



Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

11 December 2020

By email: amod@fwc.gov.au

Re: AM2018/18 and AM2018/20 – Children's Services Award 2010 and Educational Services (Teachers) Award 2010

I refer to the Full Bench's Statement of 26 November 2020 in the above matter [2020] FWCFB 6341.

The Statement dealt with two residual issues from earlier Decisions issued by the Full Bench in the 4-yearly review of the *Children's Services Award 2010* (Children's Services Award) and the *Educational Services (Teachers) Award 2020* (Teachers' Award):

- Higher duties
- Non-contact time

Higher duties

CCSA supports the draft Determination issued by the Full Bench with the Statement.

Non-contact time

CCSA supports the position put by the UWU in their submission of 4 November 2020 that variation of the Children's Services Award but not Schedule A of the Teachers' Award creates an unintended inconsistency in the application of the 10 June 2020 Decision [2020] FWCFB 3011 of the Full Bench in this matter.

The original United Voice application sought an allowance for employees taking on the role of Educational Leader in both the Children's Services Award and the Teachers' Award (for example, see United Voice submission dated 29 May 2019 at [50]). Additionally, the non-contact claim was heard by the Full Bench and reported in the June 2020 Decision as a Common Claim (i.e. a claim common to both the Children's Services Award and the Teachers' Award).

As the role and responsibilities of the Educational Leader under the *Education and Care Services National Law* are unchanged by whether the employee appointed to that role is degree-qualified and covered by the Teachers' Award, or diploma/certificate III-qualified and covered by the Children's Services Award, it is appropriate that there be common treatment of the non-contact time issue in the two awards.

One further area of inconsistency remains, however, if the UWU’s claim to have clause A.3.2 of the Teachers’ Award amended to reflect the non-contact time provisions contained in clause 21.5 of the Children’s Services Award is granted.

Since its inception, the Teachers’ Award has only made provision for non-contact time in the Schedule covering Hours of Work and Related Matters – Teachers Employed in Early Childhood Services Operating for at least 48 Weeks per Year. No similar provision is made for Early Childhood Teachers (ECTs) operating in services that operate for less than 48 weeks per year, such as preschools which usually operate according to the school year (typically 39 – 41 weeks per year).

Preschool ECTs have the same responsibilities for planning, preparing, evaluating and programming activities for children, and the same obligations under the National Law when appointed as Educational Leader, as either their fellow ECTs in long day care and other 48 week a year settings, or their diploma/certificate III-qualified colleagues in the preschool. However, their place in the award structure does not provide similar non-contact time. This can be demonstrated in the following table:

Award Coverage	Service operating at least 48 weeks per year (e.g. long day care)	Service operating for less than 48 weeks per year (e.g. preschool)
Children’s Services Award	Programming time: Yes Educational Leader: Yes	Programming time: Yes Educational Leader: Yes
Teachers’ Award	Programming time: Yes Educational Leader: Yes (subject to UWU claim being granted)	Programming time: No Educational Leader: No

Table 1. Entitlement to non-contact time

This inconsistency in approach is further exacerbated in mixed service types, such as where the one employer operates both a preschool and a long day care service from the same premises.

To address the inconsistency identified above, CCSA recommends that the non-contact time clause in the Teachers’ Award be updated as suggested by the UWU to bring it into alignment with the Children’s Services Award, but moved out of Schedule A into the main body of the Teachers Award as a new clause 15.10, applicable only to early childhood teachers. This would provide for a consistent treatment of non-contact time for both ECTs and early childhood educators with other qualifications, across all early childhood education and care service types.



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