

IN THE FAIR WORK COMMISSION

SUBMISSIONS IN REPLY

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

FILED ON BEHALF OF:

- **Australian Childcare Alliance (ACA); and**
- **Australian Business Industrial (ABI)**

30 JULY 2021

INTRODUCTION

1. This reply submission is made on behalf of the Australian Childcare Alliance (**ACA**) and Australian Business Industrial (**ABI**) with respect to submissions and materials filed by various parties on 14 July 2021, arising from the Decision¹ in the *Educational Services (Teachers) Award 2020 (EST Award)* and Directions issued by the Fair Work Commission (**FWC**) in these proceedings on 7 June 2021.

AEU SUBMISSIONS

2. In responding to the AEU we rely on the witness statement of:
 - (a) Rita Totino; and
 - (b) Rhonda Drake.
3. The AEU raise two issues that we respond to:
 - (a) A claim for mentor/supervisors to be given the same benefit as is proposed for a provisionally accredited teacher working towards proficient accreditation (reasonable release). We deal with this issue below.
 - (b) The AEU appear to be inviting the FWC to comment on what might be reasonable release for an Early Childhood Teacher (**ECT**). The FWC should be cautious in doing this as the AEU have overstated what may be required and in any event this may differ depending on the career maturity and experience of the ECT concerned.
4. In order to respond to the first issue raised by the AEU, it is important to set out the current arrangements for mentors/supervisors in the two jurisdictions that employ the majority of Early Childhood Teachers (**ECT**).

Mentor/supervisor in the early childhood setting

5. Each jurisdiction has its own requirements as to who can be a mentor/supervisor and how a provisionally accredited teacher can access a mentor/supervisor.

¹ [2021]FWCFB 2051

How to become a mentor/supervisor

Victoria

6. A teacher who wishes to become a mentor should participate in a Victorian Institute of Teaching approved Effective Mentoring Program.
7. Whilst there is no legal or regulatory requirement for a teacher to undertake this, practically, a teacher who has not undertaken this training would likely not be engaged as a mentor as they will not be listed on the “mentor map”.
8. These mentoring programs are developed and delivered with the Department of Education in Victoria.
9. The Effective Mentoring Program provides a mentor with the skills and knowledge needed to assist and support provisionally accredited teachers. Some of the skills the teacher will learn about include: understanding mentoring, mentoring skills, the role of mentors, the recommendation process review, VIT’s inquiry cycle and the VIT registration process.

NSW

10. A supervisor is a proficiently accredited teacher or above and are appointed by the principal (or equivalent attester for an early childhood setting) or the Teacher Accreditation Authority (**TAA**).
11. The Department of Education provide the following steps, which are targeted towards a school-based teacher, to become a supervising teacher:
 - (a) Have proficient accreditation;
 - (b) Discuss the opportunity of becoming a supervising teacher with your principal;
 - (c) Plan to undertake professional learning about working with pre-service teachers; and
 - (d) Complete the professional learning. This can be the AITSL Supervising Preservice Teachers program, or a NESAs approved course².
12. There is little guidance from the New South Wales Education Standards Authority (**NESA**) as to what is an equivalent attester in an early childhood setting or how an early childhood teacher can become appointed through the relevant TAA (which is NESAs).

² NSW Government - Education < <https://education.nsw.gov.au/teaching-and-learning/professional-learning/pl-resources/pre-service-teacher-resources/supervising-teachers>>

How to find a mentor/supervisor

Victoria

13. Unlike in a school setting, generally, early childhood centres do not arrange a mentor/supervisor.
14. In Victoria, The Department of Education recognises this and provides an early childhood specific webpage which among other things:
 - (a) provides the provisionally accredited teacher with some practical information on how to find a mentor; and
 - (b) a mentor map.

NSW

15. There is no guidance readily available from NESAs as to how to find a Supervisor in the early childhood setting.
16. Common knowledge throughout the industry is that the provisionally accredited teacher is to contact NESAs to have a supervisor allocated to them, as they are the TAA for the early childhood industry.
17. Given that it is NESAs who assign a Supervisor to a provisionally registered teacher, it is highly unlikely that the Supervisor will be from the same centre as a provisionally registered teacher.

Consideration

18. The AEU's claim regarding mentors/supervisors operates in two distinct scenarios:
 - (a) Where an employer has encouraged and/or supported one of their employees (teacher) to become a mentor/supervisor for use in the employer's business;
 - (b) Where a teacher has chosen to become a mentor/supervisor and makes themselves available at large for different employers.
19. Whether a modern award needs to deal with the first scenario is questionable given that in such a case the employer and employee concerned will no doubt resolve any operational issues arising.

20. When the second scenario arises, a modern award should not deal with this issue and in this regard the claim by the AEU has a number of failings:
- (a) the decision to become a mentor/supervisor is not something necessarily arising in the context of the employment relationship;
 - (b) it does not necessarily concern the work the teacher otherwise does for their employer;
 - (c) it may not necessarily concern teachers in the business the employer runs but teachers employed in an entirely unrelated business.
21. In such a circumstance requiring an employer to provide paid release time to a teacher who is also a mentor/supervisor would not be aligned to the notion of a “*fair and relevant minimum safety net*”.
22. It would not represent a fair and relevant minimum safety net for the employer and would offend the requirements of section 138 of the *Fair Work Act 2009 (FW Act)*; requiring an employer to pay an employee to go and do something in another employers business without their consent and outside of the duties and role for which the employee was hired by the employer it is a material step above the notion of a minimum safety net.

ISABELLE ARRABALDE AND ELIZABETH ARRABALDE

23. It is not evident from the submission filed by Isabelle Arrabalde and Elizabeth Arrabalde what their interest is in this matter. It may be just that they are themselves covered by the EST Award.
24. Their submission proposes to deal with the inclusion of the new allowance for an ECT appointed to the statutory role of Educational Leader by amending clause 19.3 of the EST Award, in contrast to the inclusion of a new clause 19.4 as proposed in the IEU/ACA Draft.
25. To Conflate the new Educational Leader allowance into clause 19.3 creates unnecessary confusion as clause 19.3 of the EST Award deals with the pre-existing leadership allowances applicable to schools.
26. The inclusion of the new allowance in a separate clause (19.4) is to be preferred for its simplicity and clarity and is supported having regard to s 134 (g) FW Act.

CCSA

27. The CCSA have made a submission under the heading “**Application of conditional accreditation in an early childhood setting**”.
28. The effect of this submission, if adopted by the FWC is material. In effect the submission seeks to extend the coverage of the EST Award beyond “teachers” as defined in the EST Award.
29. The focus of this submission is on diploma-qualified educators who have completed more than 50 percent of an approved a degree in early childhood teaching.
30. The foundation of this approach seems to be that because some diploma-qualified educators may be taken to be a ‘teacher’ for regulated ratios they should therefore be covered by the EST Award.
31. Importantly, the regulations which the submission relies upon allow this are either not applicable in all jurisdictions or are due to expire within the next two years.
32. This submission has a number of failings:
 - (a) it wrongly conflates an external regulatory administrative notion with the proper classification of employees based on the work they perform and industry or occupation they are in;
 - (b) the matter cannot, on any proper basis, be said to arise directly or indirectly from the Decision or any application in the matter; and
 - (c) the submission involves the likely change in modern award coverage with diploma-qualified educators being classified under the *Children’s Services Award 2010* and as such would require a full consideration of s 163 of the FW Act, including an evaluation of the value of work of diploma-qualified educators, the history of their industrial regulation, the history of conditions applied to such employees amongst other things.
33. If the CCSA wish to prosecute this issue it should be done in the normal and proper manner by the CCSA filing an application under s 158 of the FW Act and allowing the matter to be properly and fully considered on the basis of probative evidence.
34. The submission should not be entertained in the current context.

CATHOLIC EMPLOYMENT RELATIONS LIMITED

35. The FWC has a discretion (s 166 (2) FW Act) to vary a modern award minimum wages operative on a day other than that specified in s 166 (1) of FW Act; 1 July in the next financial year.
36. The FWC must be “satisfied” that it is appropriate to exercise this discretion.
37. In regard to this the FWC should consider, the:
 - (a) agreement reached by the IEU and ACA who have the primary interest in the operation of the Decision;
 - (b) limited number of employees the Decision impacts in the early childhood sector; and
 - (c) level of awareness in the industry of the Decision.

CONCLUSION

38. The parties with the principal interest in regard to the occupation of teachers in the child care industry across Australia have worked to form a consent position on the implementation of the Decision.
39. Relevantly the position does not seek to change the new classification structure or minimum rates of pay arising from the Decision but rather ensure that the Decision is practically introduced into the childcare industry in a manner consistent with the reasoning of the Decision.
40. Weight should be given to this position which is supported by a consideration of s 134 and 138 of the FW Act and the setting of a fair and relevant minimum safety net for employees and employers.

Filed on behalf of ACA and ABI

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IN THE FAIR WORK COMMISSION

MATTER AM2018/9

APPLICATION BY THE INDEPENDENT EDUCATION UNION OF AUSTRALIA (130N)

WITNESS STATEMENT OF RHONDA DRAKE

I, Rhonda Drake of 552 Highbury Road Glen, Waverley, in the State of Victoria, state as follows:

BACKGROUND

1. I am the approved provider and director of Snuggles Early Learning Centre & Kindergarten in Glen Waverley (**Snuggles**).
2. I have been in the early childhood sector and have owned Snuggles for approximately 15 years.
3. I have the following qualifications in early childhood:
 - (a) a Bachelor's Degree in Primary Teaching; and
 - (b) a Graduate Diploma in Early Childhood Education.
4. This means that I am both a Primary School Teacher and Early Childhood Teacher (**ECT**). Both of my registrations are current.
5. As part of my role, I am responsible for:
 - (a) compliance with relevant laws and regulations required of an approved provider;
 - (b) management of the day to day operational management of Snuggles including staffing, recruitment and HR;
 - (c) developing sustainable relationships with the community, parents and other external bodies such as NDIS, inclusion support;
 - (d) understanding reporting requirements;
 - (e) mentoring and caring for my employees and supporting families;
 - (f) all financial matters of Snuggles; and
 - (g) teaching from time to time.
6. I am also a Mentor for provisionally accredited teachers. I have mentored around 4 people and am currently mentoring another 7.

HOW TO BECOME A MENTOR

7. In Victoria, to become a Mentor, you must undertake a two-day workshop with the Victorian Institute of Teaching (**VIT**). This is the only requirement that I am aware of.
8. The workshop is excellent in teaching you how to understand and engage with the Inquiry process and establishes a very good understanding of useful resources to support both

the mentor and mentee. It is expected that you have a level of expertise as a registered teacher in the skill of mentoring.

9. After you have undertaken the workshop you can be a Mentor.
10. A Mentor can also, voluntarily, maintain their skills and go through a renewal workshop with VIT which is highly recommended.
11. I believe strongly in 'giving back' to the teaching profession
12. Becoming a mentor has allowed me to mentor ECT's in Snuggles and also mentor ECTs at other centres; giving back to the profession.
13. Mentoring and accreditation is still quite a new concept for the industry and is not a 'fine art'. That is, there is still work that could be done to ensure that mentors are suited to the role.

PROVISION OF A MENTOR

14. I don't recall the date, but VIT contacted me and asked if I was willing to be a 'Mentor'. VIT listed me as a Mentor on their mentor map.
15. This means that Provisionally Accredited Teachers who are seeking a Mentor can use the VIT website and contact me to be their Mentor.
16. There is no specific process for a Mentor to be assigned to a provisionally accredited ECT in Victoria but I believe there have been departmental grants given to organisations to support this recently.
17. Generally, it is the ECT who reaches out to me (or another Mentor) and asks me to be their Mentor. I recall once having a centre call me, however, this is the only occasion that this has occurred.

RELEASE FROM DUTY

18. In Snuggles, I personally chose to be a Mentor and managed to juggle this with all my other duties in my role but I acknowledge that I am not often on the floor teaching.
19. My ECT's who have been through this process also did not require time off to undertake this, other than when they were visiting teachers to observe practice or having scheduled discussions with myself as their mentor however, the evidence and documentation required is not in my experience arduous.

MY ROLE AS A MENTOR

20. I hold myself and my Mentee to a high standard as I believe that this process sets up the ECT for their career as a teacher.
21. My role as a Mentor is quite varied and depends on the needs and the skills of the Mentee. For example, I generally start my discussion with potential Mentee's by explaining the inquiry process as they are often quite uncertain as to where they should start. This can take anywhere from a couple of minutes up to half-an-hour.
22. I set out below, my experience with being a Mentor for one of my ECT's last year and the time required of the Mentor and Mentee at each stage of the inquiry process:

Stage 1

23. At Stage 1, the teacher develops a program of learning for 4 children.

24. Essentially, Stage 1 is undertaken in the normal course of the ECT's role as they should be developing a program of learning for all of the children in their room anyway. A program of learning should show annotations, reflective practice, observations on the children addressing the planning cycle with interest based learning and intentional teaching strategies.
25. The annotation required during this stage is done normally as part of their programming. It is an essential requirement in their role as a teacher. The information captured in this program of learning is information that absolutely should be captured for all of the children in the room. The Teacher may, when they are documenting this for the evidence of the Inquiry approach, be more detailed for the 4 children under observation, however if the Inquiry approach question has been developed effectively it is information that they would be required to capture through their normal teaching role.
26. I consider the evidence required at this stage no more than what I would normally require of a teacher preparing a program of learning. The purpose of requiring a teacher to prepare a program of learning at Stage 1 is to exemplify what the teacher is normally doing through evidencing the 4 children.
27. This Stage can be undertaken during their normal programming.

Stage 2

28. At this Stage, the Teacher develops an inquiry question.
29. The question the teacher develops is not to be a fictitious question, rather, it is best to be based around the needs of the current cohort of children and reflect an area that the teacher has identified where they would like to improve as a teacher, in order to address the needs of the children.
30. Once again, this should be a part of their day to day practice as a teacher; identifying an issue that the teacher is currently facing and developing strategies to address the concerns and meet the needs of the children in their room.
31. The evidence required at this stage is shown through observation, reflection, strategizing, conversation, planning, implementing - trial and error, programming and behaviour management planning, among other things, and is instrumental in being a teacher. All of these are a part of everyday teaching practice.
32. From my experience, the discussions with me as Mentor at this Stage are generally short but frequent five-minute conversations to touch base about their approach, determining what evidence is best to address the APST's or to talk through the issue they are facing to help them investigate the answer.

Stage 3

33. Stage 3 involves the teacher developing an action plan which will meet the aims of their inquiry question.
34. The evidence required at this Stage should be easily extracted from day to day practice of the teacher. It needn't be pretty, and needs to be real, it could be done through a variety of ways inclusive of photographs.
35. I would estimate this could take two days work, inclusive of their normal work day.

Stage 4

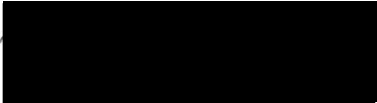
36. At Stage 4 the teacher implements their action plan.

37. This is a normal duty of the teacher, not above and beyond their duties.
38. At this Stage as their Mentor I don't really need to observe documentation, just observe the Teacher teaching the children and provide feedback in the form of professional discussions.

Stage 5

39. At this Stage the teacher can undertake their reflection during their normal work.
40. As with my previous comments, I would expect any teacher to undertake this reflective practice.
41. The Panel meeting usually takes around one hour to complete.
42. If you balance what the ECT should be doing as part of their normal programming, and what needs to be done outside of this to meet the teacher registration requirements I would estimate the time required by the ECT 'off the floor' to be around 4 days, no more. I would also suggest that this is a personal formal accreditation and thus should be viewed as such by the teacher.

Rhonda Drake



Date

2/8/21

IN THE FAIR WORK COMMISSION

MATTER AM2018/9

APPLICATION BY THE INDEPENDENT EDUCATION UNION OF AUSTRALIA (130N)

WITNESS STATEMENT OF RITA TOTINTO

I, Rita Totino of 27 Peacock Street, Seaforth, in the State of New South Wales, state as follows:

BACKGROUND

1. I am the approved provider, CEO and owner of three Long Day-Care Centres (**LDC**) in New South Wales.
2. The LDC's I own are Peacock Street Long Day Care (**Peacock Street**), Bindook Cottage (**Bindook**) and Peek-A-Boo Cottage (**Peek-A-Boo**). I will discuss the operation of the centres below.
3. I have been in the early childhood sector and owned LDC's for approximately 30 years.
4. I have the following qualifications in early childhood education:
 - (a) a Bachelor's degree of teaching Early Childhood Education;
 - (b) a Diploma in Early Childhood Services; and
 - (c) a Certificate in Childcare studies.
5. In a normal week, I work out of Bindook one day a week, two days at Peacock Street as an Early Childhood Teacher (**ECT**) and the remaining two days I undertake admin work such as payroll and/or work at Peek-A-Boo as a casual as required.
6. In my role I oversee the day to day running of my three LDC's, payroll, general administration, ensuring compliance and that each centre meets ratios, scheduling maintenance, professional development for my employees and filing in at each centre as required.
7. Each of my centres has a Director that oversees the day to day operation of the centre.

THE CENTRES

Peacock Street

8. Peacock Street has a capacity of 25 children, it currently has between 11 and 18 children enrolled.
9. Peacock Street has three rooms:
 - (a) a 2-3 year old room
 - (b) a 3-4 year old room; and
 - (c) a 4-5 year old room.

10. I employ three employees at Peacock Street, all are diploma qualified. I work two days a week as an ECT at Peacock Street.

Bindook

11. Bindook has a capacity of 20 children and currently has 10 children enrolled.
12. Bindook has two rooms:
 - (a) a 12 month to 3-year-old room; and
 - (b) a 3 - 5 year old room.
13. I employ three employees at Bindook. There are two ECT's and a certificate III qualified that work across the two rooms.
14. The two ECT's have provisional accreditation.

Peek-A-Boo Cottage

15. Peek-A-Boo has a capacity of 20 children and the centre currently has 10 children enrolled.
16. The rooms at Peek-A-Boo are:
 - (a) a birth - 16 months room; and
 - (b) a 16 month - 3 year old room.
17. I employ five employees at Peek-A-Boo. There is an ECT, three employees are diploma qualified, one certificate III qualified at the time of making this statement.
18. The ECT has proficient accreditation.

PROVISION OF A MENTOR/SUPERVISOR

19. It is the responsibility of the individual teacher to find a supervisor and to achieve proficient accreditation.
20. My understanding of the process in NSW is that once the provisionally accredited teacher feels ready to undertake the process required to achieve proficient accreditation, the individual teacher reaches out to the NSW Education Standards Authority (**NESA**) to be assigned a Supervisor.
21. NESA is the Teacher Accreditation Authority (**TAA**) for early childhood centres, I am unaware if there is any other TAA which could assist.
22. On or around 5 June 2018 I contacted NESA (as it is our TAA) to enquire about becoming an appointed Supervisor.
23. As an owner I felt I had the flexibility to fit this into how I worked, and I saw value in holding this position to assist the ECT's I employ.
24. I was advised by NESA at the time that it would be too difficult for me to become an appointed Supervisor as it was a complex process and for a small business, it would be quite a complex process for me to undertake. NESA advised that it was easier for it to assign a Mentor and for me to try again in a few years.

MENTOR/SUPERVISOR RELEASE FROM DUTY

25. It is the responsibility of the individual teacher to meet the requirements to gain proficient accreditation.

26. As an owner I have not and would not require any teacher I employ to become a Supervisor.
27. As an owner it would not be prudent for me to have an employee who is a Supervisor to release a teacher/Supervisor to assist another teacher employed by someone else outside of my centres to achieve proficiency.
28. Additionally, there is no funding available in NSW for operators or individual teachers to assist with achieving accreditation.
29. If I was required to allow my employees who chose to be a Supervisor independently of me to have release from duty to Supervise teachers working for someone else, this would be a significant disruption to my business and an additional cost with no benefit to my business.
30. I would need to pay for that teacher to be absent and backfill them with another teacher. There will also be additional superannuation and workers compensation costs incurred in this.

EXPERIENCE OF HAVING AN ECT GOING THROUGH THE ACCREDITATION PROCESS

31. I have experience of teachers going through the accreditation process. A lot of the work required to achieve accreditation can be done whilst the ECT is at work. For example, programming is a normal part of their role and could be done during their normal programming time or when the children are resting. The evidence that required does not take a lot of time.
32. My ECT who went through the accreditation process did not have any release from duty.
33. I see having to achieve and maintain accreditation as part of my professional career and being the individual's responsibility, like any having first aid or a working with children's check. These are my responsibility as a teacher.

[Redacted Signature]

Rita Totino

30/7/2021

Date