

From: Ben Redford <Ben.Redford@unitedworkers.org.au>
Sent: Monday, 18 July 2022 4:27 PM
To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>
Cc: Jordan Lombardelli <jordan.lombardelli@ablawyers.com.au>; shue.yin.lo@afei.org.au; Michael Wright <michael@ieu.asn.au>
Subject: RE: AM2018/18; AM2018/20: 4 yearly review of modern awards—Children’s Services Award 2010 and Educational Services (Teachers) Award 2020

Dear Associate

We enclose the following for filing:

1. Letter from UWU
2. Further Submissions of UWU

Please contact me on 0425 755 938 with any queries.

Regards

Ben Redford
Director – Strategic Power
United Workers Union

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Email disclaimer: unitedworkers.org.au/emaildisclaimer

From: Ben Redford
Sent: Friday, 15 July 2022 2:32 PM
To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>
Cc: jordan.lombardelli@ablawyers.com.au; shue.yin.lo@afei.org.au; Michael Wright <michael@ieu.asn.au>
Subject: AM2018/18; AM2018/20: 4 yearly review of modern awards—Children’s Services Award 2010 and Educational Services (Teachers) Award 2020

Dear Associate

We refer to his honour’s Directions in this matter, which require among other things UWU to file material in relation to it by today, 15 July 2020.

We request that the time for filing this material be extended to 5:00PM, Monday 18 July 2020.

We have spoken to representatives from ABL, AFEI and IEU, none of whom have any objection to this request.

For our part, we would not object to similar time being provided to any other party who requests it.

Please contact me on 0425 755 938 with any queries in relation to this matter.

Regards

Ben Redford
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BIGGER, STRONGER, UNITED.

TIM KENNEDY SECRETARY
JO SCHOFIELD PRESIDENT

18 July 2022

Vice President Hatcher
Fair Work Commission
Level 4, 11 Exhibition Street
NORTH SYDNEY NSW 3000

Via email: chambers.hatcher.vp@fwc.gov.au

Dear Vice President

AM2018/18 & AM2018/20 - 4 yearly review of modern awards - *Children's Services Award 2010 and Educational Services (Teachers) Award 2020*

We refer to this matter.

We enclose Further Submissions of the United Workers Union for filing.

Please note further that UWU has decided to **withdraw** its claim for a Responsible Persons allowance with respect to these awards.

On 27 June 2022 the Commission issued Directions and a Notice of Listing in relation to that matter. It may be appropriate to address those Directions and the Notice on the basis of the withdrawal of this claim.

Please contact me on 0425 755 938 if you wish to discuss this matter further.

Yours faithfully

A handwritten signature in black ink, appearing to read "Ben Redford".

Ben Redford
Director
United Workers Union

CC: IEU, ABI, AFEI

IN THE FAIR WORK COMMISSION

Matter No: AM2018/18; AM2018/20

4 yearly review of modern awards – *Children’s Services Award 2010* and *Educational Services (Teachers) Award 2020*

FURTHER SUBMISSIONS OF THE UNITED WORKERS UNION

Introduction

1. On 17 June 2022 the Fair Work Commission (**FWC**) issued a Statement (**the June 2022 Statement**) concerning two claims made by the United Workers Union (**UWU**) in relation to the *Children’s Services Award 2010* (**the CS Award**) and the *Educational Services (Teachers) Award 2020* (**the Teachers Award**) to insert into those awards two new allowances: an Educational Leader Allowance and a Responsible Person Allowance.
2. The two claims were made by UWU in about 2018 during the course of the 4 yearly review of Awards. In 2020 FWC decided to hold over determination of the two claims until FWC handed down its decision in the Equal Remuneration and Work Value Case concerning the Teachers Award¹ (**the ERO Case**) because the claims overlapped with that proceeding².
3. FWC handed down its decision in the *ERO Case* on 19 April 2021 and issued a determination in respect of its decision on 1 November 2021³. As outlined in the June 2022 Statement, in its decision, FWC determined to insert into the Teachers Award a

¹ *Independent Education Union of Australia* [2021] FWCFB 2051

² *4 yearly review of modern awards – Award stage – Group 4 awards – Children’s Services Award 2010 and Educational Services (Teachers) Award 2010 – Final Claims – Substantive Issues* [2020] FWCFB 3011 at [18]

³ [2021] FWCFB 6038

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new allowance applying to an Educational Leader in the children's services and early childhood education industry⁴.

4. In the June 2022 Statement (and in Directions issued by FWC on 27 June 2022), FWC
 - (a) Expressed a provisional view that the allowance inserted into the Teachers Award in respect of an Educational Leader should be inserted into the CS Award so that persons undertaking the role of Educational Leader under each award have an equivalent entitlement; and
 - (b) Invited submissions to be made in relation to the provisional view, noting that the "issue of the translation of the quantum of the allowance is a matter which will need to be determined".
 - (c) Invited any further evidence and submissions to be made by UWU and any party supporting the UWU's claim for a Responsible Persons Allowance.
5. UWU has filed material in support of these two claims including the following:
 - (a) UWU submission, 15 March 2019
 - (b) Witness Statement of Alicia Wade
 - (c) Witness Statement of Bronwen Hennessy
 - (d) Witness Statement of Preston Warner
 - (e) Witness Statement of Pixie Bea
 - (f) Reply submissions: UWU submission, 12 April 2019; and UWU submission, 29 April 2019

⁴ ERO Case at [658]

6. After the evidence was heard on 6 – 9 May 2019, FWC invited parties to make submissions about factual findings: UWU filed submissions in relation to this invitation on 29 May 2019.
7. In addition, FWC published two background papers relevant to these issues (**Background Paper # 1** and **Background Paper # 2**) in relation to which UWU made submissions as follows:
 - (a) UWU submission, 9 July 2019
 - (b) UWU submission, 19 July 2019
8. On 5 August 2019 FWC published a document containing questions and responses to Background Documents 1 and 2 (**the Question and Answer Document**). Then there is a summary document published by the Commission. It did invite comments on the summary.
9. On 9 August 20219 a hearing was held in relation to the matter, during which the parties made final submissions.
10. On 15 July 2022 submissions were filed in relation to Educational Leader Allowance on behalf of Australian Childcare Alliance (**ACA**) and Australian Business Industrial (**ABI**) (**the ACA submissions**).
11. In summary, UWU submits as follows:
 - (a) UWU supports the provisional view
 - (b) that the quantum of the Educational Leaders allowance inserted into the CS Award should be \$4,022.05 per annum
 - (c) that the form of the clause to give effect to the provisional view which should be inserted into the CS Award should be in accordance with that proposed in the ACA Submissions at [13].

The provisional view

12. The provisional view reflects a finding made by FWC in a decision made in November 2021 concerning the issue of “non-contact time” with respect to an Educational Leader, in which the Commission found that “the role of an Educational Leader is the same under both Awards”⁵.
13. The provisional view further reflects FWC’s apparent view adopted in the *ERO Case*, that the payment of an allowance to a person holding the role of an Educational Leader is consistent with the modern awards objective⁶.
14. This result is consistent with the evidence and submissions made by UWU in the course of this proceeding.
15. We note further the provisional view is supported by:
 - (a) IEU
 - (b) ACA and ABI.

The quantum of the Educational Leaders allowance

16. UWU notes the provisional view states that the Educational Leaders allowance should be inserted into the CS Award “so that persons undertaking the role of Educational Leader under each award have an equivalent entitlement”.
17. UWU supports this aspect of the provisional view. In our submission, and regardless of the form of the claim originally advanced by UWU, we submit the quantum of the Educational Leaders allowance in the CS Award should be the same, or as close as

⁵ [2021] FWCFB 6053 at [65]

⁶ *ERO Case* at [661]

possible, to the quantum of the allowance provided for in the Teachers Award, so that persons undertaking this role under either Award have an “equivalent entitlement”.

18. The Educational Leaders allowance in the Teachers Award is derived from a leadership allowance payable under that award to Teachers working in a school⁷. The particular leadership allowance that is relevant is calculated by reference to 0.63% of the standard rate (as defined)⁸.
19. The standard rate in the CS Award is a different rate than provided for in the Teachers Award. The standard rate in the CS Award is the minimum weekly rate for a Children’s Services Employee Level 3.1 (Certificate III qualified) in clause 14.1 of the Award⁹.
20. Accordingly, to arrive at an allowance whose quantum is the same as that in the Teachers Award, UWU agrees with the proposition made in the ACA Submissions, that the CS Award be varied to provide for an allowance by reference to the allowance provided for in the Teachers Award in the form set out in those submissions at [13].
21. We further submit that the operation of the allowance should be the same as its operation in the Teachers Award in terms of a pro-rata adjustment occurring in relation to the allowance for employees acting as Educational Leader who perform the role on less than 5 days per week. as reflected in FWC’s decision (and determination) in respect of that matter (as is envisaged by the form proposed in the ACA Submission)¹⁰.
22. We note further this submission is supported by:
 - (a) IEU
 - (b) ACA

⁷ *ERO Case* at [658]

⁸ *Independent Education Union of Australia* [2021] FWCFB 6021 at [78]

⁹ *CS Award* clause 3.1

¹⁰ *Independent Education Union of Australia* [2021] FWCFB 6021

(c) ABI

The responsible persons allowance

23. UWU has decided to withdraw its claim for that a Responsible Persons allowance be inserted into the Award. UWU does not intend to make any further submissions in relation to this matter.

**Filed on behalf of the
United Workers Union**

18 July 2022