



Fair Work Commission: 4 yearly review of modern awards

SUBMISSIONS

CHILDREN'S SERVICES AWARD 2010

EDUCATIONAL SERVICES (TEACHERS) AWARD

2010

9 OCTOBER 2020

BACKGROUND

1. These submissions are made on behalf of:
 - (a) Australian Childcare Alliance Inc. (**ACA**);
 - (b) Australian Business Industrial (**ABI**);
 - (c) New South Wales Business Chamber (**NSWBC**),
(together the **ECEC Employers**)
2. These submissions respond to the Fair Work Commission Decision (**Decision**)¹ dated 29 September 2020, which seeks submissions on the following five matters:
 - (a) *Part-time employment*: the plain language redraft set out at [13] of the Decision and the draft variation determination at Attachment A of the Decision.
 - (b) *Educational Leaders, non-contact time*: the draft variation determination at Attachment A of the Decision.
 - (c) *Clothing Allowance*: the draft variation determination at Attachment A of the Decision.
 - (d) *Minimum engagement*: the provisional view of the Commission that there is utility in harmonising the casual minimum payment provisions relating to ECEC employers by providing that casual early childhood teachers working in early childhood services be subject to a two hour minimum engagement period (as specified in clause 10.5(c) of the Children’s Services Award).
 - (e) *Award coverage*: the proposal by the Commission that a schedule is added to the Children’s Services Award which replicates the relevant wage rates from the Teachers Award and cross references to the other applicable clauses in the Teachers Award (with hyperlinks to those clauses).
3. We deal with each matter separately below.

PART TIME EMPLOYMENT

4. The ECEC Employers agree with the Commission’s proposed drafting for clauses 10.4 and 21.7 of the Children’s Services Award according to Attachment A of the Decision.

EDUCATIONAL LEADERS, NON CONTACT TIME

5. The ECEC Employers are of the view that the proposed drafting of clause 21.5 of the Children’s Services Award may inadvertently give rise to Room Leaders who are not Educational Leaders receiving 4 hours of non-contact time.
6. We also submit that there is utility in clarifying that clause 21.5 (two hours non-contact time) as it is currently drafted in the Children’s Services Award only applies to Room Leaders and outlining that in the drafting would simplify and clarify the existing entitlement.
7. We suggest the following separation and drafting:

21.5 Non-contact time

(a) A Room Leader who is responsible for the preparation, implementation and/or evaluation of a developmental program for an individual child or group of children will be

¹ [2020] FWCFB 5176

entitled to a minimum of two hours per week, during which the employee is not required to supervise children or perform other duties directed by the employer, for the purpose of planning, preparing, evaluating and programming activities.

(b) An employee who is appointed an Educational Leader will be entitled to a minimum of four hours non-contact time per week.

NOTE: Educational Leader is defined in Regulation 118 of the Education and Care Services National Regulations (2011).

CLOTHING ALLOWANCE

8. The ECEC Employers agree with the Commission's proposed drafting for clause 15.2 of the Children's Services Award according to Attachment A of the Decision.

MINIMUM ENGAGEMENT

9. The Decision expresses the provisional view that there is utility in harmonising the casual minimum payment provisions relating to ECEC employers by providing that casual early childhood teachers working in early childhood services be subject to a two hour minimum engagement period (as specified in clause 10.5(c) of the Children's Services Award).
10. The ECEC Employers support the provisional view.
11. As acknowledged by the Full Bench, some of the ECEC Employers and the IEU have participated in separate proceedings in which a determination has since been handed down² which resulting in the insertion of tables at B.1 of the Teachers Award.
12. In particular the following table including dollar figures for quarter day and half day now appears in the Award:

² [2020] FWCFB 4875.

B.1.2 CASUAL EMPLOYEES—HALF DAY AND QUARTER DAY RATES

	<i>All employees (excluding Schedule A)</i>		<i>Teachers employed in early childhood services operating for at least 48 weeks per year (Schedule A)</i>	
<i>All employees</i>	<i>Half day rate</i>	<i>Quarter day rate¹</i>	<i>Half day rate</i>	<i>Quarter day rate¹</i>
	<i>\$</i>	<i>\$</i>	<i>\$</i>	<i>\$</i>
<i>Level 1</i>	<i>125.58</i>	<i>62.79</i>	<i>130.60</i>	<i>65.30</i>
<i>Level 2</i>	<i>128.16</i>	<i>64.08</i>	<i>133.29</i>	<i>66.64</i>
<i>Level 3</i>	<i>131.65</i>	<i>65.83</i>	<i>136.92</i>	<i>68.46</i>
<i>Level 4</i>	<i>136.40</i>	<i>68.20</i>	<i>141.85</i>	<i>70.93</i>
<i>Level 5</i>	<i>141.15</i>	<i>70.58</i>	<i>146.80</i>	<i>73.40</i>
<i>Level 6</i>	<i>145.58</i>	<i>72.79</i>	<i>151.40</i>	<i>75.70</i>
<i>Level 7</i>	<i>150.00</i>	<i>75.00</i>	<i>156.00</i>	<i>78.00</i>
<i>Level 8²</i>	<i>154.75</i>	<i>77.37</i>	<i>160.94</i>	<i>80.47</i>
<i>Level 9</i>	<i>159.50</i>	<i>79.75</i>	<i>165.88</i>	<i>82.94</i>
<i>Level 10</i>	<i>164.25</i>	<i>82.13</i>	<i>170.82</i>	<i>85.41</i>
<i>Level 11</i>	<i>169.01</i>	<i>84.50</i>	<i>175.77</i>	<i>87.88</i>
<i>Level 12</i>	<i>173.75</i>	<i>86.88</i>	<i>180.70</i>	<i>90.35</i>

¹ only casual employees employed in children’s service or an early childhood education service may be paid at a quarter day rate of pay.

² where an employee is engaged for less than 5 consecutive days, the minimum rate payable to a casual employee will be no higher than the rate at level 8.

13. The ECEC Employers still maintain the view that inserting the table shown above has gone some way to assisting businesses to calculate the quarter day and half day rates. However, it has not fully rectified the issues that the IEU raised in its initial claim and that still exist with the ambiguous drafting of clause 14.5 of the Teachers Award.
14. While no evidence was found during these proceedings that employers are breaching the Teachers Award and paying incorrectly:
 - (a) the clause in its current form is overly complex and it would be easy for small businesses to inadvertently only pay a quarter day rate when the employee had worked an amount of time that actually required (on the existing drafting) the half day rate be paid;
 - (b) anecdotal evidence from the ECEC Employers members suggests that:
 - (i) some employers are more likely to pay the employee for the hours worked (rather than perform the complex calculation and determine whether they should be topped up to a half day rate)
 - (ii) employers rarely engage casuals for less than a full day (therefore they do not have to perform the complex calculations) - this may be why evidence was difficult to obtain and why this issue has not been raised before.

15. The Awards should be simple and easy to understand and having regard to the modern awards objective, we believe the Full Bench's provisional view to amend the Teachers Award with a 2 hour minimum engagement manner would be appropriate.

AWARD COVERAGE

16. The ECEC Employers have considered the Commission's proposal that a schedule is added to the Children's Services Award which replicates the relevant wage rates from the Teachers Award and cross references to the other applicable clauses in the Teachers Award (with hyperlinks to those clauses).
17. The outcome of consultation with members from each organisation has not demonstrated uniform support for insertion of a schedule. Feedback has suggested that the introduction of these references may serve to add complexity and confusion to the interpretation of the award and may result in increased disputation.
18. As a result, the ECEC Employers are of the view the status quo (of two awards) should remain.

Filed on behalf of the Australian Childcare Alliance, Australian Business Industrial and the NSW Business Chamber Ltd

9 October 2020