

**IN THE FAIR WORK COMMISSION**

**APPLICATION BY THE INDEPENDENT EDUCATION UNION OF  
AUSTRALIA (AM2018/9)**

**FURTHER SUBMISSIONS IN REPLY FILED BY  
CATHOLIC EMPLOYMENT RELATIONS LIMITED**

**13 AUGUST 2021**

## Introduction

1. The Full Bench of the Fair Work Commission issued a decision on 19 April 2021 with respect to the IEU's application for an Equal Remuneration Order and Work Value Decision
2. The Full Bench issued directions on 7 June 2021, with subsequent amendment on 9 July 2021, that interested parties filed proposed award variations to give effect to the Decision along with any evidence and submissions concerning the matters identified in paragraph [665] of the Decision. Submissions in reply were to be filed by 30 July 2021, and further submissions in reply by 13 August 2021.
3. Catholic Employment Relations Ltd (**CER**) provided submissions with respect to the matter on 14 July 2021 and on 30 July 2021. On 30 July 2021 submissions in reply were also provided by, or on behalf of:
  - a. The Independent Education Union of Australia (IEU)
  - b. Australian Childcare Alliance (ACA) and Australian Business Industrial (ABI)
  - c. Australian Education Union (AEU)
  - d. I and E Arrabalde (Arrabalde)
  - e. Community Connections Solutions Australia (CCSA)
  - f. Australian Federation of Employers and Industries (AFEI).
4. CER provides further submissions in reply to a number of matters raised in those submission referred to above.

## Operative Date and Phasing-in

1. CER notes the IEU's statement that CER has "provided no rationale for its preference for a 1 July 2022 operative date"<sup>1</sup>. 1 July 2022 is the default date for a determination varying the minimum wages under section 166(1) of the *Fair Work Act 2009* (Cth) (**Act**). Both the IEU<sup>2</sup> and ACA submissions in reply<sup>3</sup> seek to address section 166(2) in seeking an operative date of 1 January 2022, the IEU by reference to its initial submissions and ACA by reference to the agreement reached between ACA and the IEU, the limited number of employees the Decision impacts and the level of awareness in the industry of the decision.
2. CER notes the submission of AFEI, with either an operative date of 1 July 2022, or phasing in of new wage rates over two equal instalments, on 1 January 2022 and 1 January 2023. CER agrees that the increases to the minimum rates under the varied EST Award are significant wage increases and would support the proposal put forward by AFEI.<sup>4</sup>

## HALT Accreditation

3. CER notes the AEU's proposed clause 14.9(c)<sup>5</sup> and previously submitted alternate (to the IEU and ACA consent draft) clause 14.9(a) and (b)<sup>6</sup>.

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<sup>1</sup> IEU Submission in Reply dated 30 July 2021 at [15]

<sup>2</sup> Ibid at [16]

<sup>3</sup> At [35]-[37]

<sup>4</sup> AFEI Submission in Reply dated 30 July 2021 at [14]

<sup>5</sup> AEU Submission in Reply dated 30 July 2021 at [12]

<sup>6</sup> AEU Submission dated 14 July 2021 – Draft Award

4. CER supports the adoption of the AEU's variations/additions with respect to clause 14.9(a) to (c) as it ensures that all teachers are able to obtain and maintain Level 5 classification consistently regardless of the State or Territory where they are employed. Arguably the AEU proposal also supports the modern award objectives at section 134 of the Act, particular sub-section (1)(e) ensuring equal remuneration for work of equal or comparable value.
5. In CER's view the AEU proposal would also address concerns raised by CER in its Submissions in Reply, that the clause 14.9 proposed by the IEU and ACA would not address the circumstances where a teacher transferred from a outside a jurisdiction that provides for accreditation as a HALT into one that does. In those circumstances, under the AEU proposed draft, such a teacher would need to be accredited in accordance with the requirements of the relevant accreditation or authority to maintain their classification at Level 5 after five years of a prior assessment.

### Satisfactory service

6. CER notes the IEU position that there should be an 'objective method' of determining whether service was satisfactory and that having employees service deemed as satisfactory unless challenged by the employer would 'avoid uncertainty and confusion'. However, the process of deeming satisfactory service is likely to create uncertainty and confusion, for the following reasons:
  - a. A failure by an employer to recognise service as satisfactory and recognise the employee's progression to the next classification level, would be a breach of the award, unless the employer notified the Fair Work Commission of a dispute.
  - b. This would be true even where the employee agreed that their service had not been satisfactory and any objective examination of the service against the APST would conclude so.
  - c. There is no mechanism for an employer and employee to agree that the employee's service has not been satisfactory. In order to ensure an employee's service is not deemed satisfactory, the employer must notify the Fair Work Commission of the dispute pursuant to clause 31, following a formal review and providing specific reasons why the service should not be deemed satisfactory.
  - d. The alternative approach, where the employer and employee are involved in an annual performance review process, as outlined previously by CER<sup>7</sup>, would allow both parties to address satisfactory service issues without the intervention of the Fair Work Commission and would allow either party to engage with the dispute resolution process under clause 31, including referring the matter to the Fair Work Commission, if they chose to do so and only where necessary.
7. The alternative approach at point d. is also more likely to ensure the EST Award meets the modern award objectives, in that it promotes flexible modern work practices and has less impact on employment costs and regulatory burden<sup>8</sup>.

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<sup>7</sup> CER Submissions dated 14 July 2021 at [27]

<sup>8</sup> *Fair Work Act 2009* (Cth), ss 134(1)(d) and (e)

8. With respect to any proposed redrafting of the EST Award, CER's view is that the proposed clause 14.3(a) of the IEU and ACA draft should be removed, with the remaining provisions of clause 14, as proposed, satisfactory.

## Educational Leader Allowance

9. CER notes the matters raised by the parties with respect to the Educational Leader Allowance and in particular by the IEU<sup>9</sup>. CER accepts that the duties or responsibilities of an Educational Leader would be the same regardless of the role being undertaken by a full-time or part-time employee. CER does not wish to further advance the submissions made with respect to the Educational Leader Allowance in its Submissions dated 14 July 2021, and supports the IEU and ACA proposed clause

### **Catholic Employment Relations Ltd**

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<sup>9</sup> IEU Submissions in Reply dated 30 July 2021 at [27] to [34].