

From: Sophie Margaret Whish [mailto: Sophie.Whish@ablawyers.com.au]
Sent: Tuesday, 16 April 2019 12:47 PM
To: Chambers - Ross J; AMOD
Cc: Nigel Ward; Julian Arndt; Dean Tyler; Helen Hamberger; 'Natalie.Dabarera@unitedvoice.org.au'; 'aodgers@ieu.org.au'; 'michael@ieu.asn.au'; 'bellearrabalde@hotmail.com'; 'John.Gunn@ccsa.org.au'; 'Stephen.Bull@unitedvoice.org.au'; 'kez.tacar@junioradventuresgroup.com.au'; 'Kylie Brannelly'; Estha van der Linden; 'sofia.bahas@afei.org.au'; Arthur Dowdle
Subject: AM2018/18 and AM2018/20: Children's Services Award/Teachers Award - ACA, ABI, NSWBC Reply Submissions & Evidence - Email 1 of 4 [ABLAW-ImangeDocs.FID179812]

Dear Associate

RE: AM2018/18 and AM2018/20 - Children's Services Award & Teachers Award

We act on behalf of the following parties in the above matter:

- the Australian Childcare Alliance Inc;
- Australian Business Industrial;
- the NSW Business Chamber;
- the National Outside School Hours Care Services Alliance; and
- Junior Adventure Group.

We **attach** Reply Submissions and evidence filed on behalf of our clients who oppose the substantive claims proposed by the Independent Education Union, United Voice and the Individuals in this matter.

We acknowledge that the submissions were due for filing on 12 April 2019 and are accordingly being filed late. We sincerely apologise for this delay and respectfully request that leave be granted for the submissions to be considered in these proceedings.

Witness Statements

For simplicity, where a witness has already filed a statement in these proceedings, we have amended their existing statement by including a section titled "The Unions' Claims" at the end of each statement. Each of these statements has been marked in the title as an amended statement.

We trust this assists the Commission, the parties and the witnesses for the purpose of reading the material, cross examination and preparation for the hearing.

Confidentiality order

The Australian Childcare Alliance Inc seeks a confidentiality order in relation to the Statement of Gary Carroll dated 15 April 2019. We have marked this statement as confidential as a precautionary measure.

The Commission and the interested parties have been provided with an unredacted version of this statement attached to this email. We request that the unredacted version of the statement not be uploaded to the Commission's website or distributed by the parties pending the determination of ACA's request for confidentiality which will be sent in a separate email.

Due to file size limitations this is email 1 of 4.

Yours sincerely

Sophie

Sophie Margaret Whish

Senior Associate

Australian Business Lawyers & Advisors

140 Arthur Street North Sydney NSW 2060

Dir: +612 9458 7431 | Fax: +612 9954 5029 | Mob: 0409 110 373

Tel: +612 9458 7005 | Web: www.ablawyers.com.au |  [LinkedIn](#)

Fair Work Commission: 4 yearly Review of modern awards

REPLY SUBMISSION

**4 YEARLY REVIEW OF MODERN AWARDS: (AM2018/18 &
AM2018/20)**

**CHILDREN'S SERVICES AWARD 2010
AND EDUCATIONAL SERVICES (TEACHERS) AWARD 2010 -
SUBSTANTIVE ISSUES**

ACA, ABI and NSWBC

16 APRIL 2019

1. BACKGROUND

1.1 This reply submission is made in accordance with the Directions of the Fair Work Commission (**Commission**) issued on 11 December 2018 on behalf of the:

- (a) Australian Childcare Alliance Inc. (**ACA**);¹
- (b) Australian Business Industrial (**ABI**); and
- (c) New South Wales Business Chamber (**NSWBC**).

(**ACA/ABI**).

1.2 This reply submission is also supported by the National Outside School Hours Care Services Alliance (**NOSHSA**) and Junior Adventure Group (**JAG**) who are also represented by Australian Business Lawyers & Advisors in these proceedings.

1.3 NOSHSA represents the outside school hours care sector throughout Australia and has over 3,310 services that are members across Queensland, New South Wales, Victoria, Tasmania, ACT, Western Australia and North Territory.

1.4 JAG is a national provider of outside of school care services in Australia and is currently servicing more than 460 schools nationally. JAG employs over 3,000 employees and cares for over 40,000 Australian children.

1.5 This reply submission addresses the claims made by:

- (a) the United Voice (**UV**) in submissions dated 15 March 2019;
- (b) the Independent Education Union of Australia (**IEU**) in submissions dated 15 March 2019; and
- (c) the Arrabalde sisters (**Individuals**) in submissions dated 14 March 2019.

(the **Claims**)

1.6 The Claims impact the Early Childhood Education and Care sector (**ECEC**) in respect of the *Children's Services Award 2010* (**Children's Services Award**) and the *Educational Services (Teachers) Award 2010* (**Teachers Award**) (together the **Awards**).

1.7 The Claims advanced by the UV in this matter include:

- (a) a claim to introduce a new allowance for employees assigned to be the Responsible Person at a service (**Responsible Person Allowance**); and

¹ Association of Quality Childcare Centres of NSW Inc; Australian Childcare Alliance Victoria; Childcare Queensland Inc; Childcare South Australia; Childcare Association of Western Australia.

- (b) a claim to introduce a new allowance for employees assigned to be the Educational Leader at a service (**Educational Leader Allowance**);
- (c) a claim to increase the time off the floor away from children (non-contact time) for Room Leaders and Educational Leaders (**Non-contact Time Claim**);

in both the Children's Services Award and the Teachers Award.

1.8 The Claims advanced by the Individuals in this matter are similar to the Responsible Person Allowance and the Educational Leader Allowance sought above.

1.9 The other Claims advanced by UV in relation to the Children's Services Award include:

- (a) a claim seeking the payment of training courses and time worked at those courses (**Training Allowance**);
- (b) a claim seeking the laundry allowance be paid in circumstances where employees wash their clothes using the on-site facilities at the workplace (**Laundry Allowance**);
- (c) a claim to include 'hats and sun protection (including sunscreen)' in the definition of protective clothing and require the employer to either provide these items or reimburse the employee (**Clothing Allowance**);
- (d) a claim to vary the exemption in the higher duties clause so that an employee who is required to perform high duties (to replace a colleague who is attending paid training) is paid higher duties (**Higher Duties Claim**);
- (e) a claim requiring employers who direct their employees to take leave without pay (annual leave) over Christmas to pay ordinary time to those employees in circumstances where they have no accrued any leave (**Annual Leave Claim**).

1.10 The Claims advanced by the IEU in this matter in relation to the Teachers Award include:

- (a) a claim to amend award coverage for Directors of childcare centres with teaching degrees, to be covered by the Teachers Award (and not the Children's Services Award) (**Coverage Claim**); and
- (b) a claim to confirm the minimum payments of a 'quarter day' and 'half day' to casual teachers (**Minimum Engagement Claim**).

1.11 In support of its position, ACA/ABI relies upon:

- (a) the amended witness statement of Karthika Viknarash dated 11 April 2019 (**Viknarash Statement**);

- (b) the amended witness statement of Sarah Elizabeth Tullberg dated 9 April 2019 (**Tullberg Statement**);
 - (c) the amended witness statement of Kristen McPhail 12 April 2019 (**McPhail Statement**);
 - (d) the amended witness statement of Nicole Louise Llewellyn dated 9 April 2019 (**Llewellyn Statement**);
 - (e) the amended witness statement of Jae Dean Fraser dated 15 April 2019 (**Fraser Statement**);
 - (f) the amended witness statement of Pam Avril Maclean dated 15 April 2019 (**Maclean Statement**);
 - (g) the amended witness statement of Kerry Joseph Mahony dated 11 April 2019 (**Mahony Statement**);
 - (h) the witness statement of Katie Ann Gibbs dated 12 April 2019 (**Gibbs Statement**);
 - (i) the witness statement of Kristel Smylie dated 12 April 2019 (**Smylie Statement**);
 - (j) the witness statement of Gary Carroll dated 15 April 2019 (**Carroll Statement**);
 - (k) the witness statement of Kylie Brannelly dated 15 April 2019 (**Brannelly Statement**).
- (Collectively, the **ACA/ABI Statements**).

1.12 ACA/ABI deal with each of the Claims separately below.

2. CLAIM FOR NEW ALLOWANCES FOR RESPONSIBLE PERSON AND EDUCATIONAL LEADER

Summary of Claims

2.1 UV and the Individuals seek the introduction of:

- (a) a weekly allowance for any employee assigned to be the Educational Leader at a service; and
- (b) an hourly allowance for any employee assigned to be the Responsible Person at a service.

Basis of Claims: National Law and Regulation

2.2 UV submits that regulatory reform in the ECEC sector has resulted in the creation of the Educational Leader and Responsible Person roles. The catalyst for most of (although not all of) that reform has been the *Education and Care Services National Law Act 2010* (**National Law**) and *Education and Care Services National Regulations 2010* (**National Regulations**).

- 2.3 In order to determine whether the relevant roles have any additional duties or responsibilities the Commission must:
- (a) understand the legislative duties and responsibilities currently imposed on Educational Leaders and Responsible Persons by the National Law and Regulations (if any);
 - (b) determine whether any consideration should be given to the indicative duties provided by UV witnesses², the Australian Children’s Education & Care Authority (ACECQA)³ and Dr Fenech⁴;
 - (c) determine which duties and responsibilities listed by witnesses that hold dual roles (eg; Director and Responsible Person) actually attach to the Educational Leader or Responsible Person positions; and
 - (d) consider whether the award classifications already include the duties and responsibilities of an Educational Leader and Responsible Person.
- 2.4 The National Law and Regulations must always be read together with the modern awards to determine a specific employee’s duties, responsibility, remuneration and legal liability.
- 2.5 It is common for employees in the ECEC sector to hold multiple positions. Some of these positions come from the National Law and Regulations and others come from the Children’s Services Award or Teachers Award. For example, a single employee at a smaller service could be the:
- (a) Approved Provider (eg; owner, as per the National Law);
 - (b) Director (as per the Children’s Services Award);
 - (c) Responsible Person (as per the National Law); and
 - (d) Educational Leader (as per the National Law).
- 2.6 All of the employee’s position descriptions would need to be considered against the modern award classifications. Having regard to the duties of each role this employee used in the example above would be classified as a Level 6 and receive a Directors Allowance.
- 2.7 ACA/ABI disagrees with the basis of the UV’s claim for the Responsible Person and Educational Leader allowances.

² Statement of Hennessy at [18]

³ Llewellyn Statement at [97]-[98]

⁴ Dr Fenech Report at Annexure 3

- 2.8 ACA/ABI submit it is simply not the case that the National Law and Regulations created new roles with additional skills and responsibilities. In fact, the ACA/ABI's Statements of Fraser, Viknarash and Brannelly provide evidence that the duties of an Educational Leader and Responsible Person existed well before the National Law and Regulations were implemented and the modern awards were drafted in 2009.⁵
- 2.9 The true position is that the extensive regulatory reform of the ECEC sector has had the purpose and effect of codifying and harmonising (although imperfectly) standards in ECEC and has established a common minimum national standard. As part of this process, some new (harmonised) position titles were inserted into the National Law and Regulations, but new roles were not created by the legislation.⁶
- 2.10 The ACA/ABI evidence suggests that the relevant duties and roles already existed in different forms on a state by state basis across the country.⁷
- 2.11 In a childcare setting, there has always been educational programs and persons leading the development and implementation those programs (now, these persons are called Educational Leaders).
- 2.12 Similarly, there were always Directors and Assistant Directors in charge of a service who assumed responsibility for the centre (both in a legal and operational sense). The term Responsible Person merely harmonises and codifies the requirement that already existed (that someone be 'in charge' and 'responsible' at all times).
- 2.13 A new position title does not of itself create additional duties or responsibilities. In that sense the National Law and Regulations do not impose any additional responsibilities on Educational Leaders or Responsible Persons and therefore no additional allowances are warranted as a result.
- 2.14 UV has also not demonstrated that the standards are more demanding than those which have applied in the past or that they have resulted in a greater degree of difficulty in the work of Educational Leaders or Responsible Persons.
- 2.15 Many of the UV statements make no attempt to distinguish between the position of Educational Leader/Responsible Person and any other position those witnesses hold for the

⁵ Fraser Statement at [114]; Viknarash Statement at [116] and [119]; Tullberg Statement at [90]-[98] and Brannelly Statement [47]-[49]

⁶ Tullberg Statement at [94]

⁷ Fraser Statement at [114]; Viknarash Statement at [116] and [119]; Tullberg Statement at [90]-[98] and Brannelly Statement [47]-[49]

service (such as Director, Assistant Director, Co-ordinator, Centre Manager, Room Leader etc).

- 2.16 This is not to say of course that Educational Leaders/Responsible Persons do not provide duties of leadership, programming or contribute to the operation of a service. That will commonly be the case. Such duties do not arise from an employee's status as an Educational Leaders or Responsible Person but rather from their status of holding other positions in the centre. For example, UV witness Alicia Wade is both the Centre Manager, Nominated Supervisor and the Responsible Person. As well as this, Ms Warner is the Lead Educator (or Room Leader), Educational Leader and Responsible Person.
- 2.17 The difficulty with dual roles is Educational Leaders or Responsible Persons who are also appointed as Directors are already paid at the highest level of the Children's Services Award (Level 6) and provided with a Directors allowance of between 11.5% and 17.3% of the standard rate in the award to compensate for any additional responsibilities associated with being a person in charge (or responsible) under the National Law. To pay these roles a further allowance in compensation for duties already included in the Level 6 classification would be inappropriate.

3. EDUCATIONAL LEADER ALLOWANCE

- 3.1 Specifically with respect to the Educational Leader Allowance, UV and the Individuals seek the introduction of a weekly allowance for any employee assigned to be the Educational Leader at a service. The weekly allowance represents a wage increase of \$62 - \$105 per week depending on the size of the service.
- 3.2 The grounds relied upon in support of the Educational Leader allowance by UV are broadly the following:
- (a) The Educational Leader role is a new role which was created in 2012 as a result of regulatory change.
 - (b) The duties of the Educational Leader role were not considered when the modern awards were created.
 - (c) Additional responsibilities have been imposed on employees by the NQF in respect of the Educational Leader role.
 - (d) Educational Leaders are responsible for:
 - (i) programming;

- (ii) leading the programming;
 - (iii) planning for the centre;
 - (iv) mentoring and supporting other educators;
 - (v) leadership and direction;
 - (vi) maintaining a centres high (NQF) standards;
 - (vii) ensuring compliance with the NQF in particular ensuring centres meet the outcomes of Quality Area 1 (Educational program and practice);
 - (viii) leading critical reflections; and
 - (ix) creating specialised programs for children with additional needs.
- (e) Educational Leaders have expertise in:⁸
- (i) strong communication and interpersonal skills
 - (ii) in-depth knowledge of theory relevant to ECEC
 - (iii) deep knowledge of the NQS and approved learning frameworks
 - (iv) capacity to build a learning community based on inquiry, action, research and reflection.
- (f) The role requires additional skills above and beyond that which is required in an employee's classification within the Awards.
- (g) The Awards do not currently recognise or compensate Educational Leaders by way of allowance or other compensation.
- (h) That the work of Educational Leaders in ECEC is comparable to the work of Educational Leaders in schools (and those teachers receive an educational leadership allowance).⁹

3.3 Put simply, there is insufficient evidence before the Commission that could be relied upon to support the granting of this allowance.

3.4 As noted above, the history of the National Law and Regulations confirms that the title of Educational Leader is new but ACA/ABI submits that the duties and responsibilities of an Educational Leader are not.

⁸ UV Submission at [51] - Dr Fenech Report.

⁹ Arrabalde Submission at [17]

3.5 The only requirements for Educational Leaders imposed by the National Law are as follows:

	Summary of requirements	Section of the National Law and Regulations
Educational Leader	<p>118 Educational leader</p> <p>The approved provider of an education and care service must designate, in writing, a suitably qualified and experienced educator, co-ordinator or other individual as educational leader at the service <u>to lead the development and implementation of educational programs in the service.</u></p>	Section 118

The duties and responsibilities of the role are not new

3.6 The ACA/ABI Statements of Viknarash and Brannelly suggest that the duties of the Educational Leader existed well before the implementation of the National Law (including the NQF in 2012).

The Viknarash statements states:

“Similarly to the “Responsible Person,” there has always been a form of “Educational Leader” This person has no additional responsibility as UV suggests and in fact, they have less work under the NQF as was the intention of the regulation.”¹⁰

The Brannelly statements states:

“In OSHC, there was always someone delivering, implementing and creating a program for children. These are not new duties and were generally performed by Assistant Coordinators, Coordinators and Directors in conjunction with Educators in the past.”¹¹

3.7 The Individuals have not filed any evidence in support of the Educational Leader Allowance. The Individuals rely on submissions that, at best, provide an indication of indicative duties of an Educational Leader sourced from Journals and regulatory authorities. Evidence of the

¹⁰ Viknarash Statement at [118]

¹¹ Brannelly Statement at [44]

indicative duties of an Educational Leader have been filed by UV (including duties such as developing a program for children and mentoring other educators). However, both parties have failed to outline any new or additional duties that would warrant granting the claim.

The duties and responsibilities are captured in the award classifications

3.8 The notion that the duties of an Educational Leader were not considered when the modern award grading system was created is simply incorrect.

3.9 The duties of an Educational Leader (eg; leading the development and implementation of a program) were split between multiple persons at the centre (Director, Assistant Director etc.). The exact words “Educational Leader” will not appear in the award (as that term did not exist), but there was always someone responsible for the educational program and mentoring others.¹²

3.10 The Viknarash Statement confirms:

“The ECEC sector to my knowledge has always had an educational leader, even before the NQF as services still needed to be accredited and a person was still in charge of guiding that educational program. Annexed and marked ‘KV-1’ is an example of a 2005 NCAC Quality Practice Guide which shows that the role of educational leader needed to be performed under Quality Area 3 (Programming and Evaluation) and Quality Area 4 (Children’s Experiences and Learning) in order to meet the qualities required of a centre. This clearly shows that there was a person fulfilling the role of “Educational Leader” well before the NQF and therefore this role was contemplated and given consideration in the making of the Modern Award created in 2009 by the Australian Industrial Relations Commission.”¹³

3.11 Every duty or responsibility said by the parties to justify the introduction of the Educational Leader Allowance can be found in the classifications for Levels 4 - 6 in the Children’s Services Award. Schedule A to this submission is a table matching each of the suggested new or additional duties of an Educational Leader with an already existing duty from the Children’s Services Award.

¹² See Statements referred to at [3.19] of this Submission

¹³ Viknarash Statement at [119]

- 3.12 On that basis, the evidence that, *“the [educational leader] role requires additional skills above and beyond that which is required in an employee’s classification within the Awards”*¹⁴ is simply incorrect. It is contradicted by:
- (a) the duties listed in the Children’s Services Award (which incorporate all of the duties listed by UV as being additional); and
 - (b) the fact that centre Directors (who manage the entire centre as opposed to Educational Leaders who manage a subset of tasks) are covered by the existing modern award grading system.
- 3.13 It is unclear why UV continues to argue that the Awards do not *“recognise or compensate Educational Leaders by way of allowance or other compensation”*. As the employer case makes out, Educational Leaders are already compensated in accordance with the minimum wages set for levels 4-6 under the Children’s Services Award, depending on the nature of their duties. The ACA/ABI evidence suggests most Educational Leaders will fall into Level 5 or 6. To provide an additional allowance for the performance of duties already forming a part of the existing classification would be essentially to ‘double-dip’ and be paid twice for the same duties.
- 3.14 In respect of the Teachers Award, teachers who have coverage under that Award are classified simply by the length of their bachelor degree followed by a service based progression method for each year of service. There is no reason why duties for an Educational Leader should be specifically outlined in the classifications in the Teachers Award given this method. Notwithstanding that these duties are not specifically itemised in the classification system of the Teachers Award, the rationale outlined above in respect of the Children’s Services Award also applies to the Teachers Award.

Expertise of Educational Leaders

- 3.15 Dr Fenech suggests that Educational Leaders have special expertise. It is unclear whether or not this is the same “skill” that UV relies upon to warrant a new allowance being awarded to these employees.¹⁵
- 3.16 The expertise outlined by Dr Fenech (including strong communication and deep knowledge of the NQS) are not skills specific to Educational Leaders. For example, all educators possess some knowledge of the NQS and the best educators often have strong communication and

¹⁴ UV submissions at [52]

¹⁵ Dr Fenech Report at Annexure 3.

interpersonal skills. Again, this does not make out a sufficient case for the introduction of a new allowance.

Educational Leaders at primary schools

- 3.17 The Individuals submit that there is an existing educational leadership allowance (in the Teachers Award)¹⁶ that should be applied to the ECEC sector. This allowance is provided to those nominated for a leadership position who are in charge of 100 - 600 students at a school. This is a very different role to an Educational Leader in long day care or OSHC service. Anyone performing an equivalent role in the ECEC space would likely be considered a Director or Co-ordinator. These employees are already classified and remunerated at Level 6 of the Children's Services Award and likely paid a Directors Allowance.
- 3.18 The Individuals claim that the work of Educational Leaders in ECEC is comparable to the work of Educational Leaders in primary schools. Whether the work in a primary school is comparable to the work in an early childhood service is currently being explored in the Equal Remuneration Order and Work Value Proceedings before the Fair Work Commission. The employer position in those proceedings is that the work is not of equal or comparable value. By way of example the work of primary school teachers (and presumably Educational Leaders in primary schools) includes:
- (a) much lower adult:child ratios;
 - (b) teaching in a classroom environment;
 - (c) programming lessons and teaching according to a comprehensive, detailed and prescriptive curriculum dictating content and outcomes (including mathematics, science, health and physical education, history);
 - (d) teaching groups of 20 to 30 pupils;
 - (e) working alone with a class; and
 - (f) setting, marking and grading homework and tests and other academic evaluations.¹⁷

The Proposed Allowance does not contemplate conditions in OSHC

- 3.19 The Educational Leader Allowance proposed by UV neglects to consider how the allowance would impact outside of school hours care providers.

¹⁶ Teachers Award clause 15.2

¹⁷ C2013/6333 and C2013/5139 - United Voice Application dated 15 July 2013

- 3.20 Based on the ACECQA 2019 NQF Snapshot, OSHC services comprised 4,443 of 15,787 of the total number of services in the childcare industry which is approximately 28%.¹⁸
- 3.21 The conditions relating to Educational Leaders in OSHC are different from Long day care.
- 3.22 An Educational Leader in OSHC will ordinarily oversee *an aspect* of the overall OSHC program (eg; Before School Care, After School Care or Vacation Care) or a particular component such as a preparatory program, junior program or senior program. This means the role of Educational Leader in the OSHC is divided between several (usually casual) employees throughout the week.¹⁹ As a consequence, the weekly allowance sought by UV and the Individuals is unworkable in OSHC as centres would be required to pay multiple employees the weekly allowance at the same time.
- 3.23 To further compound this difficulty, given that historically ‘caps’ have not applied in OSHC (as they have in long day care), a centre in OSHC sector will invariably operate with a relatively large number of children. As the evidence of Brannelly at [35]-[37] suggests, a ‘small’ OSHC centre would be one with less than 59 children while a large OSHC centre would have 120 children or more.
- 3.24 These two factors mean that, if the Claim is accepted, OSHC centres would be paying several Educational Leader allowances at the highest rates at all times.²⁰ If combined with an obligation to also pay the claimed Responsible Person Allowance (also likely to be calculated at the highest rate) this compounds the cost of the Claim further again.

The Claim should be dismissed

- 3.25 The Educational Leader Allowance constitutes a substantive change to the Awards and would require probative evidence to demonstrate a cogent basis for the variation sought.²¹
- 3.26 No such evidence or cogent basis has been identified and accordingly the allowance proposed by UV and the Individuals should be dismissed.
- 3.27 In effect, this claim seeks to further compensate employees for duties already included in current Award classifications. The duties claimed are in no meaningful sense ‘new’ and therefore do not warrant a new allowance. To provide an allowance would essentially to provide further increased payment for the same work.

¹⁸ (see Table 1: Number of services by service sub-type and jurisdiction), ACECQA 2019 NQF Snapshot

¹⁹ Brannelly at [51]-[52]

²⁰ Brannelly at [37]

²¹ 4 Yearly Review of Modern Awards - Preliminary Jurisdictional Issues Decision [2014] FWCFB at [60]

4. RESPONSIBLE PERSON ALLOWANCE

- 4.1 UV and the Individuals also seek the introduction of an hourly allowance for any employee assigned to be the Responsible Person at a service of between \$3 - \$6 per hour depending on the number of places at a centre.
- 4.2 This is essentially a re-agitated claim that UV pursued in the 2012 award review, which was dismissed.²²
- 4.3 The grounds relied upon in support of the Responsible Person allowance by UV are broadly the following:
- (a) The Responsible Person role is a new role which was created in 2012 as a result of regulatory change.
 - (b) The duties of the Responsible Person role were not considered when the modern awards were created.
 - (c) Additional responsibilities have been imposed on employees by the NQF in respect of the Responsible Person role.
 - (d) Responsible Persons are responsible for:²³
 - (i) ensuring that the centre is operating at all times in accordance with the National Law and Regulations;
 - (ii) ensure the health and safety of the children on site;
 - (iii) ensure staff to child ratios are being met;
 - (iv) ensure the physical environment is set out appropriately;
 - (v) ensure programming and planning is carried out in accordance with the NQF;
 - (vi) maintain relationships with parents and families;
 - (vii) maintaining the quality of a service.²⁴
 - (e) The National Law requires a Responsible Persons must:
 - (i) be responsible and be on-site at all times²⁵
 - (ii) be 18 years old;²⁶

²² United Voice, Application to vary a modern award 2012 review, 6 March 2012.

²³ UV Submission at [66]

²⁴ Dr Fenech Report, Annexure 3, page 10

²⁵ Section 162 of National Law

- (iii) be an approved provider, nominated supervisor or a person in day-to-day charge;²⁷
- (iv) have adequate knowledge and understanding of the provisions of education and care to children and an ability to effectively supervise and manage an education and care service;²⁸
- (v) have child protection training required by state law.²⁹
- (f) The role requires additional skills and responsibility above and beyond that which is required in an employee's classification within the Awards.³⁰
- (g) Employees are required to take on the role of Responsible Person without any additional pay.
- (h) The role of Responsible Person is equal or comparable to the work of Co-ordinators or Directors.

4.4 The history of the National Law and Regulations in paragraph 2.2 - 2.17 above confirms that the title of Responsible Person is new but that the duties and responsibilities of a Responsible Person are not.

The duties and responsibilities of the role are not new

4.5 The Statements of Tullberg and Maclean, suggest that the duties of the Responsible Person existed well before the implementation of the NQF in 2012.

4.6 The Tullberg statement provides the Victorian perspective:

"I know that the concept and duties of a 'Responsible Person' has existed in Victoria for decades and I believe it existed as early as the commencement of the Children's Services Act 1996 over twenty years ago.

...

In 1996, the legislation required childcare providers to complete a form when obtaining their licence to operate. The application had to state "whether the proprietor intends to be present at the premises where the children's service is to operate at all times or to employ a person to manage or control the children's service

²⁶ Regulation 117B

²⁷ As above

²⁸ As above

²⁹ S162A of the National Law

³⁰ Individuals Submissions at [31]

in the absence of the proprietor.”³¹ This chosen person, although not specifically termed the ‘Responsible Person’ was the person who managed and controlled the centre in the absence of the proprietor and was the same role as the ‘Responsible Person’ carries out today”³².

4.7 The Maclean Statement states:

“The role of Responsible Person, as required by the National Quality Framework (NQF) is not a new concept despite not being explicitly mentioned in the Children’s Services Award 2010 or Educational Services (Teachers) Award 2010.

Speaking from my own experience, acting in such a role, I always knew that role as being called the ‘early group leader’ or ‘late group leader’. These people were the ones to make operational decisions as required until the Director arrived at work. We were instructed about the choices we could make and who to contact in an emergency and it was regarded as part of our normal role. Rosters were devised using the team members who were qualified, experienced and capable to undertake such a role to make sure someone ‘responsible’ was always on-site.”³³

4.8 Evidence of the indicative duties of a Responsible Person has been filed by UV and the Individuals (including duties such supervising, managing and liaising with parents). However, both parties have failed to outline any new or additional duties that would justify an allowance of the magnitude sought.

4.9 The only requirements for Responsible Persons imposed by the NQF are as follows:

	Summary of requirements	Section of the National Law and Regulations
Responsible Person	<p>162 Offence to operate education and care service unless responsible person is present</p> <p>(1) The approved provider of an education and care service must ensure that one of the following persons is present at all times that the service is educating and caring for children—</p>	Section 162

³¹ Section 9, Children Services Act 1996.

³² Tullberg Statement at [93]

³³ Maclean Statement at [102]-[103]

	<p>(a) the approved provider, if the approved provider is an individual or, in any other case, a person with management or control of an education and care service operated by the approved provider;</p> <p>(b) a nominated supervisor of the service;</p> <p>(c) a person in day-to-day charge of the service.</p>	
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4.10 Despite the title, Responsible Persons have no legal responsibility (unless they are an approved provider or nominated supervisor). If the Responsible Person is not an approved provider or nominated supervisor, the requirement of the National Regulations is that an Approved Provider select a person in day-to-day charge who they deem has adequate knowledge to supervise and manage an education and care service³⁴ But it does not require that that person bear any legal responsibility for the centre.

4.11 The Fraser statements confirms:

“... there is not any additional legal requirements and responsibilities as the ultimate responsibility of the centres falls on the Approved Provider. It is important to note that it is the Approved Provider who has liability of the centre, never the Responsible Person.”³⁵

4.12 The Viknarash statement states:

“In my Centres, the “Responsible Person” will only not be the Director or Assistant Director for a short amount of time that day. During that short amount of time there will be a “Responsible Person” who will just be a point of call for the Centres for a short amount of time. This person has no practical additional work such as creating rosters, buying equipment or furniture or programming and planning for the Centres as the UV suggests. The “Responsible Person” is not responsible legally at any point for the other educators or staff members as this is still the ultimate responsibility of the Nominated Supervisor.”³⁶

³⁴ S117B National Regulations

³⁵ Fraser Statement at [115]

³⁶ Viknarash Statement at [115]

The duties and responsibilities are captured in the award classifications

- 4.13 The notion that the duties of a Responsible Person were not considered when the modern award grading system was created is simply incorrect. The exact words “Responsible Person” will not appear in the award (as that term did not exist), but there was always someone responsible for centre.³⁷
- 4.14 Every duty or responsibility proposed by the parties can be captured in the classifications for Levels 4 - 6 in the Children’s Services Award. Schedule B to this submission is a table matching each of the suggested new or additional duties of a Responsible Person with an existing duty from the Children’s Services Award.
- 4.15 The Individuals have not filed any evidence in support of the Responsible Person Allowance. However, their submissions continually assert that Responsible Persons (who are not Directors or Co-ordinators) have additional responsibilities.³⁸ The additional responsibilities they outline include:
- (a) supervise and manage an education and care service;³⁹
 - (b) being the point of contact for parents and staff in the absence of the nominated supervisor;⁴⁰ and
 - (c) day-to-day operations of the service.⁴¹
- 4.16 To summarise, the Individuals are suggesting that any employee paid less than a Level 6 who is allocated the Responsible Person title (for any period of time) is performing “additional responsibilities”. This simply does not reconcile with the responsibilities listed in the classifications in the Children’s Services Award.
- 4.17 For example, a Level 5 is:
- “Responsible for the day-to-day management of the centre or service in the temporary absence of the Director and for management and compliance with licensing and all statutory and quality assurance issues.”⁴²*
- and a Level 4 includes being:

³⁷ See Statements referred to at 4.5 of this Submission

³⁸ Individuals Submission at [36]

³⁹ Individuals Submission at [35]

⁴⁰ Individuals Submission at [37]

⁴¹ Individuals Submission at [38]

⁴² Schedule B, Children’s Services Award, Level 5

- (a) *Responsible, in consultation with the Assistant Director/Director for the preparation, implementation and evaluation of a developmentally appropriate program for individual children or groups.*
- (b) *Responsible to the Assistant Director/Director for the supervision of students on placement.*
- (c) *Responsible for ensuring a safe environment is maintained for both staff and children.*
- (d) *Responsible for ensuring that records are maintained accurately for each child in their care.*
- (e) *Develop, implement and evaluate daily care routines.*
- (f) *Ensure that the centre or service's policies and procedures are adhered to.*
- (g) *Liaise with families.*

4.18 An allowance is not warranted for Levels 4-6 in light of the duties of Responsible Persons (as proposed by the Individuals) already being listed in the Award.

4.19 The employer evidence is that Responsible Persons are engaged as Levels 4A and above⁴³, due largely to the fact that:

- (a) they are usually the Nominated Supervisor (Level 5), Approved Provider or the Director (Level 6);⁴⁴ or
- (b) if it is a person in day-to-day charge they are more likely to be Diploma Qualified (Level 4) as:
 - (i) 2 employees must open and close the centre;⁴⁵ and
 - (ii) the centre must always have 50% of its staff be Diploma qualified or working towards a Diploma.⁴⁶

4.20 By contrast, Level 3 and below of the Children's Services Award do not include the duties required of a Responsible Person and may be entitled to an allowance (on the basis that they are performing additional duties). However, a safety mechanism already exists in the award, whereby an employee "stepping up" to perform Level 4, 5 or 6 duties (eg;

⁴³ Viknarash Statement at [121]; Llewellyn Statement at [93]-[94]; McPhail Statement at [97]; Tullberg Statement at [101]-[103]; Fraser Statement at [90]

⁴⁴ As UV points out in their submissions at [68], the Nominated Supervisor is usually the Director of the Centre.

⁴⁵ ACA submission 15 March 2019, page 19

⁴⁶ ACA submission 15 March 2019, page 11

Responsible Person duties) would be paid in accordance with the higher duties clause of the award.⁴⁷

4.21 The ACA/ABI evidence suggests employers already utilise the higher duties clause for lower level employees taking on additional responsibilities.⁴⁸

4.22 Teachers who have coverage under the Teachers Award are classified simply by the length of their bachelor degree followed by a service based progression method for each year of service. There is no reason why duties for an Educational Leader should be specifically outlined in the classifications in the Teachers Award given this method. Notwithstanding that these duties are not specifically itemised in the classification system of the Teachers Award, the rationale outlined above in respect of the Children's Services Award also applies to the Teachers Award.

The Proposed Allowance does not contemplate conditions in OSHC

4.23 The Responsible Person Allowance proposed by UV neglects to consider how the allowance would impact outside of school hours care providers which make up 28% of the formal care sector. Our submissions above at 3.19-3.24 also apply to the Responsible Person Allowance albeit that as the Responsible Person Allowance is an hourly allowance, OSHC centres would only be required to pay one employee the Responsible Person Allowance at any one time. The allowance in OSHC would still arise at the highest rate and would be (if granted) combined with an obligation to also pay the claimed Educational Leader Allowance (also likely to be calculated at the highest rate).

Conclusion

4.24 Put simply, there is insufficient evidence before the Commission that could be relied upon to support the granting of this allowance. Responsible Person duties are already included in Levels 4-6 under the Children's Services Award and to provide a further allowance for the performance of these duties would essentially be 'double-dipping'.

4.25 The UV has put on no evidence in relation to employees engaged as Responsible Persons under Levels 1-3, but even if they had, those persons are entitled to be paid in accordance with the higher duties clause.

⁴⁷ Clause 18 of Childcare Industry Award

⁴⁸ Brannelly Statement at [53]

5. WORK VALUE

- 5.1 The Commission will need to consider whether s 156(3) is triggered by either the Educational Leader Allowance or the Responsible Person Allowance.
- 5.2 If s 156(3) is triggered, then UV must provide reasons justifying that the allowances should be paid for doing a particular kind of work, being reasons related to any of the following:
- (a) the nature of the work;
 - (b) the level of skill or responsibility involved in doing the work;
 - (c) the conditions under which the work is done.
- 5.3 UV has already used the implementation of the National Law and Regulations (which occurred in 2012) and the 'changes' it brought about, to justify a previous attempt at increasing the minimum wages for educators in the Equal Remuneration Order Case [2017] FWCFB 2690. UV was of course unsuccessful in that Claim.
- 5.4 It is also relevant to state that UV proposed the allowance claims early in the 4 yearly Review but withdrew them whilst it ran the UV ERO case. It is no coincidence that these claims were re-filed after their ERO case was unsuccessful. Each case essentially seeks the same outcome (an increase to the minimum wages for educators).
- 5.5 We note UV has sought to provide work value reasons to support the proposed allowances, and continues to refer to additional skill and responsibility required by Educational Leaders and Responsible Persons throughout their submissions.
- 5.6 UV provides 3 work value reasons in their submissions being:
- (a) the NQF created the role of educational leader;
 - (b) the NQF created the of Responsible Person;
 - (c) the NQF has increased programming time for educators.
- 5.7 We have addressed in detail the ACA/ABI position that the duties of Educational Leader and Responsible Person are not new, though the titles of those roles were created in 2012.
- 5.8 Given the history of UV's Claims to increase the minimum wages, there is a real concern, that UV will pursue a work value claim for an increase to minimum wages (outside of the 4 yearly review) if they are not successful in obtaining these allowances. These allowance claims are merely an attempt to increase the minimum wage whilst avoiding having to run a 'full' work value case.

- 5.9 Put simply, the evidence before the Commission does not demonstrate that there has been a significant net addition to work requirements which would justify either allowance. Putting the same point differently, there has been no significant change in the nature of the work, the skills and responsibility required or the conditions under which the work is performed.
- 5.10 In particular, the introduction of a significant degree of national regulation - has codified and to an extent harmonised standards for ECEC. It has not influenced in any significant way the day-to-day work of those educators who would be entitled to the allowances sought.
- 5.11 There has been no change in the duties or responsibilities required of educators appointed to 'leadership positions'. The titles of Educational Leader and Responsible Person might be new titles but for 7 years businesses have been paying these people in accordance with the award, using the existing classification structure. The duties (and work value) of these positions (whatever their name), has always been incorporated into the award classifications.
- 5.12 Lastly, it is relevant to note that there are various changes in the sector which have actually improved working conditions. No evidence has been led by either party on this point. However, evidence filed in other proceedings suggest that technology has actually made programming easier for educators and the increase in mandated educator:child ratios has reduced the difficulty of the work by reducing the number of children per educator.⁴⁹

6. NON-CONTACT TIME CLAIM

- 6.1 UV seeks to increase the amount of non-contact time for employees who are *'responsible for the preparation, implementation and/or evaluation of a developmental program'* from 2 hours up to 4 hours per week. These persons are commonly referred to as 'Room Leaders'.
- 6.2 UV also seeks for Educational Leader to receive the following amounts of non-contact time:
- (a) Up to 39 children centre - 2 hours;
 - (b) 40 - 59 children centre - 3 hours; and
 - (c) 60 or more children - 4 hours.
- 6.3 The Children's Services Award currently provides for non-contact time as follows:

21.5 Non-contact time

(a) An employee responsible for the preparation, implementation and/or evaluation of a developmental program for an individual child or group of children will be

⁴⁹ AM2018/9 - Outline of Submissions for the ACA dated 2 April 2019 at [31] and [109]

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) Wherever possible non-contact time should be rostered in advance.

Employer evidence

- 6.4 The employer evidence suggests that programming has always been a duty and responsibility of educators, and it has not increased in skill or difficulty since the introduction of the NQF.⁵⁰ In fact, as mentioned in paragraph 5.12, technology may have made duties associated with programming easier.

UV evidence

- 6.5 The report of Dr Fenech acknowledges that there is no prescribed curriculum for preparing a program. Programs must be in accordance with the NQF/NQS but the evidence of ACA/ABI is that these standards are simply a guideline that centres and educators are able to work within. The creation of the NQF/NQS has actually made programming easier as it provides some generic outcomes for centres and educators to work towards as opposed to centres having to come up with their own outcomes. An example of an outcome could be: Educators facilitate and extend each child's learning and development.⁵¹
- 6.6 Further, the evidence of the employer witnesses is that Centre Managers/Directors are the ones creating and preparing template programs⁵² that educators (Room Leaders) often insert data into the programs electronically using an App like Story Park.

2 hours non-contact time is sufficient

- 6.7 The UV evidence of Ms Wade, Ms Hennessy, Ms Warner and Ms Bea is generally that 2 hours non-contact time is not enough to complete programming.
- 6.8 In direct contrast the Fraser, Mahony, Llewellyn and McPhail Statements outline that 2 hours is sufficient and that additional time would not add to the quality of programming or the service.⁵³
- 6.9 2 hours non-contact for Room Leaders is the minimum standard, and the award is intended to provide a minimum. Centres are free to provide more time than this (if they determine it

⁵⁰ See paragraph 3.6 of this submission

⁵¹ Standard 1.2 - National Quality Framework

⁵² Gibbs Statement at [7]

⁵³ Fraser Statement at [130]; Mahoney Statement at [11]; Llewellyn Statement at [103]; McPhail Statement at [115]

is required) and the employer evidence suggests that when ratio requirements or children attendance allow, they often do provide additional time to employees.⁵⁴ It would be difficult to determine a more appropriate minimum than 2 hours given the need to consider:

- (a) the number of children in the room at any given time;⁵⁵
- (b) the nature of that centre's program (eg; is it a template, is it created from scratch);
- (c) the facilities (including technology) available at that centre to make programming easier/faster to program (eg; Apps and Ipads);
- (d) the age of the children and the complexity of the program for them; and
- (e) which room the room leader is allocated to that day or week.

Insufficient evidence of working out of hours

- 6.10 The evidence of Ms Wade is that educators at her centre are completing work outside of hours. This evidence is not specific; she does not name the educator(s) or how frequently this is occurring. In any event, the evidence of the employer witnesses is contrary to this. Where employees work outside of hours or on lunch breaks they have been asked not to do this by their employer.⁵⁶ This is a management concern that should be managed by the centre manager to ensure the amount of programming does not exceed 2 hours and if it does, systems are put in place to manage this or provide more time.
- 6.11 There has not been a sufficient case made out that the 2 hour mandated minimum for non-contact time is insufficient or not working. The Awards provide an appropriate minimum that can be increased on a case by case basis for operational reasons.
- 6.12 Probative evidence has not been provided in the form or volume required to warrant such a costly increase to overall wages costs. Any claim to mandate time "off-the-floor" must compliment the strict ratio requirements imposed by the National Law and Regulations. This claim does not consider the operational difficulties (and costs) of allowing educators (whose primary job is to care for children) more time away from those children to prepare programs for them.
- 6.13 The claim should be dismissed.

⁵⁴ Fraser Statement at [103]; Llewellyn Statement at [103]

⁵⁵ As stated by Ms Wade, "some lead educators are responsible for programming for 4 children and some are responsible for 36 children".

⁵⁶ See Gibbs Statement at [15] replying to the Hennessy Statement of UV

7. TRAINING ALLOWANCE

7.1 UV seeks the insertion of a new allowance in the Children's Services Award being:

15.9 Training expenses

Where an employee is directed to participate in training, any expenses associated with training incurred by the employee (including course fees) shall be reimbursed by the employer to the employee. The time spent in training will count as time worked.

7.2 The claim is too wide and seeks for all training to be paid for. This is not supported by evidence filed by UV. The evidence filed by UV is narrowly directed at CPR and First Aid course fees being paid for (and time spent at these courses being counted as time worked). Currently First Aid is included in Certificate III and Diploma courses, which are qualifications that are required to be held⁵⁷ by employees working in a childcare centre. The Children's Services Award only requires employers to pay for First Aid training courses as follows (our emphasis added):

15.4 First aid allowance

(a) Where an employee classified below Level 3 is required by the employer to administer first aid to children within the employee's care and the employee holds a current recognised first aid qualification such as a certificate from the St John Ambulance, the Australian Red Cross or a similar body they will be paid an allowance of 1.13% of the standard rate per day. Where the employee is employed in out-of-school hours care, the allowance will be 0.15% of the standard rate per hour.

(b) Provided that a first aid officer need not be appointed where a qualified nurse is on the premises at all times.

(c) Where an employee is required by an employer to act as a first aid officer and they do not have current qualifications, the employer must pay the costs of any required training.

7.3 The legislative requirement is for at least one staff member or nominated supervisor has a first aid qualification so they can be immediately available in an emergency.

7.4 Despite this, many employers pay for all employees First Aid and CPR qualifications for the employee's that are not required to hold this position.⁵⁸ While it is true that this does make rostering easier for the employer, employers are not *requiring or directing* employees to

⁵⁷ Or working towards these qualifications

⁵⁸ Mahony Statement at [101]; Tullberg Statement at [107]; McPhail Statement at [101]

have this qualification. The courses are optional for the employees to attend and held at a variety of times. Sometimes this is Saturdays (once every 3 years), after work or during the day if suitable staff can fill in for the employees who attend training. Paying for this course (when it is not required) is upskilling the workforce and a benefit that not all employers can afford to provide.⁵⁹ The McPhail, Mahony and Tullberg Statements state that if they had to pay overtime for employees to attend training, they would be far more selective about who is allowed to attend rather than continuing to pay for the course for all employees.⁶⁰

- 7.5 Employers generally use a portion of their operating profit towards training. If business is doing well, more money is spent on training and upskilling the workforce. There is a fundamental difference between employers stating that first aid is a *recommended* qualification versus it being mandatory.
- 7.6 An employee engaged at level 4 and above is generally 'expected' to have first aid qualifications. A nominated supervisor would be classified as at least a Level 5 or 6 under the award. That is why they are not provided with the first aid allowance that employees at levels 3 and below are provided with. The base wage is already considered to include this 'responsibility'.
- 7.7 On the basis that the award already appropriately governs when first aid should be paid, and that no evidence was filed in relation to other training and development, we submit the claim should be dismissed.
- 7.8 Granting the claim could have the adverse effect of deterring employers from upskilling the workforce as the costs incurred for paying for training at overtime rates would result in only the most senior employees being given learning opportunities. The sector as a whole does not benefit from less employees having first aid qualifications.

8. LAUNDRY ALLOWANCE

- 8.1 The Children's Services Award provides for a laundry allowance to be paid as follows:

15.2 Clothing and equipment allowance

(a) Where the employer requires an employee to wear any special clothing or articles of clothing the employer must reimburse the employee for the cost of purchasing such clothing. The provisions of this clause do not apply where the employer pays for the clothing required to be worn by the employee.

⁵⁹ Viknarash Statement at [129]

⁶⁰ Mahony Statement at [102]; Tullberg Statement at [108]; McPhail Statement at [103]

(b) Where an employee is required to launder any clothing referred to in clause 15.2(a) the employee will be paid an allowance of \$9.49 per week or \$1.90 per day, or where the uniform does not require ironing, \$5.98 per week or \$1.20 per day.

(c) Where an employee is required to wear protective clothing or equipment such as goggles, aprons or gloves, the employer will either supply such clothing or equipment or reimburse the employee for the cost of their purchase.

8.2 UV seeks the insertion of the following note, after clause 15.2(b):

Note: The existence of on-site laundry facilities that can be used by employees to launder uniform items does not make this allowance not payable.

8.3 The laundry allowance is not insignificant and can be as much as \$9.49 per week per employee.

8.4 The ACA/ABI Statements⁶¹ outline that it does not make sense to pay employees an allowance to wash their uniforms in situations where:

- (a) the employee is washing their uniform during work time (eg; at a cost to the employer) or the employee's uniform is washed by someone else at the centre (eg; another employee or Director); and
- (b) the employer pays for electricity, water, detergent; and
- (c) there is no cost to the employee.

8.5 The evidence in support of this Claim appears to amount to a single statement.⁶² This is not sufficient evidence to warrant a change to the modern award.

8.6 The ACA/ABI evidence is that if the employees are required to wear a uniform, the allowance is paid. However, the Statements acknowledge that if the employees did use the washing facilities they should not have to pay an allowance.⁶³

9. CLOTHING ALLOWANCE

9.1 UV seeks to amend the existing protective clothing clause (15.2) as follows:

(c) Where an employee is required to wear protective clothing or equipment such as hats, sun protection (including sunscreen lotions), goggles, aprons or gloves, the employer will either supply such clothing or equipment or reimburse the employee for the cost of their purchase.

⁶¹ Fraser Statement at [126]-[127]; McPhail Statement at [105]-[106]; Llewellyn Statement at [99]-[100]; Mahony Statement at [105]

⁶² Statement of Pixie Bea

⁶³ Fraser Statement at [126]-[127]; McPhail Statement at [105]-[106]; Llewellyn Statement at [99]-[100]; Mahony Statement at [105]

- 9.2 Including 'hats and sun protection (including sunscreen)' in the definition of protective clothing will require employers to either provide these items or reimburse the employee.
- 9.3 It is not necessary to amend the Children's Services Award on the basis that there is no issue in the industry with respect to sunscreen and hats. The ACA/ABI evidence suggests employers already provide sunscreen and hats for outdoor play.⁶⁴
- 9.4 The proposed drafting of the protective equipment clause raises more issues than it resolves. It places no 'cap' on the cost of items purchased by employees and could give rise to employers having to reimburse unreasonable expenses.
- 9.5 With that in mind, on the basis that UV amend the claim to:
- (a) "hats" and "sunscreen lotion" only (and not the generic term "sun protection"); and
 - (b) that reimbursements be "reasonable" and validated by receipts or otherwise,
- ACA/ABI do not oppose this amendment.

10. HIGHER DUTIES CLAIM

- 10.1 Clause 18.1 of the Children's Services Award currently reads:

An employee engaged in duties carrying a higher rate than their ordinary classification for two or more consecutive hours within any shift or day will be paid for the time so worked at the higher rate provided that:

...

(e) An employee who is required to undertake the duties of another employee by reason of the latter employee's absence for the purpose of attending (with pay) and approved training course (including in-service training) will not be entitled to payment under this clause.

- 10.2 The Children's Services Award has a unique higher duties clause that has come about by various negotiations between the parties to try and accommodate the payment of higher duties whilst childcare centres comply with onerous legislative requirements (including ratio requirements and health and safety). The clause exists in the manner it does due to specific reasons aimed at balancing various issues unique to the ECEC industry.
- 10.3 The clause that UV seeks to remove has a purpose. It allows an employer to pay for any employee's first aid training (during the working week including the hours an employee

⁶⁴ Fraser Statement at [128]-[127]; McPhail Statement at [107]-[109]; Llewellyn Statement at [101]; Mahony Statement at [106]-[107]

spends at training) whilst another employee to fill in for them. Without this clause employers may be more inclined to schedule training on the weekend or outside of hours. In any other industry, it may be reasonable to pay higher duties. But this clause is holistic and looks at the centre's costs as a whole. This clause requires the employer to pay for time spent at training as time worked (for one employee) and as a result does not have to pay the employee filling in higher duties.

- 10.4 In light of the purpose of this clause, and given that UV has not provided any evidence that employers are relying on this clause (and that it is causing a detriment to those employees not being paid higher duties), this claim should be dismissed.

11. ANNUAL LEAVE CLAIM

- 11.1 UV seeks to amend the Children's Services Award as follows:

24.4(b)

(b) During the Christmas vacation only, an employee may be directed to take annual leave. Where an employee has insufficient accrued leave to maintain their ordinary rate of pay during the vacation period, an employee will be paid the ordinary rate of pay during such a period.

24.4(c)

(c) Notwithstanding clause 24.4(a) in establishments which operate for more than 48 weeks per year, an employer may require an employee to take paid annual leave by giving at least four weeks' notice as part of a close-down of its operations

- 11.2 UV also seeks to insert a definition for Christmas vacation being:

as a period of not more than 4 weeks in the months of December and January during which the workplace is closed and no work is available.

- 11.3 This claim, which requires employers to pay employees to take time off in circumstances where they have no leave accrued, appears to be akin to payment of additional annual leave and is not appropriate. This claim is a substantive change to the award and does not fit with the existing modern award concepts of directing annual leave and payment of leave in advance. ACA/ABI submit that the current clause is permitted by s 139(1)(h) and should be retained as it correlates with the unique conditions of the industry including the alignment of many centres with school terms.

12. COVERAGE CLAIM

- 12.1 The IEU seeks to amend the coverage of Directors in childcare centres who have teaching degrees. The IEU proposes to amend the Teachers Award as follows:

3.1

'teacher means a person employed as such by a school, children's service or early childhood education service and who performs duties which include delivering an educational program, assessing student participation in an education program, administering an education program and performing other duties incidental to the delivery of the education program. So as to remove any doubt, teacher includes a person with teaching qualifications appointed as a Director of an early childhood education service (whether or not that person directly performs day to day teaching activities), teacher in a senior leadership position, but not a principal or deputy principal.'

Concurrently, to avoid any further doubt, the Childrens' Services Award 2010 should be amended at cl.B.1.10: A Director is an employee who holds a relevant Degree (other than a teaching qualification), or an AQF Advanced Diploma, or a Diploma in Children's Services, or a Diploma in Out-of-Hours Care; or is otherwise a person possessing such experience, or holding such qualifications deemed by the employer or the relevant legislation to be appropriate or required for the position, and who is appointed as the director of a service.

- 12.2 Consequently, the IEU seeks to also amend the Children's Services Award at B.1.10 to say:

A Director is an employee who holds a relevant Degree (other than a teaching qualification), or an AQF Advanced Diploma, or a Diploma in Children's Services, or a Diploma in Out-of-Hours Care; or is otherwise a person possessing such experience, or holding such qualifications deemed by the employer or the relevant legislation to be appropriate or required for the position, and who is appointed as the director of a service

- 12.3 The claim has been expressed as "clarifying the coverage" in light of the fact the Teachers Award is "ambiguous". The employer parties submit that this is a substantive variation that would have the result of:

- (a) inappropriately favouring teaching degrees over any other qualification Directors of childcare centres may hold (for example, accounting degrees or Diplomas of childcare);
- (b) not considering the benefits of other qualifications;
- (c) not understanding the nature and requirements of a Director of a childcare centre; and
- (d) increasing the minimum wages of Directors of childcare who are already remunerated in accordance with the highest level of the Children’s Services Award (level 6) and a Directors Allowance.

12.4 ACA/ABI submits that it is clear that when any employee has a teaching degree and uses that degree to “deliver an educational program” and perform “other duties incidental to the delivery of an educational program”, that employee is remunerated in accordance with the Teachers Award. However if an employee has a teaching degree but is performing the role of a Director (eg; overall operations of the centre), they should be remunerated in accordance with the Children’s Services Award.

12.5 The Farrant and Frend Statements provided by the IEU state that teaching degrees make Directors ‘better’ or ‘more qualified’ at their job. The employer parties have taken particular aversion to this and find this notion disrespectful to the industry as a whole and the many varied qualifications that educators and Directors possess. The Fraser and Viknarasah statements respond to those assertions as follows:

Fraser states:

“I do not agree that a Certificate III or Diploma is unable to provide insight into the needs of children, some of my educators are parents with over 20 years’ experience in the ECEC sector and whilst they may only hold a Certificate III or a Diploma, their knowledge and understanding of children and development is significantly deeper than that of a bachelor qualified teacher who has just graduated or even been a teacher for 5-10 years. Hands on experience is incredibly valuable in the ECEC sector.”⁶⁵

Viknarasah states:

⁶⁵ Fraser Statement at [147]

“I do not believe that having a teaching qualification allows a greater depth of understanding and the most significant factor I have found is world experience and general knowledge of the individual as well as if the individual has had children of their own and their experiences as a parent. I agree somewhat, that it is generally easier for someone with a degree to potentially articulate issues in writing however I do not believe that this has a significant impact on their role as a Director.”⁶⁶

12.6 This claim should be dismissed. Directors (regardless of their qualification) are classified in detail in the Children’s Services Award. It would not be appropriate for these employees to be covered by a different award when an existing award has appropriate coverage and classifications.

13. MINIMUM ENGAGEMENT CLAIM

13.1 The current minimum engagement clause 14.5 in the Teachers Award is complex but self explanatory. The award currently states:

14.5 Casual employee

(a) *The salary payable to a casual employee will be:*

(i) no higher than the salary at Level 8 in clause 14.1 where the employee is engaged for less than five consecutive days; or

(ii) where the employee is engaged for five or more consecutive days the salary will be the appropriate salary for the classification as specified in clause 13—Classifications,

calculated in accordance with the table below:

Full day	<i>Weekly rate calculated in accordance with clause 14.3 divided by 5 plus 25%</i>
Half day	<i>Weekly rate calculated in accordance with clause 14.3 divided by 10 plus 25%</i>
Quarter day	<i>Weekly rate calculated in accordance with clause 14.3 divided by 20 plus 25%</i>

(b) *Provided that:*

⁶⁶ Viknarasah Statement at [156]

(i) a casual employee in a school will be paid for a minimum of half a day; where a day is the usual required attendance time for an employee at that school and a half day is half the usual required attendance time; and

(ii) a casual employee in a children’s service or early childhood education service may be paid for a minimum of a quarter day.

13.2 The IEU submission suggests that on “some occasions” award reliant employers are paying casual employees incorrectly under the Teachers Award. The evidence that this is occurring is limited to a single sentence in Ms James statement that she has “come across employers” paying incorrectly in her role as union organiser. This is insufficient evidence to warrant a change to the award on the basis that there is some ambiguity. No evidence has been provided by casual teachers whose employers are paying them incorrectly or by Ms James as to the number of business she has “come across” that are paying incorrectly.

13.3 To the contrary, evidence provided in the ACA/ABI Statements suggests that:

(a) many ECEC employers do not engage casual teachers (as they do not provide continuity of care and are expensive);⁶⁷ and

(b) those that do employ casuals, are aware of clause 14.5 and how to correctly calculate a quarter day/half day for a casual under that award.⁶⁸

13.4 The variations proposed by the IEU are unnecessary and should not be made.

14. MODERN AWARDS OBJECTIVE

14.1 In exercising its modern award powers, the Commission must ensure that modern awards provide “*a fair and relevant minimum safety net*”, taking into account each limb of sections 134(1)(a) to 134(1)(h) of the FW Act.

14.2 In the sections that follow, we identify how granting the Claims would not provide a “*fair and relevant minimum safety net*”, taking into account several limbs of the Modern Awards Objective.

Cost of claim

14.3 UV and the IEU have not considered the actual cost of these Claims to a business in the ECEC sector.

⁶⁷ Viknarasah Statement at [161]; Mcphail Statement at [118]; Llewellyn at [107]; Tullberg at [113]; Mahoney at [121]

⁶⁸ Viknarasah Statement at [162]; Tullberg at [114]

14.4 The only evidence in relation to costs and capacity for businesses to pay for these increases has been provided by ACA witnesses.

14.5 The Carroll, Fraser, Maclean, Tullberg and Mahony Statements outline that the most costly of the Claims sought are:

- (a) the Educational Leader Allowance;
- (b) the Responsible Person Allowance;
- (c) the Non-Contact Time Claim (due to the cost of additional staff); and
- (d) the Coverage Claim (due to instantly higher minimum wages in the Teachers Award).

Affordability of Childcare

14.6 The stakes in this case are increased because the result of granting many of the Claims will be an increase in childcare fees.⁶⁹

14.7 The affordability of childcare is an important and complex social issue. It bears upon female workforce participation and other matters. Unaffordability is already a factor which tends to suppress female workforce participation. There is a risk that the grant of a large pay increase (particularly by way of the Educational Leader Allowance, Responsible Person Allowance, Coverage Claim or the Non-contact Time Claim) will further suppress that participation.

14.8 In our respectful submission, the Commission should be cautious to grant an application which had such serious ramifications except in the face of a clearly made out case.

Capacity to pay

14.9 The ECEC industry has a low level of consolidation. The four main players (including G8 who has provided 3 Statements in these proceedings) account for 20 per cent of industry revenue, while 39 per cent of approved child care providers have only one centre.⁷⁰

14.10 While some operators have some capacity to pay some increased wages or training, it is doubtful whether many operators will have the capacity to give pay increases of the order sought for the Claims above, especially if awarded altogether.

14.11 Service providers are also concerned about their capacity to pay increased wages and staff costs (including allowances), in light of:

⁶⁹ Carroll Statement at [30]-[32]; Fraser Statement at [122]

⁷⁰ IBIS World Industry Report Q8710 'Child Care Services in Australia' December 2017

- (a) the ongoing Equal Remuneration Order and Work Value Case which will be heard in June 2019. There could be a compounding impact if for example an Educational Leader was also a Teacher and they were awarded both a new allowance and an increase to their wage as a result of the Work Value Case; and
- (b) the increase in teacher:child ratios, which will be implemented in 2020 and will be doubling any wages costs associated with having a teacher for most states.⁷¹

14.12 While a radical increase in costs will affect different businesses in different ways, the likely outcomes of such an increase will include:

- (a) reduced quality of care for children;
- (b) increased childcare costs for parents; and
- (c) in the most serious of cases, threats to the business viability of centres.⁷²

15. CONCLUSION

15.1 For the reasons outlined in this reply submission, each of the UV, Individual and IEU Claims should be dismissed.

AUSTRALIAN BUSINESS LAWYERS & ADVISORS

On behalf of Australian Childcare Alliance Inc, Australian Business Industrial, the New South Wales Business Chamber Ltd

15 April 2019



as per

Julian Arndt

Associate Director

Australian Business Lawyers & Advisors Pty Ltd

(02) 9458 7565

julian.arndt@ablawyers.com.au

Sophie Whish

Senior Associate

Australian Business Lawyers & Advisors Pty Ltd

(02) 9458 7431

Sophie.whish@ablawyers.com.au

⁷¹ NSW will have higher ratios of teachers:children than the rest of Australia.

⁷² See generally Carroll Statement at [31]-[32]

ATTACHMENT

Witness Statements

- (a) the amended witness statement of Karthika Viknarash dated 11 April 2019 ([Viknarash Statement](#));
- (b) the amended witness statement of Sarah Elizabeth Tullberg dated 9 April 2019 ([Tullberg Statement](#));
- (c) the amended witness statement of Kristen McPhail 12 April 2019 ([McPhail Statement](#));
- (d) the amended witness statement of Nicole Louise Llewellyn dated 9 April 2019 ([Llewellyn Statement](#));
- (e) the amended witness statement of Jae Dean Fraser dated 15 April 2019 ([Fraser Statement](#));
- (f) the amended witness statement of Pam Avril Maclean dated 15 April 2019 ([Maclean Statement](#));
- (g) the amended witness statement of Kerry Joseph Mahony dated 11 April 2019 ([Mahony Statement](#));
- (h) the witness statement of Katie Ann Gibbs dated 12 April 2019 ([Gibbs Statement](#));
- (i) the witness statement of Kristel Smylie dated 12 April 2019 ([Smylie Statement](#));
- (j) the witness statement of Gary Carroll dated 15 April 2019 ([Carroll Statement](#));
- (k) the witness statement of Kylie Brannelly dated 15 April 2019 ([Brannelly Statement](#)).

SCHEDULE A

EDUCATIONAL LEADERS

Educational leaders have expertise in

(i) strong communication and interpersonal skills			
4	B.1.6	Indicative Duties	Liaise with families
5	B.1.8 (d)	Unqualified Coordinator	work positively with parents and/or committees; and
6 - Director	B.1.10	Indicative Duties	Liaise with families and outside agencies Liaise with management committees as appropriate.
(ii) in-depth knowledge of theory relevant to ECEC			
1	B.1.1(a)	Indicative Duties	Learning the basic skills required to work in this environment with children.
2	B.1.2	Indicative Duties	Develop awareness of and assist in maintenance of the health and safety of the children in care. Understand and work according to the centre or service's policies and procedures. Demonstrate knowledge of hygienic handling of food and equipment.
3	B.1.4	Indicative Duties	Undertake and implement the requirements of quality assurance.
4	B.1.6	Indicative Duties	Responsible, in consultation with the Assistant Director/Director for the preparation, implementation and evaluation of a developmentally appropriate program for individual children or groups. Develop, implement and evaluate daily care routines. Ensure that the centre or service's policies and procedures are adhered to.
5	B.1.8(b) B.1.8	Indicative Duties	Applies well-developed theoretical knowledge to the care situations with respect to cultural diversity, gender issues and scheme philosophy (Co-ordinator) Contribute, through the Director, to the development of the centre or service's policies. Co-ordinate centre or service operations including Occupational Health and Safety, program planning, staff training. Responsible for the day-to-day management of the centre or service in the temporary absence of the Director and for management and compliance with licensing and all statutory and quality assurance issues.

6	B.1.10	Indicative Duties	Responsible for the overall management and administration of the service. Supervise the implementation of developmentally appropriate programs for children. Recruit staff in accordance with relevant regulations. Ensure that the centre or service adheres to all relevant regulations and statutory requirements. Ensure that the centre or service meets or exceeds quality assurance requirements. Liaise with families and outside agencies. Develop and maintain policies and procedures for the centre or service.
(iii) deep knowledge of the NQS and approved learning frameworks			
6 - Director	B.1.10	Indicative Duties	Supervise the implementation of developmentally appropriate programs for children Ensure that the centre or service adheres to all relevant regulations and statutory requirements Ensure that the centre or service meets or exceeds quality assurance requirements.
(iv) capacity to build a learning community based on inquiry, action, research and reflection.			
5	B.1.8		Work positively with parents and/or committees. Documents, interprets and uses information about children. communicates effectively with family based childcare workers, children, parents and families; Applies well-developed theoretical knowledge to the care situations with respect to cultural diversity, gender issues and scheme philosophy;
6 - Director	B.1.10	Indicative Duties	Provide professional leadership and development to staff. Liaise with management committees as appropriate. Liaise with families and outside agencies.

The role of the educational leader is primarily to:

collaborate with educators and provide curriculum direction and guidance			
3	B.1.4	Indicative Duties	Assist in the direction of untrained staff.
4	B.1.6	Indicative Duties	Responsible to the Assistant Director/Director for the supervision of students on placement
5	B.1.8	Indicative Duties	Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs.

			Generally supervise all employees within the service
6—Director	B.1.10	Indicative Duties	Provide professional leadership and development to staff.
support educators to effectively implement the cycle of planning to enhance programs and practices			
5	B.1.8	Indicative Duties	Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs.
5	B.1.8 (d)	unqualified Co-ordinator	develop and/or oversee programs and ensure they offer a balance of flexibility, variety, safety and fun
6—Director	B.1.10 (a)	Indicative Duties	Responsible for the overall management and administration of the service. Supervise the implementation of developmentally appropriate programs for children.
Lead the development and implementation of an effective educational program in the service ensure that children's learning development are guided by the learning outcomes of the approved learning frameworks			
5	B.1.8	Indicative Duties	Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs.
6—Director	B.1.10 (a)	Indicative Duties	Responsible for the overall management and administration of the service. Supervise the implementation of developmentally appropriate programs for children.

The Educational Leader also has a significant role in:

Level	Clause	Sub Heading	Content
Guiding and developing educators and families' understandings about play and leisure-based learning, and the significance of the early years in the education continuum for children			
4	B.1.6 Level 4	Indicative Duties	Responsible, in consultation with the Assistant Director/Director for the preparation, implementation and evaluation of a developmentally appropriate program for individual children or groups.
5	B.1.8	Indicative Duties	Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs.
5	B.1.8 (d)	unqualified Co-ordinator	develop and/or oversee programs and ensure they offer a balance of flexibility, variety, safety and fun supervise the programs/activities and ensure each staff member is fulfilling their relevant duties and responsibilities;
6—Director	B.1.10 (a)	Indicative Duties	Responsible for the overall management and administration of the service.

			Supervise the implementation of developmentally appropriate programs for children.
Building the knowledge, skills and professionalism of educators			
4	B.1.6	Indicative Duties	Responsible to the Assistant Director/Director for the supervision of students on placement
5	B.1.8	Indicative Duties	Co-ordinate centre or service operations including Occupational Health and Safety, program planning, staff training.
5	B.1.8 (d)	Unqualified Co-ordinator	supervise the programs/activities and ensure each staff member is fulfilling their relevant duties and responsibilities;
6 - Director	B.1.10		Recruit staff in accordance with relevant regulations. Provide professional leadership and development to staff
Building a culture of professional inquiry with educators, coordinators and staff members to develop professional knowledge, reflect on practice and generate new ideas.			
6 - Director	B.1.10		Recruit staff in accordance with relevant regulations. Provide professional leadership and development to staff Ensure that the centre or service adheres to all relevant regulations and statutory requirements. Ensure that the centre or service meets or exceeds quality assurance requirements. Develop and maintain policies and procedures for the centre or service.

SCHEDULE B

RESPONSIBLE PERSON

Level	Clause	Sub Heading	Content
Health and safety of children			
2	B.1.2	Indicative Duties	Develop awareness of and assist in maintenance of the health and safety of the children in care
3	B.1.4 (a)	Indicative Duties	Work in accordance with food safety regulations.
4		Indicative Duties	Responsible for ensuring a safe environment is maintained for both staff and children.
5	B.1.8 Level 5	Indicative Duties	Co-ordinate centre or service operations including Occupational Health and Safety, program planning, staff training.
5	B.1.8 Level 5 (d)	Unqualified coordinator	develop and/or oversee programs and ensure they offer a balance of flexibility, variety, safety and fun
Staff to children ratios are being met			
5	B.1.8	Indicative Duties	Responsible for the day-to-day management of the centre or service in the temporary absence of the Director and for management and compliance with licensing and all statutory and quality assurance issues
5	B.1.8 (d)	Unqualified coordinator	Supervise the programs/activities and ensure each staff member is fulfilling their relevant duties and responsibilities
6 - Director	B.1.10 (a)	Indicative Duties	Responsible for the overall management and administration of the service Recruit staff in accordance with relevant regulations. Ensure that the centre or service adheres to all relevant regulations and statutory requirements
Physical environment is being set out appropriately			
4	B.1.6	Indicative Duties	Responsible for ensuring a safe environment is maintained for both staff and children.
Programming and planning is being carried out with NQF			
2	B.1.2	Indicative Duties	Assist in the implementation of the children's program under supervision

Level	Clause	Sub Heading	Content
3	B.1.4 (a)	Indicative Duties	<p>Assist in the preparation, implementation and evaluation of developmentally appropriate programs for individual children or group</p> <p>Record observations of individual children or groups for program planning purposes for qualified staff</p> <p>Undertake and implement the requirements of quality assurance</p>
4	B.1.6	Indicative Duties	<p>Responsible, in consultation with the Assistant Director/Director for the preparation, implementation and evaluation of a developmentally appropriate program for individual children or group</p> <p>Responsible for ensuring that records are maintained accurately for each child in their care</p>
5	B.1.8	Indicative Duties	<p>Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs</p> <p>Responsible for the day-to-day management of the centre or service in the temporary absence of the Director and for management and compliance with licensing and all statutory and quality assurance issue</p>
5	B.1.8 (d)	Unqualified Co-ordinator	<p>develop and/or oversee programs and ensure they offer a balance of flexibility, variety, safety and fun;</p> <p>supervise the programs/activities and ensure each staff member is fulfilling their relevant duties and responsibilities</p>
6 - Director	B.1.10	Indicative Duties	<p>Supervise the implementation of developmentally appropriate programs for children</p> <p>Ensure that the centre or service adheres to all relevant regulations and statutory requirements.</p> <p>Ensure that the centre or service meets or exceeds quality assurance requirements.</p>
Maintain relationships with parents and families			
4	B.1.6	Indicative Duties	Liaise with families

Level	Clause	Sub Heading	Content
5	B.1.8 (d)	Unqualified Co-ordinator	work positively with parents and/or committees;
6 - Director	B.1.10	Indicative Duties	Liaise with families and outside agencies

NOMINATED SUPERVISOR

(i) Programming; (ii) leading the programming			
2	B.1.2	Indicative Duties	Assist in the implementation of the children's program under supervision.
3	B.1.4	Indicative Duties	Assist in the preparation, implementation and evaluation of developmentally appropriate programs for individual children or groups. Record observations of individual children or groups for program planning purposes for qualified staff.
4	B.1.6	Indicative Duties	Responsible, in consultation with the Assistant Director/Director for the preparation, implementation and evaluation of a developmentally appropriate program for individual children or groups
5	B.1.8	Indicative Duties	Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs. Co-ordinate centre or service operations including Occupational Health and Safety, program planning, staff training
5	B.1.8 (d)	Unqualified Coordinator	develop and/or oversee programs and ensure they offer a balance of flexibility, variety, safety and fun; supervise the programs/activities and ensure each staff member is fulfilling their relevant duties and responsibilities
6 - Director	b.1.10 (a)	Indicative duties	Supervise the implementation of developmentally appropriate programs for children
(iii) Planning for the centre			
3	B.1.4	Id	Record observations of individual children or groups for program planning purposes for qualified staff
5	B.1.8	ID	Co-ordinate centre or service operations including Occupational Health and Safety, program planning, staff training
(iv) mentoring and supporting guiding, other educators;			
3	B.1.4	Indicative Duties	Assist in the direction of untrained staff.
4	B.1.6	Indicative Duties	Responsible to the Assistant Director/Director for the supervision of students on

			placement
5	B.1.8	Indicative duties	Generally supervise all employees within the service
6 - Director	B.1.10	Indicative duties	Provide professional leadership and development to staff.
(v) Supervisory role			
4	B.1.6	Indicative Duties	This is an employee who has completed a Diploma in Children's Services or equivalent (e.g. Certificate IV in Out of School Hours Care) as recognised by licensing authorities and is appointed as the person in charge of a group of children in the age range from birth to 12 years or an employee who is appointed as an Authorised Supervisor (as defined in the Children and Young Persons (Care and Protection) Act 1998 (NSW)). Responsible to the Assistant Director/Director for the supervision of students on placement.
5	B.1.8 (a)	Indicative duties	Generally supervise all employees within the service (a) A Children's Service Co-ordinator undertakes additional responsibilities including: - supervising staff, trainees and students on placement; and
5	B.1.8 (d)	unqualified Co-ordinator	supervise the programs/activities and ensure each staff member is fulfilling their relevant duties and responsibilities
6 - Director	B.1.10 (a)	Indicative duties	Supervise the implementation of developmentally appropriate programs for children
(vi) Leadership and Direction			
6 - Director	B.1.10 (a)	Indicative duties	Provide professional leadership and development to staff.
3	B.1.4	Indicative duties	Assist in the direction of untrained staff
(vii) ensuring centres have high standards that are maintained			
4	B.1.4 (a)	Indicative duties	Undertake and implement the requirements of quality assurance.
5	B.1.8	Indicative duties	Responsible for the day-to-day management of the centre or service in the temporary absence of the Director and for management and compliance with licensing and all statutory and quality assurance issues
6 - Director	B.1.10 (a)	Indicative duties	Ensure that the centre or service adheres to all relevant regulations and statutory requirements Ensure that the centre or service meets or exceeds quality assurance requirements
(viii) a centres compliance with the NQF in particular ensuring centres meet the outcomes of Quality Area 1 (Educational program and practice);			

4	B.1.4	Indicative duties	Undertake and implement the requirements of quality assurance
6 - Director	B.1.10 (a)	Indicative duties	Ensure that the centre or service adheres to all relevant regulations and statutory requirements Ensure that the centre or service meets or exceeds quality assurance requirements
5	B.1.8	Indicative duties	Responsible for the day-to-day management of the centre or service in the temporary absence of the Director and for management and compliance with licensing and all statutory and quality assurance issues.
(ix) leading critical reflections			
4	B.1.6	ID	Responsible, in consultation with the Assistant Director/Director for the preparation, implementation and evaluation of a developmentally appropriate program for individual children or group Develop, implement and evaluate daily care routines
5	B.1.8	ID	Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs
6—Director	B.1.10	ID	Supervise the implementation of developmentally appropriate programs for children Provide professional leadership and development to staff Develop and maintain policies and procedures for the centre or service
(x) creating specialised programs for children with additional needs.			
3	B.1.4 (a)	ID	Under direction, work with individual children with particular needs.
5	B.1.8	ID	Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs.
Level 6— Director	B.1.10	ID	Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs