



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Award stage—*Children’s Services Award 2010 and Educational Services (Teachers) Award 2010—Final claims—Substantive issues*

(AM2018/18 and AM2018/20)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER LEE

MELBOURNE, 15 JUNE 2020

4 yearly review of modern awards – Award stage – Group 4 awards – Children’s Services Award 2010 and Educational Services (Teachers) Award 2010 – Final Claims – Substantive Issues—Provisional views.

[1] This Statement deals with one of the *provisional* views expressed in our decision of 10 June 2020¹ (the June decision). At [556] to [560] of the June decision we said:

‘[556] There is one final matter we wish to raise, on our own initiative.

[557] During the course of the proceedings a number of witnesses commented on the difficulty associated with referring to two awards. In Ms Paton’s statement she says:

‘Despite a long history in the child care industry, I find the Awards difficult to interpret and apply because they are not straightforward or written in plain English. I also do not think the Awards work together or consider all the other legislation that applies to the ECEC sector.’

[558] Further, Ms Viknarasah says:

‘I often find that the Awards are not simple or easy to understand. I find it confusing and difficult to try to adhere with all the requirements placed on me by the Awards as well as keeping up with the legislation and regulations which I will mention below. I also find it inefficient that every centre has to read and understand two Awards, even though Teachers could easily be covered under the Children’s Services Award.’

¹ [\[2020\] FWCFB 3011](#)

[559] We see no good reason why the operator of an ECEC centre should have to refer to two awards in order to determine the terms and conditions applicable to the employees at their centre. It is our provisional view that the relevant part of the Teachers Award be transferred to the Children's Services Award.

[560] We invite submissions in response to our provisional view. Submissions are to be filed by 4pm Tuesday, 16 June 2020. Submissions in reply are to be filed by 4pm Tuesday, 23 June 2020.'

[2] On 11 June 2020, we received [correspondence](#) from the IEU as follows:

'At paragraphs [556]-[560] the Full Bench indicates a 'provisional view' that 'the relevant parts of the Teachers Award be transferred to the Children's Services Award', inviting submissions by 16 June 2020.

The IEU does not presently understand what the 'provisional view' is and cannot properly respond. It is not apparent to us what the 'relevant parts' of the Teachers' Award are said to be (noting that the conditions that apply to teachers in ECEC settings are not limited to Schedule A of that Award), or if this is a 'provisional view' that the coverage of both awards should be altered – which would be a major case.'

[3] The IEU requested that the directions set out at [560] of our June decision be vacated and that the matter be listed urgently for mention on 12, 15 or 16 of June 2020.

[4] We do not propose to list the matter for a mention at this time.

[5] As set out above, the purpose of the *provisional* view is to try to limit the need for employers in the ECEC sector to apply two different awards. In order to give effect to that *provisional* view, the Children's Services Award would be amended to include teachers working in the ECEC sector and consequential amendments would then be made to the Teachers Award. The intention of the *provisional* view is not to vary the conditions for teachers in the ECEC sector. Any process to give effect to the *provisional* view will be undertaken in consultation with interested parties.

[6] We will amend the directions set out in our June decision. Submissions are to be filed by **4pm Tuesday, 30 June 2020**. Submissions in reply are to be filed by **4pm Tuesday, 7 July 2020**.

PRESIDENT

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