><u>ACECQA, National Quality Standard: Information Sheet, Responsible person requirements for approved providers from 1 October 2017, 30 August 2017</u></a></p> <p><a href="#"><u>Department of Education and Training (for COAG), Belonging, Being and Becoming, The Early Years Learning Framework for Australia</u></a></p> <p><a href="#"><u>Investing in the Early Years –A National Early Childhood Development Strategy’ (Strategy Paper, COAG, 2 July 2009)</u></a></p> <p><a href="#"><u>The Education and Care Services National Law and the proposed National Regulations’ (Information Paper, Department of Education, Employment and Workplace Relations, December 2010)</u></a></p> <p><a href="#"><u>Productivity Commission, Early Childhood Development Workforce, Research Report, November 2011, page 65</u></a></p> <p><a href="#"><u>Productivity Commission, Childcare and Early Childhood Learning, Inquiry Report, Volume 2, page 319</u></a></p> <p><a href="#"><u>Fair Work Commission, Statistical report –Annual Wage Review 2018-19, 8 March 2019, page 36, Table 7.1: Award reliance by industry, per cent; pages 12-13; 15</u></a></p> <p><a href="#"><u>Social Research Centre, 2016 Early Childhood Education and Care National Workforce Census, September 2017, page 16</u></a></p> <p><a href="#"><u>Safe Work Australia, First aid in the workplace: Code of Practice, May 2018, page 18</u></a></p> <p>Andrew Stewart, <i>Stewart’s Guide to Employment Law</i> 3rd edition, the Federation Press at [10.19]; see also Creighton &amp; Stewart, <i>Labour Law</i>, 5th edition, Federation Press at [13.39]</p>

Party/witness	Submissions
	<p>Creighton &amp; Stewart, <i>Labour Law</i>, 5th edition, Federation Press, at [13.41]</p> <p><i>Report for the Fair Work Commission for the Four Yearly Review of Modern Awards AM2018/18 Children’s Services Award &amp; AM2014/266 Educational Services (Teachers) Award 2010</i>, pages 5; 6; 11</p>
IEU	<p><a href="#">Submission – 18 March 2019</a></p>
I and E Arrabalde	<p><a href="#">Submission – 15 March 2019</a></p> <p>Tamara Cumming, Jennifer Sumsion and Sandra Wong, “Rethinking early childhood workforce sustainability in the context of Australia’s early childhood education and care reforms,” <i>International Journal of Child Care and Education Policy</i> 9, no. 1 (2015): 2.</p> <p><a href="#">Organisation for Economic Co-operation and Development (OECD), Starting strong II: Early childhood education and care, (2006).</a></p> <p>Margaret Sims, Manjula Waniganayake and Fay Hadley, "Educational leadership: An evolving role in Australian early childhood settings," <i>Educational Management Administration &amp; Leadership</i> 46, no. 6 (2018): 960-979; 963</p> <p>Manjula Waniganayake and Suzie Stipanovic, "Advancing Leadership Capacity: Preparation of Early Childhood Leaders in Australia Through a Coursework Masters Degree," <i>Journal of Early Childhood Education Research</i> 5, no. 2 (2016): 268-288; 269</p> <p><a href="#">ACECQA, National Quality Standard: Information Sheet, the role of the educational leader, April 2018</a></p> <p>Alma Fleet, Rod Soper, Anthony Semann and Lorraine Madden, "The role of the educational leader: Perceptions and expectations in a period of change," <i>Australasian Journal of Early Childhood</i> 40, no. 3 (2015): 29; 34</p> <p>Joce Nuttall, Louise Thomas and Linda Henderson, "Formative interventions in leadership development in early childhood education: The potential of double stimulation," <i>Journal of Early Childhood Education Research</i> 16, no. 1 (2018): 80-91; Elizabeth Rouse and Gail Spradbury, “The role of the educational leader in long day care – how do they perceive their role?,” <i>Early Child Development and Care</i> 186, no. 3 (2016): 497-508</p> <p><a href="#">Australian Institute for Teaching and School Leadership (AITSL), One Teaching Profession: Teacher Registration in Australia (September 2018)</a></p>

Party/witness	Submissions
	<p>Productivity Commission, <i>Childcare and early childhood learning</i>, (Inquiry report, No. 73), (Canberra: Commonwealth of Australia, 2014).</p> <p>Susan Grieshaber and Linda J. Graham, "Equity and educators enacting the Australian early years learning framework." <i>Critical Studies in Education</i> 58, no. 1 (2017): 89-103</p> <p>Manjula Waniganayake, "Being and becoming early childhood leaders: Reflections on leadership studies in early childhood education and the future leadership research agenda," <i>Journal of Early Childhood Education Research</i> 3, no. 1 (2014): 65-81; 72</p> <p><a href="#"><u>Community Early Learning Australia (CELA), <i>The Responsible Person</i></u></a></p> <p><a href="#"><u>ACECQA, <i>Responsible Person Requirements for Approved Providers from October 2017</i></u></a></p> <p>Tamara Cumming, "Early childhood educators' well-being: An updated review of the literature," <i>Early Childhood Education Journal</i> 45, no. 5 (2017): 583-593.</p>
ACA, ABI and NSW BC	<p><a href="#"><u>Submission – 15 March 2019</u></a></p> <p>Gong, Xiaodong, Robert Breunig and Anthony King. 2010. Treasury Working Papers: How responsive is female labour supply to childcare costs – new Australian estimates; and Childcare availability, quality and affordability: Are local problems related to maternal labour supply. Canberra: Department of the Treasury.</p> <p>Office of Early Childhood Education and Child Care. 2010. State of Child Care in Australia. Canberra: Department of Education, Employment and Workplace Relations.</p> <p>Australian Bureau of Statistics (ABS). 2008. <a href="#"><u>Childhood Education and Care</u></a>. (Cat. no. 4402.0) Canberra: ABS; Table 1.</p> <p>McNamara, Justine, Rebecca Cassells and Rachel Lloyd. 2005. Persistence of problems with child care: evidence from the HILDA survey. Canberra: National Centre for Social and Economic Modelling</p> <p>JWS Research. 2010. What Parents Want Survey. Logan City: Australian Childcare Alliance</p> <p><i>Childcare and Early Childhood Learning - Productivity Commission Inquiry Report</i> (31 October 2014); Overview and recommendations at iv; page 11</p> <p><a href="#"><u>ALRC Report 84 – Seen and heard: priority for children in the legal process</u></a></p>



Party/witness	Submissions
	<p data-bbox="469 271 1366 376"><a href="#">Early Childhood and Child Care in Summary June Quarter 2018; The Australian Children's Education &amp; Care Quality Authority Quarterly Report</a></p> <p data-bbox="469 416 1366 488"><a href="#">Department of Education and Training's - Early Childhood and Child Care in Summary June Quarter 2018 Report</a></p> <p data-bbox="469 528 1378 600">June Quarter 2018, <i>Early Childhood and Child Care in Summary June Quarter 2018 Report</i> at [page 10]</p> <p data-bbox="469 640 1310 712"><i>Early Childhood and Child Care in Summary June Quarter 2018 Report</i> at [page 4]</p> <p data-bbox="469 752 1350 857">News.com - Global Urban mobility Index shows Sydney and Melbourne more traffic snarled than many major cities (4 December 2018).</p> <p data-bbox="469 898 783 931">Bittman &amp; Pixley, 1997.</p> <p data-bbox="469 972 775 1005">McDonald, 1999 a &amp; b.</p> <p data-bbox="469 1046 1326 1117"><a href="#">Household, Income and Labour Dynamics in Australia (HILDA) - Statistical Report 2018.</a></p> <p data-bbox="469 1158 1378 1229">June Quarter 2018, <i>Early Childhood and Child Care in Summary June Quarter 2018 Report</i></p> <p data-bbox="469 1270 1394 1341"><a href="#">PwC Women in Work Index: Closing the gender pay gap (March 2018)</a> at page 10</p> <p data-bbox="469 1382 1366 1453"><a href="#">Department of Human Services: Child Care Subsidy - How much can you get</a></p> <p data-bbox="469 1494 1286 1527"><a href="#">Department of Jobs and Small Business - Australian Jobs 2018.</a></p> <p data-bbox="469 1568 1378 1639"><a href="#">Department of Jobs and Small Business - Newsroom: Health Care and Social Assistance jobs on the rise (10 September 2018).</a></p> <p data-bbox="469 1680 1378 1751">Sydney Morning Herald: There's a female jobs boom, and its good for the whole economy (7 March 2018)</p> <p data-bbox="469 1792 1366 1863"><a href="#">McKinsey Global Institute: The Power of Parity: How advancing women's equality can add \$12 trillion to global growth (2015)</a> at p.25</p> <p data-bbox="469 1904 1394 1975"><b>Witness Statement of Smith</b> - Additional Staffing requirements from 1 January 2020' (ACECQA) and 'Staffing arrangements' (ACECQA)</p>

Party/witness	Submissions
	<p><b>Witness Statement of Chemello</b> – ‘Educator to child ratios’ (ACECQA)</p> <p><b>Witness Statement of McPhail</b> – ‘National Quality Standard and Assessment and Rating’</p> <p><b>Witness Statement of Fraser</b> – A quarterly report from the Australian Children’s Education and Care Quality Authority February 2018</p> <p>Guide to National Quality Framework</p> <p>Qualifications for centre-based services with children preschool age or under (ACECQA)</p> <p>‘Demographic and Development Impact Analysis: Queensland Childcare Centres’ (August 2017) conducted by Urban Economics</p> <p>National Childcare Barometer 2017</p> <p>IBIS World Report</p>
<p>Australian Children’s Education and Care Quality Authority</p>	<p><a href="#">Submission – 15 March 2019</a></p> <p>OECD, Starting Strong V: Transitions from Early Childhood Education and Care to Primary Education, June 2017.</p> <p>Mitchell Institute, Quality is key in Early Childhood Education in Australia, October 2017.</p> <p>OECD, Supporting quality early childhood education and care through workforce development and working conditions, in Engaging Young Children: Lessons from Research about Quality in Early Childhood Education and Care, March 2018.</p> <p>Australian Government Department of Education and Training, 2016 Early Childhood Education and Care National Workforce Census, September 2017</p> <p>Australian Government Department of Jobs and Small Businesses, 2018 Employment Projections - for the five years to May 2023, December 2018</p> <p>Australian Children’s Education and Care Quality Authority, National Quality Agenda National Partnership Annual Performance Report, December 2018.</p> <p><a href="#">ACECQA, National Quality Standard: Information Sheet, the role of the educational leader, April 2018</a></p>

Party/witness	Submissions
	<p><a href="#">ACECQA, National Quality Standard: Information Sheet, Responsible person requirements for approved providers from 1 October 2017, 30 August 2017</a></p> <p>Australian Institute for Teaching and School Leadership, One Teaching Profession: Teacher Registration in Australia, September 2018.</p>
<i>Submissions in Reply</i>	
ACA, ABI and the NSW BC	<p>Submission in Reply – <a href="#">16 April 2019</a> and <a href="#">29 April 2019</a></p> <p><i>Report for the Fair Work Commission for the Four Yearly Review of Modern Awards AM2018/18 Children’s Services Award &amp; AM2014/266 Educational Services (Teachers) Award 2010, Annexure 3 page 10</i></p> <p>Table 1: Number of services by service sub-type and jurisdiction), ACECQA 2019 NQF Snapshot</p> <p>Standard 1.2 - National Quality Framework</p> <p>IBIS World Industry Report Q8710 ‘Child Care Services in Australia’ December 2017</p> <p><a href="#">Baxter, Jennifer, Child care and early childhood education in Australia, Australian Government Australian Institute of Family Studies accessed on 26 April 2019</a> at p 3</p> <p><b>Witness Statement of Viknarash</b> – National Childcare Accreditations Council Inc – ‘Quality Improvement and Accreditation System Quality Trends Report <i>QIAS Quality Practices Guide</i> (1<sup>st</sup> edition 2005).</p> <p>Ministers for the Department of Education and Training – ‘Review of childcare National Quality Framework performance underway’</p> <p>Certificate III in early childhood education and care; TAFE NSW</p> <p><b>Witness Statement of Tullberg</b> – Early childhood teacher centre-based services –  <a href="http://www.education.vic.gov.au/childhood/providers/regulation/pages/centre-basedservices.aspx">www.education.vic.gov.au/childhood/providers/regulation/pages/centre-basedservices.aspx</a></p> <p><b>Witness Statement of Llewellyn</b> – Information sheet on ‘role of the educational leader’ (ACECQA)</p> <p>Sample SunSmart policy for early childhood (SUNSMART)</p> <p><b>Witness Statement of Fraser</b> – as above</p> <p><b>Witness Statement of Mahony</b> – ‘Governance and Leadership’</p>

Party/witness	Submissions
	(ACECQA); Productivity Commission Inquiry Report Vol 1 ‘Childcare and Early Childhood Learning’
UV	<p data-bbox="464 383 1398 416">Submission in Reply – <a href="#">15 April 2019</a> and <a href="#">29 April 2019</a></p> <p data-bbox="464 461 1398 562"><a href="#">Australian Institute of Health and Welfare 2015, <i>Literature review of the impact of early childhood education and care on learning and development: working paper</i>. Cat no. CWS 53. Canberra, page 17</a></p> <p data-bbox="464 607 1398 674"><a href="#">Australian Bureau of Statistics, <i>Barriers and Incentives to Labour Force Participation, Australia, July 2016 to June 2017</i></a></p> <p data-bbox="464 719 1398 819">Pascoe, S &amp; Brennan, D. (2018) <a href="#">‘Review to Achieve Education Excellence in Australian Schools through Early Childhood Interventions’</a>, pages 62-63</p> <p data-bbox="464 864 1398 1010"><a href="#">OECD (2017) <i>Starting Strong 2017 – Key OECD Indicators on Early Childhood Education and Care</i>, Paris: OECD Publishing and Fox, S. &amp; Torii, K. (2017), <i>Quality is Key in Early childhood Education in Australia</i></a></p> <p data-bbox="464 1043 1398 1223">Goodfellow, J. (2007) ‘<i>Childcare provision: Whose responsibility? Who pays?</i>’ <i>Kids Count: Better early childhood education and care in Australia</i>, p. 248 and Productivity Commission (2014) <i>Childcare and Early Childhood Learning and Inquiry Report</i>, Volume 2, p.310.</p> <p data-bbox="464 1267 1398 1335"><a href="#">Social Research Centre, <i>2016 Early Childhood Education and Care National Workforce Census</i>, September 2017, page 16</a></p> <p data-bbox="464 1379 1398 1413"><a href="#">PWC, <i>Understanding the unpaid economy</i>, March 2017, page 2</a></p> <p data-bbox="464 1458 1398 1525"><a href="#">Social Research Centre, <i>2016 Early Childhood Education and Care National Workforce Census</i>, September 2017, page vii</a></p> <p data-bbox="464 1570 1398 1637"><a href="#">Productivity Commission (2014) <i>Childcare and Early Childhood Learning</i>, No. 73, 31 October 2014, pages 327-330; 324-30; 309</a></p> <p data-bbox="464 1682 1398 1749"><a href="#">NSW Government / Centre for Education Statistics &amp; Evaluation (2016) <i>Key Findings From The NSW Long Day Care Survey, 2015</i></a></p> <p data-bbox="464 1794 1398 1895"><a href="#">Irvine, S., J. Sumsion, J. Lunn and K. Thorpe (2016) ‘One in five early childhood educators plan to leave the profession’, <i>The Conversation</i>, 23 June 2016.</a></p> <p data-bbox="464 1939 1398 2029">Cassidy, D. J., Lower, J. K., Kintner-Duffy, V. L., Hegde, A. V., &amp; Shim, J. (2011) ‘The day-to-day reality of teacher turnover in preschool classrooms: An analysis of classroom context and teacher, director, and</p>

Party/witness	Submissions
	<p>parent perspectives’, <i>Journal of Research in Childhood Education</i>, 25(1), 1-23</p> <p>Whitebook, M., &amp; Sakai, L. (2003) ‘Turnover begets turnover: An examination of job and occupational instability among child care center staff’, <i>Early Childhood Research Quarterly</i>, 18, 273-293</p> <p>Whitebook, M., &amp; L. Sakai (2004) <i>By a thread: How centers hold on to teachers, how teachers build lasting careers</i>. Kalamazoo, MI: UPJohn Institute for Employment Research</p> <p>Whitebook, M., D. Phillips and C. Howes (2014), <i>Worthy Work, STILL Unliveable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study</i>. Centre for the Study of Child Care Employment, University of California, Berkeley, p. 6</p> <p>Hale-Jinks, C., Knopf, H., &amp; Kemple, K. (2006) ‘Tackling teacher turnover in child care: Understanding causes and consequences, identifying solutions’, <i>Childhood Education</i>, 82(4), pp. 219-26</p> <p>Jovanovic, J. (2013) ‘Retaining Early Childcare Educators’, <i>Gender, Work &amp; Organization</i>, 20(5), pp. 528-44</p> <p>Fenech, M., Sumsion, J., Robertson, G., &amp; J. Goodfellow (2008) ‘The regulatory environment: a source of job (dis)satisfaction for early childhood professionals?’, <i>Early Child Development and Care</i>, 178(1), pp. 1–14</p> <p>Pascoe, S &amp; Brennan, D. (2017) ‘Review to Achieve Education Excellence in Australian Schools through Early Childhood Interventions’, Confidential Draft Report (pages 35-40).</p> <p><a href="#"><u>ACECQA, Guide to the National Quality Framework, October 2018</u></a> pages 93</p> <p><a href="#"><u>OCED, Who uses childcare? Background brief on inequalities in the use of formal early childhood education and care (ECEC) among very young children, June 2016</u></a>, page 6</p> <p>Social Research Centre, 2016 <i>Early Childhood Education and Care National Workforce Census</i>, page viii</p> <p><a href="#"><u>Australian Institute of Family Studies, Facts and Figures: Work and Family</u></a></p> <p><a href="#"><u>Irvine, S., J. Sumsion, J. Lunn and K. Thorpe (2016) ‘One in five early childhood educators plan to leave the profession’, <i>The Conversation</i>, 23 June 2016</u></a></p>

Party/witness	Submissions
	<p><a href="#">ACECQA, The Educational Leader Resource, March 2019</a>, pages 8; 22</p>
IEU	<p>Submission in Reply – <a href="#">15 April 2019</a> and <a href="#">29 April 2019</a></p> <p><b>Statement of James</b> – ACECQA National Register at <a href="https://www.acecqa.gov.au/resources/national-registers">https://www.acecqa.gov.au/resources/national-registers</a></p> <p>ACECQA - <a href="http://snapshots.acecqa.gov.au/Snapshot/overallratings.html">http://snapshots.acecqa.gov.au/Snapshot/overallratings.html</a></p> <p>Australian Institute for Teaching and School Leadership (AITSL) – ‘Australian Professional Standards for Teachers, February 2011’</p> <p><i>‘The Effective Provision Of Pre-School Education (EPPE) Project: Findings From The Pre-School Period’</i>, Kathy Sylva+, Edward Melhuish#, Pam Sammons*, Iram Siraj-Blatchford*, Brenda Taggart* and Karen Elliot*; *Institute of Education, University of London, +University of Oxford, #Birkbeck, University of London</p> <p>Early Childhood Australia – ‘Seven tips on flexible hours you may not know’ – <a href="http://www.earlychildhoodaustralia.org.au/our-work/flexibility-early...zine-june-2014/extended-hours-ecec/extended-hours-families-children">www.earlychildhoodaustralia.org.au/our-work/flexibility-early...zine-june-2014/extended-hours-ecec/extended-hours-families-children</a></p> <p>Australian Government – Australian Institute of Family Studies; ‘Flexible child care – key findings from the AIFS Evaluation of the Child Care flexibility Trials’, Jennifer Baxter and Kelly Hand</p> <p>Goodstart early learning – Flexible Options - <a href="https://www.goodstart.org.au/sessions">https://www.goodstart.org.au/sessions</a></p> <p>Australian Government – Department of Education and Training – ‘New child care package – frequently asked questions’ – <a href="http://www.education.gov.au/new-child-care-package-frequently-asked-questions">www.education.gov.au/new-child-care-package-frequently-asked-questions</a></p>
AFEI	<p>Submission in Reply – <a href="#">17 April 2019</a></p>
I and E Arrabalde	<p>Submission in Reply – <a href="#">29 April 2019</a></p> <p>The Hon Julia Gillard MP, Joint media release with The Hon Maxine McKew MP, Parliamentary Secretary for Early Childhood Education and Child Care. <i>Experts to develop the Early Years Learning Framework, Thursday 2 October 2008.</i> <a href="https://ministers.jobs.gov.au/gillard/experts-develop-early-years-learning-framework">https://ministers.jobs.gov.au/gillard/experts-develop-early-years-learning-framework</a></p>

Party/witness	Submissions
	<p data-bbox="469 271 1407 412">Australian Government Department of Education Employment and Workplace Relations (DEEWR). (2009). <i>Belonging, being &amp; becoming: The Early Years Learning Framework for Australia</i>. Canberra: Commonwealth of Australia.</p> <p data-bbox="469 454 1407 633">Sumsion, Jennifer, Sally Barnes, Sandra Cheeseman, Linda Harrison, Anne Kennedy, and Anne Stonehouse. “Insider Perspectives on Developing Belonging, Being &amp; Becoming: The Early Years Learning Framework for Australia.” <i>Australasian Journal of Early Childhood</i> 34, no. 4 (December 2009): 4–13.</p> <p data-bbox="469 676 1407 817">Millei, Zsuzsa, and Jennifer Sumsion. “The ‘Work’ of Community in Belonging, Being and Becoming: The Early Years Learning Framework for Australia.” <i>Contemporary Issues in Early Childhood</i> 12, no. 1 (March 2011): 71–85.</p> <p data-bbox="469 860 1407 965">Siraj-Blatchford, Iram, and Laura Manni. 2007. <i>Effective leadership in the early years sector: The ELEYS study</i>. London, UK: Institute of Education, University of London</p> <p data-bbox="469 1008 1407 1077"><u><a href="#">Charles Sturt University (CSU) Early Years Learning Framework Consortium. 2009. Document 1: Pedagogical Leadership.</a></u></p> <p data-bbox="469 1120 1407 1189"><u><a href="#">Australian Children’s Education and Care Quality Authority (ACECQA)(a). 2019. The Educational Leader Resource, page 145</a></u></p> <p data-bbox="469 1232 1407 1373">Waniganayake, Manjula, Sandra Cheeseman, Marianne Fenech, Fay Hadley, Wendy Shepherd. 2017. <i>Leadership: contexts and complexities in early childhood education</i>. South Melbourne: Oxford University Press. p. 101; 106; 107</p> <p data-bbox="469 1415 1150 1444"><u><a href="#">Educational Leaders Association, Education: Policy.</a></u></p> <p data-bbox="469 1487 1407 1628"><u><a href="#">Australian Children’s Education and Care Quality Authority (ACECQA)(b). 2017. Leadership and management in education and care services: An analysis of Quality Area 7 of the National Quality Standard, Occasional Paper 5 August 2017</a></u></p> <p data-bbox="469 1671 1407 1740"><u><a href="#">Australian Childcare Alliance (ACA). 2018. ACA Submission to Red Tape Committee 2018, p.11</a></u></p> <p data-bbox="469 1783 1407 1852"><u><a href="#">Australian Bureau of Statistics, 2018, 4402.0 - Childhood Education and Care, Australia, June 2017</a></u></p> <p data-bbox="469 1895 1407 1964"><u><a href="#">Australian Children’s Education and Care Quality Authority (ACECQA). 2019. The Educational Leader Resource</a></u></p>

Party/witness	Submissions
<i>Findings sought</i>	
ACA, ABI and NSWBC	<a href="#">Submission – findings sought dated 29 May 2019</a>
UV	<a href="#">Submission – findings sought dated 29 May 2019</a>
IEU	<a href="#">Submission – findings sought dated 29 May 2019</a>
I and E Arrabalde	<p><a href="#">Submission – findings sought dated 29 May 2019</a></p> <p>NSW/ACT Inclusion Agency. About Inclusion.  <a href="https://www.inclusionagencynswact.org.au/what-is-inclusion">https://www.inclusionagencynswact.org.au/what-is-inclusion</a></p> <p><a href="https://www.reconciliation.org.au/reconciliation-action-plans">https://www.reconciliation.org.au/reconciliation-action-plans</a> - a strategic plan designed and implemented by an organisation that recognises the capabilities, contributions, capacity and cultures of Aboriginal and Torres Strait Islander people and is designed to further the reconciliation movement.</p> <p>The Australian Professional Standards for Teachers – <a href="https://www.aitsl.edu.au/teach/standards">https://www.aitsl.edu.au/teach/standards</a></p> <p>Fleet, Alma, Rod Soper, Anthony Semann and Lorraine Madden, ‘The role of the educational leader: Perceptions and expectations in a period of change’, <i>Australasian Journal of Early Childhood</i> 40, no. 3 (2015): 29.</p> <p>Electronic payroll system - <a href="https://www.ato.gov.au/Business/Single-Touch-Payroll">https://www.ato.gov.au/Business/Single-Touch-Payroll</a></p> <p>ACECQA (n.d.) Regulatory Authority Powers: Monitoring, compliance and enforcement, Offences, Good regulatory practice.  <a href="https://www.acecqa.gov.au/sites/default/files/2018-10/Guide-to-the-NQF-5-RAP_0.pdf">https://www.acecqa.gov.au/sites/default/files/2018-10/Guide-to-the-NQF-5-RAP_0.pdf</a></p>
AFEI	<p><a href="#">Reply Submission – findings sought dated 2 June 2019</a></p> <p>Guide to the NQF – Operational Requirements  Guide to the National Quality Framework</p>

<sup>1</sup> ACA, ABI and NSWBC, submission on findings sought, 29 May 2019

<sup>2</sup> United Voice, submission on findings sought, 29 May 2019

<sup>3</sup> IEU submission, submission on findings sought, 29 May 2019



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- <sup>4</sup> AFEI, submission on findings sought, 2 June 2019
- <sup>5</sup> I and E Arrabalde, submission on findings sought, 29 May 2019
- <sup>6</sup> Annexure ‘KM-2’ to the Mahony Statement (Exhibit 38), page 129
- <sup>7</sup> Maclean Statement (Exhibit 25) at [55], Llewellyn Statement (Exhibit 39) at [53]-[54]
- <sup>8</sup> Llewellyn Statement (Exhibit 39) at [45]-[55]; Viknarash Statement (Exhibit 13) at [62]-[63]; Fraser Statement (Exhibit 18) at [37]; Paton Statement (Exhibit 21) at [46]
- <sup>9</sup> Viknarash Statement (Exhibit 13) at [110]; Annexure ‘KM-2’ to the Mahony Statement (Exhibit 38), page 223
- <sup>10</sup> Annexure ‘KM-2’ to the Mahony Statement (Exhibit 38), page 223
- <sup>11</sup> [2018] FWCFB 1692 (Family Friendly Decision); Annexure ‘KM-2’ to the Mahony Statement (Exhibit 38), page 223
- <sup>12</sup> TN at [1474]
- <sup>13</sup> TN at [1475]
- <sup>14</sup> By way of contrast, the regulatory authority, ACECQA, suggests that the NQF consists of: the National Law and National Regulations; the National Quality Standard (which is a schedule to the National Regulations); the assessment and quality rating process (which is outlined in Part 5 of the National Law); and the national learning frameworks - see p 9 of Exhibit 1
- <sup>15</sup> IEU submissions in reply 26 May 2019 at paras 10-16
- <sup>16</sup> TN at [1097]-[1099] [Viknarasah]; TN at [1595]-[1603] [Fraser]; TN at [2203]-[2209] [Paton]; TN at [2492]-[2495] [Maclean]; TN at [2676]-[2680] [Chemello]; TN at [2926]-[2927] [McPhail]; TN at [3912]-[3916] [Mahony]; TN at [4163]-[4166] [Llewellyn]; TN at [4618]-[4621] [Hands]
- <sup>17</sup> TN at [1006]-[1009] [Viknarasah]; TN at [4587] [Hands]. See also the ACECQA submission of 15 March 2019, p.1.
- <sup>18</sup> TN at [2671]-[2672] [Chemello]; TN at [4602]-[4603] [Hands]
- <sup>19</sup> TN at [2673] [Chemello]; TN at [4601] [Hands]
- <sup>20</sup> TN at [2674]-[2676] [Chemello]; TN at [4588] [Hands]
- <sup>21</sup> TN at [2463] [Maclean]; TN at [2943] [McPhail]; TN at [4686] [Hands]; TN at [4691] [Hands]
- <sup>22</sup> TN at [1107]-[1109] [Viknarasah]; TN at [2107]-[2108] [Paton]; TN at [4151]-[4152] [Llewellyn]; TN at [4687] [Hands]; TN at [4691] [Hands]
- <sup>23</sup> TN at [1661]-[1662], [2014] [Fraser]; TN at [2939]-[2940] [McPhail]; TN at [2943] [MCPHAIL]; TN at [3919]-[3921] [MAHONY]; TN at [4146]-[4150] [Llewellyn]; TN at [3552]-[3533] [Tullberg]
- <sup>24</sup> TN at [2109]-[2113] [PATON]
- <sup>25</sup> TN at [2681] [Chemello]; TN at [2685] [Chemello]
- <sup>26</sup> TN at [2683]-[2684] [Chemello]
- <sup>27</sup> Transcript at [1191] (Viknarasah); [1892]-[1899] (Fraser); [2533]-[2536] (Maclean); [2763] (Chemello); [4001]-[4002] (Mahoney); Exhibit 21 at [79] (Paton); Exhibit 28 at [30] (McPhail) and Exhibit 35 at [87] (Tullberg)
- <sup>28</sup> ACA, ABI and MSWBC submission as to findings to be made by the Full Bench, 29 May 2019 at 4.1 – 4.12
- <sup>29</sup> Maclean Statement (Exhibit 25) at [56] – [57]; Mahony Statement (Exhibit 38) at [38]; Fraser Statement (Exhibit 18) at [99] - [104]
- <sup>30</sup> Paton Statement (Exhibit 21) at [46]
- <sup>31</sup> Maclean Statement (Exhibit 25) at [41] – [42]; Paton Statement (Exhibit 21) at [43]-[44]
- <sup>32</sup> Maclean Statement (Exhibit 25) at [53]; Paton Statement (Exhibit 21) at [43]
- <sup>33</sup> Maclean Statement (Exhibit 25) at [53]
- <sup>34</sup> TN at [884]
- <sup>35</sup> This is evident from spans of hours in other modern awards
- <sup>36</sup> Maclean Statement (Exhibit 25) at [40]-[42]; Fraser Statement (Exhibit 18) at [55]; Paton Statement (Exhibit 21) at [29]; Mahony Statement (Exhibit 38) at [40]; Hands Statement (Exhibit 43) at [43]
- <sup>37</sup> Maclean Statement (Exhibit 25) at [40]; Fraser Statement (Exhibit 18) at [53] - [54]; Paton Statement (Exhibit 21) at [35]; Hands Statement (Exhibit 43) at [33]-[35]
- <sup>38</sup> Fraser Statement (Exhibit 18) at [48]; Paton Statement (Exhibit 21) at [30]
- <sup>39</sup> TN at [3942]

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- <sup>40</sup> TN at [3942]
- <sup>41</sup> TN at [2186]
- <sup>42</sup> Fraser Statement (Exhibit 18) at [51]; Mahony Statement (Exhibit 38) at [47]; Paton Statement (Exhibit 21) at [43]-[44]; Hands Statement (Exhibit 43) at [34] - [35]
- <sup>43</sup> TN at [2490]
- <sup>44</sup> United Voice submission – Factual Findings, 29 May 2019 at para 136
- <sup>45</sup> Statement of Lisa James in Reply (15/4/2019) at [12]-[14], [16]-[18], [33]; Transcript (6/5/19), P1088 - P1089, P1379 [KARTHIKA VIKNARASAH ]; Transcript (7/5/19), P2237 - P2238 [KATY LOUISE PATON]; Transcript (7/5/19), P2489 - P2491 [PAMELA AVRIL MACLEAN]; Transcript (7/5/19), P2696 - P2698 [ANN MARIE CHEMELLO]; Transcript (8/5/19), P3582 - P3583 [ SARAH ELIZABETH TULLBERG] Transcript (8/5/19), P3954 – p397 [ KERRY JOSEPH MAHONY]
- <sup>46</sup> Exhibit 36
- <sup>47</sup> Clause 4.1 and 23.3 of the Children’s Services Award 2010; Clause 14.1 and B.4.1 of the Educational Services (Teachers) Award 2010
- <sup>48</sup> Transcript (9/5/19), P4170 - P4207 [NICOLE LOUISE LLEWELLYN]
- <sup>30</sup> Transcript (6/5/19), P875 [ALICIA ANNE WADE]; Transcript (6/5/19), P1090 - P1092 [KARTHIKA VIKNARASAH]
- <sup>49</sup> Transcript (6/5/19), P875 [ALICIA ANNE WADE]; Transcript (6/5/19), P1090 - P1092 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1709 [JAE DEAN FRASER]; Transcript (7/5/19), P2181 - P2183, P2196 - 2197 [KATY LOUISE PATON]; Transcript (7/5/19), P2919 - P2920 [ KRISTEN CAROL MCPHAIL]; Transcript (8/5/19), P3594 [ SARAH ELIZABETH TULLBERG]; Transcript (8/5/19), P3958 - P3960 [ KERRY JOSEPH MAHONY]
- <sup>50</sup> Transcript (7/5/19), P1710 [JAE DEAN FRASER]; Transcript (9/5/19), P4633 - P4634 [ALEXANDRA HANDS]
- <sup>51</sup> Transcript (7/5/19), P2184 - P2185 [KATY LOUISE PATON]; Transcript (7/5/19), P2498 [PAMELA AVRIL MACLEAN]; Transcript (7/5/19), P2693 [ANN MARIE CHEMELLO]; Transcript (8/5/19), P3595 [ SARAH ELIZABETH TULLBERG]; Transcript (8/5/19), P3961 [ KERRY JOSEPH MAHONY]; Transcript (9/5/19), P4208 - P4010 [NICOLE LOUISE LLEWELLYN]; Transcript (9/5/19), P4630 - P4631 [ALEXANDRA HANDS]
- <sup>52</sup> Statement of Lisa James in Reply (15/4/2019) at [25]; Transcript (7/5/19), P2189 - P2192 [KATY LOUISE PATON]; Transcript (9/5/19), P4211 - P4213 [NICOLE LOUISE LLEWELLYN]; Transcript (7/5/2019) PN1796 [JAE DEAN FRASER]
- <sup>53</sup> Statement of Lisa James in Reply (15/4/2019) at [23], [30]; Transcript (7/5/19), P1704 - P1707 [JAE DEAN FRASER]; Transcript (8/5/19), P3610 [ SARAH ELIZABETH TULLBERG]; Transcript (9/5/19), P4130 - P4133 [NICOLE LOUISE LLEWELLYN] Transcript (9/5/19), P4564 - P4565, p4648-P4655 [ALEXANDRA HANDS]
- <sup>54</sup> Transcript (7/5/19), P1713 - P1715 [JAE DEAN FRASER]; Transcript (9/5/19), P4159 [NICOLE LOUISE LLEWELLYN]; Statement in Reply of Lisa James, LJ-7
- <sup>55</sup> Statement of Lisa James in Reply (15/4/2019) at [21], [28], [37]; Transcript (6/5/19), P1093- P1094, P1099 - P1103 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P2213 - P2216 [KATY LOUISE PATON]; Transcript (7/5/19), P2496 [PAMELA AVRIL MACLEAN]; Transcript (9/5/19), P4160 - P4162 [NICOLE LOUISE LLEWELLYN]
- <sup>56</sup> IEU Submission 26 May 2019, see footnotes 6 - 9
- <sup>57</sup> ACA, ABI and NSWBC submission as to Findings to be made by the Full Bench, 29 May 2019 at paras 5.1 – 5.5
- <sup>58</sup> Ms Wade at [918] and [920]; Ms Chemello at [2710]; Ms Payton at [2293]; and Statement of Mr Mahoney, (Exhibit 38) at [46]-[68]
- <sup>59</sup> Critically, Mr Fraser’s evidence between TN1809-TN1823 relates to a scenario put to him by the IEU where an employer simply decides, presumably for costs reasons, to reduce staff - this is not what the Rostering Claim contemplates - the Rostering Claim involves two elements: (1) another employee has provided less than seven days’ notice of his/her inability to perform a rostered shift; and (2) in order to comply with its statutory obligations in respect of maintaining staff to child ratios, the employer is required to change an employee’s rostered hours so as to replace the absent employee
- <sup>60</sup> TN at [2305]
- <sup>61</sup> Ibid at para 126
- <sup>62</sup> Children’s Services Award, clause 21.7(b)(i) and the Teachers’ Award, for part-time employees, clause 10.4(d)(i)
- <sup>63</sup> Oral evidence of Maclean TN at [2482]-[2486]; Chemello, TN at [2720]-[2727]; McPhail, TN at [2974]-[2986]; Tullberg, TN at [3563]-[3565]; Mahony, TN at [3962]-[3964]; Llewellyn TN at [4224]-[4229].

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- <sup>64</sup> Ms Chemello at [2710]; Mr Fraser at [1778] and [1776]; and Ms Hands at [4680] and [4692].
- <sup>65</sup> IEU submissions in reply 26 May 2019 at paras 27-34
- <sup>66</sup> TN at [2880]-[2882] [Paton]
- <sup>67</sup> TN at [1113]-[1115], [1172]-[1176] [Viknarasah]; TN at [2482]-[2486] [Maclean]; TN at [2708]-[2709] [Chemello]; TN at [2980]-[2986] [McPhail]; TN at [3557]-[3558]; [3568]-[3569] [Tullberg]; TN at [3973]-[3974] [Mahony]; TN at [4217]-[4219], [4228]-[4229] [Llewellyn]
- <sup>68</sup> United Voice submission – Factual Findings, 29 May 2019 at para 49
- <sup>69</sup> See, for example, Maclean TN at [2588] to [2593]: Ms Maclean’s preferred practise was for a director to be the responsible person and all the directors she engaged were paid above award wages. McPhail notes in her statement that her centre director is the responsible person and because of the ‘valued roles’ she performs is ‘on a salary and bonus structure significantly above her applicable award’ at Exhibit 28 at [85].
- <sup>70</sup> Exhibit 3 at page 1.
- <sup>71</sup> Viknarasah TN at [1223]-[1232]; Brannelly TN at [3450]; Tullberg TN at [3709]-[3714]
- <sup>72</sup> s162 (1) (a).
- <sup>73</sup> Section 162(1) of the National Law is the source of the obligation to have a responsible person on the premises of a centre when it is operating. The section notes that an approved provider (if an individual), nominated supervisor or a person in day to day charge of the service ‘must be present at all time’. The role can only be performed by a natural person.
- <sup>74</sup> As above, the criteria are that the person is over 18, has adequate knowledge and understanding of the provision of education and care to children and an ability to effectively supervise and manage an educational care service. There are no educational standards or a level of experience associated with being a responsible person.
- <sup>75</sup> Regulation 150 of the National Law.
- <sup>76</sup> See note 27
- <sup>77</sup> Mr Mahoney’s costing includes 20% for on cost.
- <sup>78</sup> Fraser TN at [2612]; MacLean TN at [2592]-[2600]; Tullberg TN at [2634]-[3638]; see also McPhail TN at [3096]-[3097].
- <sup>79</sup> Isabelle and Elizabeth Arrabalde submission 29 May 2019 at para 5
- <sup>80</sup> TN at [4823]
- <sup>81</sup> TN at [794], [2617], [3107], [3454], [4298], Maclean statement (Exhibit 25) at 103
- <sup>82</sup> TN at [925], [1525]-[1526], [2617], [2807], [3359], [3708], [4296]
- <sup>83</sup> TN at [632], [1540], [2752]
- <sup>84</sup> TN at [820], [928], [1540], [2617], [3696], [3701], [4501]
- <sup>85</sup> TN at [791], [803], [3107], [3696], Viknarasah statement (Exhibit 13) at 115
- <sup>86</sup> TN at [804]
- <sup>87</sup> TN at [3743]
- <sup>88</sup> TN at [812], [3361], [4295], [4368], [4368], [4488]
- <sup>89</sup> TN at [632]
- <sup>90</sup> TN at [4814]
- <sup>91</sup> TN at [4287]-[4288]
- <sup>92</sup> TN at [1540]
- <sup>93</sup> TN at [1872], [2804], [3032], [3697], [4818], [4820]
- <sup>94</sup> See for example, TN at [2844], [4363], [4373]
- <sup>95</sup> TN at [1909], Maclean statement (Exhibit 25) at 103
- <sup>96</sup> TN at [797], [1527], [3800]-[3801]
- <sup>97</sup> TN at [797], [1527], [3800]-[3801]
- <sup>98</sup> TN at [3105]
- <sup>99</sup> TN at [2615], [3106]
- <sup>100</sup> TN at [800], [3099], [3102], [3238], [3660], [3671], [3688], [3706]
- <sup>101</sup> TN at [633]
- <sup>102</sup> TN at [3660]
- <sup>103</sup> TN at [1191], [1893], [2534]-[2535], [2770]

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- <sup>104</sup> TN at [1197]-[1200], [1894], [2770]
- <sup>105</sup> TN at [1870]
- <sup>106</sup> TN at [1920]-[1922], [2613], [3659]-[3661]
- <sup>107</sup> TN at [1872], [4817]
- <sup>108</sup> TN at [1876]
- <sup>109</sup> TN at [1834]-[1835], [3627], [3629]
- <sup>110</sup> For more information see, <https://www.ato.gov.au/Business/Single-Touch-Payroll/>
- <sup>111</sup> ACA, ABI and NSWBC submission as to Findings to be made by the Full Bench, 29 May 2019 at paras 7.1 – 7.6
- <sup>112</sup> TN at [3690]
- <sup>113</sup> TN at [724]
- <sup>114</sup> TN at [725]
- <sup>115</sup> TN at [1523]-[1524]
- <sup>116</sup> TN at [2810]
- <sup>117</sup> TN at [1218]
- <sup>118</sup> TN at [3670]
- <sup>119</sup> TN at [3671]
- <sup>120</sup> TN at [3673]
- <sup>121</sup> AFEI submission dated 2 June 2019 at paras 4 - 10
- <sup>122</sup> United Voice submission – Factual Findings, 29 May 2019 at para 73
- <sup>123</sup> Isabelle and Elizabeth Arrabalde submission 29 May 2019 at para 4
- <sup>124</sup> TN at [216], [667], [680], [1273], [1478], [1535], [2792], [3480], [3517], [4029], [4379]
- <sup>125</sup> TN at [1262]
- <sup>126</sup> TN at [667], [680], Maclean statement (Exhibit 25) at 113
- <sup>127</sup> TN at [318], [516], [680], [1324], [1492], [2340], [3517], [4379], Maclean statement (Exhibit 25) at 113
- <sup>128</sup> TN at [1952], [3517], Maclean statement (Exhibit 25) at 113
- <sup>129</sup> TN at [680], [1492]
- <sup>130</sup> TN at [305]
- <sup>131</sup> TN at [516], [862], [2792]
- <sup>132</sup> TN at [352], [1487], [4379]
- <sup>133</sup> TN at [352], [4379]
- <sup>134</sup> TN at [1338], [1492]
- <sup>135</sup> TN at [328]-[329], [1344], [1495]-[1498], [1516]
- <sup>136</sup> TN at [516], [667], [680], [3517]
- <sup>137</sup> TN at [2340]
- <sup>138</sup> TN at [297]
- <sup>139</sup> TN at [299], [2340]
- <sup>140</sup> NSW/ACT Inclusion Agency. About Inclusion. <https://www.inclusionagencynswact.org.au/what-is-inclusion>
- <sup>141</sup> TN at [302]
- <sup>142</sup> For more information see, <https://www.reconciliation.org.au/reconciliation-action-plans/>
- <sup>143</sup> TN at [1492]
- <sup>144</sup> PN 680
- <sup>145</sup> PN 1517 and 2341
- <sup>146</sup> TN at [4303]
- <sup>147</sup> TN at [1951], [4527]
- <sup>148</sup> Fleet, Alma, Rod Soper, Anthony Semann and Lorraine Madden, "The role of the educational leader: Perceptions and expectations in a period of change," *Australasian Journal of Early Childhood* 40, no. 3 (2015): 29.
- <sup>149</sup> TN at [235], [1470], [3468], [1933]-[1937], [1953]-[1956], [4020]-[4022], [4305]

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- <sup>150</sup> ACA, ABI and NSWBC submission as to Findings to be made by the Full Bench, 29 May 2019 at paras 6.1 – 6.7
- <sup>151</sup> Dr Fenech at [531]-[535]
- <sup>152</sup> TN at [1488]-[1490]
- <sup>153</sup> TN at [1336]
- <sup>154</sup> TN at [264]-[275]
- <sup>155</sup> TN at [1485]
- <sup>156</sup> TN at [1493]
- <sup>157</sup> TN at [4022]
- <sup>158</sup> TN at [4099]
- <sup>159</sup> TN at [1327]
- <sup>160</sup> TN at [513]
- <sup>161</sup> AFEI submission dated 2 June 2019 at para 11 - 15
- <sup>162</sup> United Voice submission – Factual Findings, 29 May 2019 at para 83
- <sup>163</sup> ACA, ABI and NSWBC submission as to Findings to be made by the Full Bench, 29 May 2019 at paras 8.1 – 8.2
- <sup>164</sup> Fraser Statement (Exhibit 18) at [130]; Mahony Statement (Exhibit 38) at [110]; Llewellyn Statement (Exhibit 39) at [103]
- <sup>165</sup> AFEI submission dated 2 June 2019 at paras 16-18
- <sup>166</sup> United Voice submission – Factual Findings, 29 May 2019 at para 94 and 101
- <sup>167</sup> ACA, ABI and NSWBC submission as to Findings to be made by the Full Bench, 29 May 2019 at paras 9.1 – 9.4
- <sup>168</sup> Mahony Statement (Exhibit 38) at [101]; Tullberg Statement (Exhibit 35) at [106]; McPhail Statement (Exhibit 28) at [101]-[103]
- <sup>169</sup> Mahony Statement (Exhibit 38) at [102]; Tullberg Statement (Exhibit 35) at [108]; McPhail Statement (Exhibit 28) at [103]
- <sup>170</sup> AFEI submission dated 2 June 2019 at para 19
- <sup>171</sup> United Voice submission – Factual Findings, 29 May 2019 at paras 103 – 105 and 109
- <sup>172</sup> TN at [4804] and [4805]
- <sup>173</sup> McPhail Statement (Exhibit 28) at [106]; Llewellyn Statement (Exhibit 39) at [100]
- <sup>174</sup> Mahony Statement (Exhibit 38) at [105]
- <sup>175</sup> TN at [4320]
- <sup>176</sup> AFEI submission dated 2 June 2019 at para 20
- <sup>177</sup> United Voice submission – Factual Findings, 29 May 2019 at paras 112-113
- <sup>178</sup> See Mr Mahony at TN at [4027], Ms Llewellyn at TN4027, Ms Hennessy at TN at [331]-[332]
- <sup>179</sup> AFEI submission dated 2 June 2019 at para 21
- <sup>180</sup> ACA, ABI and NSWBC submission as to Findings to be made by the Full Bench, 29 May 2019 at para 12.1
- <sup>181</sup> ACA, ABI and NSWBC submission as to Findings to be made by the Full Bench, 29 May 2019 at paras 14.1– 14.4
- <sup>182</sup> Fraser Statement (Exhibit 18) at [147]
- <sup>183</sup> Viknarasah Statement (Exhibit 13) at [156]
- <sup>184</sup> IEU submissions in reply 26 May 2019 at paras 8-9
- <sup>185</sup> ACA, ABI and NSWBC submission as to Findings to be made by the Full Bench, 29 May 2019 at para 15.2
- <sup>186</sup> Viknarasah Statement (Exhibit 13) at [161]; Mcphail Statement (Exhibit 28) at [118]; Llewellyn Statement (Exhibit 39) at [107]; Tullberg Statement (Exhibit 35) at [113]; Mahoney Statement (Exhibit 38) at [121]
- <sup>187</sup> Viknarasah Statement (Exhibit 13) at [162]; Tullberg Statement (Exhibit 35) at [114]