

Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

30 September 2016

By email: amod@fwc.gov.au

**MATTERS AM2014/219, AM2014/263, AM2014/266 & AM2014/285 -
4 YEARLY REVIEW OF MODERN AWARDS**

In a Statement and Directions released by the President, Justice Ross on 26 August 2016, parties were asked to confirm the substantive claims they intend to propose to awards that have been placed in Group 4 of the 4 yearly review of modern awards. On 2 March 2015 CCSA informed the Commission and other parties of its intention to pursue claims in regards to the following awards:

Award Code	Award Title	Matter No.
MA000002	<i>Clerks Private Sector Award 2010 (Group 3 Award)</i>	AM2014/219
MA000120	<i>Children's Services Award 2010</i>	AM2014/263
MA000077	<i>Educational Services (Teachers) Award 2010</i>	AM2014/266
MA000100	<i>Social, Community, Home Care and Disability Services Industry Award 2010</i>	AM2014/285

Since March 2015, CCSA has monitored the ongoing operation of the above awards, as well as having discussions with other interested parties to determine their positions on the various issues raised. The approaches now proposed by CCSA for each award are attached.



Megan Mendham
General Manager

MA000002	<i>Clerks - Private Sector Award 2010</i>	AM2014/219
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CCSA previously proposed that clause 4.6 of the *Clerks Private Sector Award 2010* be varied to include the *Children's Services Award 2010* in the list of industry awards that excludes coverage of employers and their employees from the operation of the *Clerks Private Sector Award 2010*.

CCSA considers that the case of *United Voice v Cuddlepie Early Learning Centre* [FWC 6661] has definitively resolved this issue, with administrative employees in an early childhood education and care setting to be covered by the *Clerks – Private Sector Award 2010*. CCSA withdraws its previous application.

After reviewing the operation of the Award since our initial submission of 2 March 2015, CCSA has decided to withdraw all applications previously made in respect of this Award. Our reasoning for withdrawing each application is given below. CCSA still intends to participate in the ongoing consideration of other parties' applications with respect to this Award.

Casual Employment

CCSA considers that issues previously raised by it with regard to casual employment under the *Children's Services Award 2010* will be adequately clarified by consideration of other parties' ongoing proposals. CCSA withdraws its previous applications in this area.

Children's Services Support Workers

CCSA proposed that additional pay levels for the classification of Support Worker Level 3 should be included in clause 14.1 as Level 3.2 and Level 3.3, with pay rates equivalent to those for Children's Services Employee Level 3.2 and Level 3.3 respectively.

However, CCSA now considers that the case of *United Voice v Cuddleprie Early Learning Centre* [FWC 6661], which determined that administrative employees in an early childhood education and care setting are more appropriately covered by the *Clerks – Private Sector Award 2010*, renders this proposed change unnecessary. CCSA withdraws its previous application in this area.

Allowances

CCSA had proposed the establishment of new allowances to reflect the introduction of the *Education and Care Services National Law* and *Education and Care Services National Regulations 2011*. Consequent experience has demonstrated the ability of early childhood services to manage these situations locally without the need to introduce additional, universal allowances through the award system. CCSA withdraws its previous application.

CCSA had also sought clarification of Clause 15.1 (Broken shift allowance). The exposure draft of the *Children's Services Award 2016* satisfactorily addresses CCSA's concerns, and no further action is required from our perspective.

Higher Duties

CCSA had proposed the deletion of clauses 18.1(c) and 18.1(e):

- (c) an employee engaged as a Children's Services Employee Level 3 who is required to undertake duties of the Director by reason of that Director's non-attendance outside of core hours will not be entitled to payment under this clause;
- (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) an approved training course (including in-service training) will not be entitled to payment under this clause.

In both cases, the employee undertaking the higher duties is taking greater responsibilities than those for which they are being paid under their base classification, irrespective of the reason for absence of the other employee. While CCSA stands by the principle of its initial claim, we have been unable in the intervening period to identify any instances of this actually impacting on an employee. CCSA will not, therefore, proceed with this application at this time.

Superannuation

CCSA had proposed aligning the Children's Services Award 2010 provision for payment of employer superannuation contributions with those of the *Educational Services (Teachers) Award 2010*, which is the other modern award commonly used in the children's services and early childhood education industry. Review of the operation of the respective clauses with CCSA members has shown that the different approaches currently occur so rarely as to have no practical impact on services. CCSA withdraws its previous application.

MA000077	<i>Educational Services (Teachers) Award 2010</i>	AM2014/219
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After reviewing the operation of the Award since our initial submission of 2 March 2015, CCSA has decided to withdraw all applications previously made in respect to this award. Our reasoning for withdrawing each application is given below. CCSA still intends to participate in the ongoing consideration of other parties' applications with respect to this award.

CCSA had proposed that early childhood teachers (ECTs) be removed from the coverage of the *Educational Services (Teachers) Award 2010*, replaced by an industry award that covered the entire children's services and early childhood education industry, including ECTs, Children's Services Employees and Support Workers. Consultation with other parties has not demonstrated support for this approach. CCSA withdraws its previous application in this area.

Withdrawal of that application renders the following additional applications unnecessary:

- Types of employment
- Part-time employment
- Casual employment
- Notice of termination by employee
- Ordinary hours of work
- Pro rata payment of salary inclusive of annual leave

Allowances

CCSA had proposed the establishment of new allowances to reflect the introduction of the *Education and Care Services National Law* and *Education and Care Services National Regulations 2011*.

Consequent experience has demonstrated the ability of early childhood services to manage these situations locally without the need to introduce additional, universal allowances through the award system. CCSA withdraws its previous application.

MA000100	<i>Social, Community, Home Care and Disability Services Industry Award 2010</i>	AM2014/219
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CCSA had proposed that coverage of the family day care scheme sector be moved from the *Social, Community, Home Care and Disability Services Industry Award 2010* to the *Children's Services Award 2010*. Consultation with other parties has not demonstrated support for this approach. CCSA withdraws its previous application in this area.