

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)**

13 AUGUST 2021

INTRODUCTION

1. This reply submission is made on behalf of the Australian Childcare Alliance (**ACA**) and Australian Business Industrial (**ABI**) with respect to reply submissions and materials filed by various parties on 30 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.

PHASING IN

2. AFEI and CER submit that there is a significant impact to minimum rates of pay that warrants phasing in of the increases.
3. These considerations always require some evaluative judgement.
4. In this matter the theoretical increases seem to move from the negative to low double figures. There is a real challenge in understanding how many Early Childhood Teachers (**ECT**) actually are employed at the various levels and where they will translate in practice.
5. ACA (supported by ABI) has been guided by engagement with its various 'State and Territory branches' in this regard who have sought direct feedback from members.
6. This feedback has allowed ACA to arrive at the position it has with the IEU because the increases, as previously submitted:
 - (a) apply to a limited portion of employees within the industry, not the bulk of the industry's workforce (child care workers), therefore the impact to the industry and individual employers is lessened;
 - (b) can be factored into labour forecasts for the new year given the proposed operative date;
 - (c) can be offset by a modest increase to fees in line with the new year enrolments; and
 - (d) can be absorbed into over award payments.

SATISFACTORY SERVICE

7. The FWC's new classification structure focuses on the notion of "satisfactory service" which aligns with [656] of the Decision.

¹ [2021]FWCFB 2051

8. The ACA/IEU consent position retains the focus of satisfactory service and provides practical guidance to implement the FWC's Decision across all jurisdictions.

AFEI

9. With regards to the AFEI's submission that satisfactory service should mean:
 - (a) the maintenance of proficient accreditation; and
 - (b) a performance appraisal/staff development scheme, and that through that scheme the employer determines that the employee has demonstrated satisfactory performance in the prior 12 months; and
 - (c) where there is no appraisal system, the employer determines that the employee's service has been satisfactory.

it is not a scheme that has any practical attraction to the membership of the ACA who favour greater clarity and objectivity (the APST) to be applied in this process.

10. It is important that a requisite level of clarity and objectivity is in operation to avoid disputes around what is satisfactory and also the proliferation of underpayment claims.
11. The ACA/IEU consent position seeks to achieve this while maintaining the FWC's proposed architecture of the new classification structure.

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12. The basis of this submission, that progression through the classification structure should be based on service is an attempt to retain automatic progression based on service, is inconsistent with the Decision.

APPLICATION OF THE CLASSIFICATION STRUCTURE IN NON-ACCREDITATION JURISDICTIONS

13. AFEI proposes at paragraph 53 of their submissions that those in non-accreditation jurisdictions should maintain the current classification and pay structure. This proposition is inconsistent with the Decision.
14. The FWC has expressly stated at [653] of the Decision that:

"The key classification, in our view, would be a Proficient Teacher who has a degree and has obtained registration (or, in the case of an early childhood teacher, if registration is not yet required in their jurisdiction, has met the requirements for registration as if they applied)" (emphasis added)

15. By requiring States without an accreditation jurisdiction for ECT (it is important to note that this proposition will only effect ECT's and not school teachers) to operate on a redundant classification and pay structure which the FWC has stated is "*anachronistic and does not properly relate to the work value of teachers*" is an unsustainable challenge to the FWC's Decision to establish a new classification structure that appropriately reflects the work value of all teachers, regardless of which state or educational institution they are employed in.

SUPPORT FOR MENTORS

16. ACA and ABI maintain that the EST Award should not deal with this issue and relies on its previous submissions in this regard.
17. The AEU have now raised that some funding is available for an employer who has an ECT going through accreditation. Relevantly:
- (a) this funding is isolated to Victoria;
 - (b) it is not funding directed at a mentor per se; and
 - (c) it is not funding directed at an employer employing a mentor.
18. ACA and ABI contends that limited funding in Victoria² for certain employers is likely to be supportive of the position ACA and the IEU have reached on support for an ECT seeking accreditation, but does little to support the AEU claim for mentors at large especially when the mentor may be playing that role for a child care service entirely unrelated to that of the mentor's employer.

Filed on behalf of ACA and ABI

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² Currently \$2,872 per provisionally registered teacher - Department of Education and Training <
https://www.education.vic.gov.au/childhood/professionals/profdev/Pages/provisionally_registered_teachers_funding.aspx>