
Fair Work Commission: 4 yearly review of modern awards

SUBMISSIONS

CHILDREN'S SERVICES AWARD 2010

EDUCATIONAL SERVICES (TEACHERS) AWARD

2010

30 JUNE 2020

BACKGROUND

1. These submissions are made on behalf of:
 - (a) Australian Childcare Alliance Inc. (**ACA**);
 - (b) Australian Business Industrial (**ABI**);
 - (c) New South Wales Business Chamber (**NSWBC**),
(together the **ECEC Employers**)
2. These submissions respond to the Fair Work Commission Decision (**Decision**)¹ dated 10 June 2020, which seeks submissions on two provisional views.
3. The two provisional views are:
 - (a) At paragraphs [550] – [551] the Full Bench expressed its provisional view that clause 14.5 of the Educational Services (Teachers) Award 2010 (**Teachers Award**) be varied to:
 - (i) provide that casual employees are paid the appropriate minimum classification rate plus a 25 percent casual loading for all time worked; and
 - (ii) provide minimum engagement periods, consistent with the current award term.
 - (b) At paragraph [559] the Full Bench expressed its provisional view that the *relevant part* of the Teachers Award be transferred to the Children’s Services Award. In a statement dated 15 June 2020, the Full Bench added further:

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.
4. We deal with each provisional view separately below.

CASUAL MINIMUM ENGAGEMENT

5. The ECEC Employers agree with the submission of CCSA dated 16 June 2020.
6. Adoption of the Full Bench’s provisional view would harmonise payment arrangements for casual early childhood teachers with the arrangements for other ECEC casual employees engaged under the Children’s Services Award 2010.
7. The complexities associated with calculating a quarter day in ECEC centres (which do not have the same hours as schools eg; 9-3pm) is very difficult. In the submission of the ECEC Employers that while it is more cost effective for employers to continue to pay in accordance with the quarter day method, employers may find themselves paying in accordance with a 2 hour minimum engagement term in practice (which they are used to using under the Children’s Services Award).

¹ [2020] FWCFB 3011.

8. The ECEC Employers note that providing employees with 2 hours minimum engagement actually improves the position of employees being paid the quarter day method.
9. In order to do a comparison between the quarter day rate and the hourly method of calculating we conducted the following analysis:
 - (a) Calculating the quarter day rate in accordance with clause 14.5 of the Teachers Award (the existing method)
versus
 - (b) Calculating a quarter day rate using an hourly methodology:
 - (i) By virtue of clause 10.2 of the Teachers Award, a full-time week is 38.
 - (ii) Therefore, the weekly rate must be equivalent to 38 hours, with a day meaning 38 divided by 5, which equals 7.6.
 - (iii) Proportionately, a half day must equal 3.8 hours work, and a quarter day is 1.9 hours.

The result of the analysis shows that the casual quarter day rate calculated in accordance with clause 14.5 is (in dollar terms) equivalent to 1.9 hours of work as evidenced below:

Level	Existing Quarter Day	Existing Hourly (1.9 hours)	Provisional View Hourly (2 hours)
Level 1	64.18	64.18	67.56
Level 2	65.50	65.50	68.94
Level 3	67.28	67.28	70.82
Level 4	69.71	69.71	73.38
Level 5	72.14	72.14	75.94
Level 6	74.40	74.40	78.32
Level 7	76.66	76.66	80.70
Level 8	79.08	79.08	83.24
Level 9	81.51	81.51	85.80
Level 10	83.94	83.94	88.36
Level 11	86.37	86.37	90.92
Level 12	88.80	88.80	93.48

Note: these rates include 4% for casual employees working in Long Day Care, which is the subject of proceedings AM2020/24.

10. The adoption of an hourly rate method for the minimum engagement also creates consistency across the two awards (Children's Services Award and Teachers) and with many other awards that provide minimum engagements expressed as hours.
11. However, in order for a 2 hour minimum engagement to be paid as an hourly amount, wages will need to be displayed in an hourly form - which is not currently the case under the Teachers Award.

12. In terms of how the minimum engagement rates should be represented/drafted in the Teachers Award, we agree with the drafting proposed by CCSA.
13. The Awards should be simple and easy to understand and having regard to the modern awards objective, we believe the Full Bench's provisional view to amend the Teachers Award with a 2 hour minimum engagement manner would be appropriate.
14. Should clause 14.5 be inserted/transferred into the Children's Services Award in accordance with any provisional view we would again recommend an hourly pay rate is used for consistency within the industry and common payroll practices.

INSERTION OF RELEVANT CLAUSES FROM TEACHERS AWARD INTO CHILDREN'S SERVICES AWARD

15. Following publication of the Full Bench's provisional view, ACA have undertaken some preliminary discussions with members as to whether to support the Full Bench's view.
16. The outcome of this consultation has not demonstrated uniform support for the consolidation of the Teachers Award and the Children's Services Award in respect of work performed in early childhood education and care centres at this time.
17. Whilst, as some of ACA's witnesses observed, there appears in respect of some ECEC employers an initial attraction to this course, in light of the complexity of two awards and the many other legislative requirements in the sector, this amalgamation would require detailed thought, analysis and drafting to accommodate all parties.
18. ACA is also aware of opposition to this course from other parties to the proceedings, including at least some unions.
19. The industry is currently heavily focused on structural challenges occasioned by the COVID-19 pandemic, including alternations to their businesses, demand/service issues, rostering issues, a new funding model (and return to the pre-covid-19 subsidy scheme) and the loss of Jobkeeper payments in July 2020.
20. As a result, ACA is of the view the status quo (of two awards) should remain and does not endorse the provisional view.
21. ABI and NSWBC support this view.

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

30 June 2020