

FAIR WORK COMMISSION

Matter No.: AM2018/18 and AM2018/20

4 yearly review of modern awards –

Children’s Services Award 2010 and Educational Services (Teachers) Award 2010

SUBMISSIONS IN REPLY - UNITED WORKERS UNION

1. On 26 November 2020, the Commission published a Statement [2020] (FWCFB 6341)¹ (**the Statement**) in relation the United Workers Union submission of 10 November 2020² (**10 November Submission**) regarding the *Children’s Services Award 2010 and the Educational Services (Teachers) Award 2010 (the Awards)*.
2. At [9] of the Statement the commission invited parties to file submissions in response to the issue outlined in our 10 November Submission concerning the non-contact time issue and clause A.3.2 of the Teachers Award. United Worker’s Union makes these submissions in reply to address this matter.

The June 2020 Decision:

3. The matter of non-contact time was heard and determined in the Decision of 10 June 2020 [2020] FWCFB 3011(**the June Decision**)³.
4. The Commission in the June Decision intended the decision to apply to both Awards. At [316] The Commission found in favour of the United Worker’s Union claim ‘*that employees designated as Educational Leaders require additional non-contact time in order to undertake their role.*’ The meaning of this Decision was that a clause be inserted into both Awards providing two hours additional non-contact time for the role of educational leader.
5. United Workers Union presented the claim for additional planning time as applying to both the Children’s Services Award 2010 and the Educational Services (Teachers)

¹ [\[2020\] FWCFB 6431](#)

² [10 November submission UWU](#)

³ [\[2020\] FWCFB 3011](#)

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Award 2010 and the matter was heard as a common claim. This is noted in the June Decision at [5]

“The claims advanced by the United Workers’ Union (UWU; formerly United Voice) 5 in both the Children’s Services Award and the Teachers Award are as follows:

(i) a claim to introduce a new allowance for employees assigned to be the Educational Leader at a service (Educational Leader Allowance);

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

(iii) 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).”

And at [258]:

“ The UWU seek to increase the non-contact time (time off the floor away from responsibilities with children) currently provided for under the Children’s Services Award and the Teachers Award; and to provide extra non-contact time for Educational Leaders.”

6. All claims which related only to the Children’s Services Award were heard after the common claims and appear in the June 2020 Decision after point 7 –‘*Claims in relation to the Children’s Services Award*’.
7. The merits of the case for awarding the additional non-contact time were prosecuted across both employers and employee parties including evidence from Educational Leaders who hold diploma and teaching qualifications. This includes evidence from ACECQA at [54-57] of the June 2020 Decision which confirmed that the role of Educational Leader is not linked to holding a particular qualification but rather to the responsibilities and duties performed.
8. The Commission also noted the consistency between clause 21.5 of the Children’s Services Award and Clause A.3.2 of the Educational Services (Teachers) Award at [258] of the June 2020 Decision. It was noted about the provisions for non-contact time were provided for in both awards.

Practical impact of inconsistency between the Children’s Services Award and Teachers Award

9. United Workers Union submits that the inconsistency between the two Awards will result in the outcome of two employees performing the same role within the same educational setting receiving different entitlements. The practical effect of the inconsistency is that an employee designated as the Educational Leader in a long day care centre who holds a diploma qualification will be entitled to up to four hours non-contact time per week. If the same employee held a teaching qualification, they would only be entitled to two hours non-contact time per week while performing the same duties.

10. United Workers Union submits that this was not the meaning or intention of the June 2020 Decision.

Response to employer submissions

11. We note the only objection to our November 2020 submission is from AFEI. United Workers Union opposes their submission that the matter should be re-prosecuted on behalf of employees covered by the Teachers Award for the reasons outline above.

12. United Workers Union does not support or oppose the CCSA submission to extend the entitlement of non-contact time to employees not covered by Schedule A of the Educational Services (Teachers) Award 2010.

UWU

18 December 2020