



Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

9 October 2020

By email: amod@fwc.gov.au

Re: AM2018/18 and AM2018/20 – Children’s Services Award 2010 and Educational Services (Teachers) Award 2010

I refer to the Full Bench’s Decision of 30 September 2020 in the above matter [2020] FWCFB 5176.

The Decision addresses five outstanding issues from an earlier Decision [2020] FWCFB 3011 issued by the Full Bench on 10 June 2020 (the *June 2020 decision*):

- Part-time employment: plain language redraft
- Educational Leaders, non-contact time
- Clothing Allowance
- Minimum engagement
- Award coverage

Part-time employment

CCSA supports the plain language redraft set out at [13] and at Items 1-3 and 6-9 of the draft variation determination at Attachment A to the Decision.

CCSA notes and supports Items 3 and 9 of the draft variation determination which clarifies that the employer must pay the employee at overtime rates for the additional time the employee remains at the workplace in circumstances where the employer makes the change as a result of an emergency outside the employer’s control.

Educational Leaders, non-contact time

While it would be common practice for the Educational Leader of a service to also be responsible for the ‘preparation, implementation and/or evaluation of a developmental program for an individual child or group of children’, there is no absolute requirement that this be the case.

As currently drafted, Item 5 of the draft variation determination assumes that the Educational Leader always has both responsibilities. As drafted, it is also possible that the new clause 21.5(a) will be misinterpreted so that the programming and Educational Leader non-contact times, 2 and 4 hours per week respectively, are treated as being cumulative (i.e. 6 hours per week) rather than the 2 hours of programming being included in the Educational Leader’s 4 hours of non-contact time.

CCSA recommends that Item 5 of the draft variation determination be revised as follows:

5. By deleting clause 21.5(a) and inserting the following:

- (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 entitled to a minimum of two hours non-contact time per week. During non-contact time, an employee will not be required to supervise children or perform other duties as directed by the employer.
- (b) An employee appointed as the Educational Leader will be entitled to a minimum of two hours non-contact time per week. During non-contact time, an employee will not be required to supervise children or perform other duties as directed by the employer.

NOTE: Educational leader is defined in Regulation 118 of the Education and Care Services National Regulations (2011).

NOTE: The entitlements at sub-clauses (a) and (b) are cumulative. An Educational Leader who also has programming responsibilities for an individual child or group of children will be entitled to a minimum of four hours non-contact time per week.

By renumbering clause 21.5(b) as clause 21.5(c).

Clothing Allowance

CCSA supports Item 4 of the draft variation determination. However, to fully implement [545] of the *June 2020 decision*, CCSA recommends that Item 4 of the draft variation determination also include the sentence 'Reimbursement will be limited to reasonable costs incurred.'

Minimum engagement

CCSA supports the Full Bench's *provisional* view that there is utility in harmonising the casual minimum payment provisions relating to early childhood education and care (ECEC) employers by providing that casual early childhood teachers working in early childhood services be subject to a two hour minimum engagement period (as specified in clause 10.5(c) of the Children's Award).

To reiterate our earlier submission of 16 June 2020, CCSA's view is that this supports attainment of the modern awards objective, in particular Section 134(1)(g):

the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

Harmonising payment arrangements of all ECEC casual employees would improve ease of understanding by the small and micro businesses, usually without significant human resources specialists, that are the

predominant employers in the ECEC sector. Additionally, a simpler approach of a fixed hours amount for a minimum engagement would be likely to support increased compliance by these employers.

Expressing the minimum engagement in this more precise way reduces the likelihood of disputes over what constitutes the length of a day, especially given the variable engagement patterns that can exist within a single ECEC service such as those that operate both long day care and preschool rooms.

Implementing the Full Bench’s *provisional* view of a two hour minimum engagement period for casual early childhood teachers working in early childhood services would require amendment of Table B.1.2 of Schedule B of the *Educational Services (Teachers) Award 2020*. CCSA’s recommendation is that Table B.1.2 be adjusted to be the minimum pay rates for casual teachers employed in schools, and for casual early childhood teachers employed in early childhood services. A separate Table B.1.3 could then show the hourly rates payable to casual early childhood teachers employed in early childhood services.

B.1.2 Casual employees – minimum rates of pay

Pay Level	Teachers employed in a school	Early childhood teachers	
		Employed in early childhood services NOT operating for at least 48 weeks per year	Employed in early childhood services operating for at least 48 weeks per year (Schedule A)
Minimum Engagement	Half Day	2 hours	2 hours
	\$	\$	\$
Level 1	125.58	66.10	68.74
Level 2	128.16	67.46	70.16
Level 3	131.65	69.28	72.06
Level 4	136.40	71.78	74.66
Level 5	141.15	74.28	77.26
Level 6	145.58	76.62	79.68
Level 7	150.00	78.94	82.10
Level 8	154.75	81.44	84.70
Level 9	159.50	83.94	87.30
Level 10	164.25	86.44	89.90
Level 11	169.01	88.96	92.52
Level 12	173.75	91.44	95.10

B.1.3 Casual employees – hourly rates of pay for early childhood teachers

Pay Level	Early childhood teachers	
	Employed in early childhood services NOT operating for at least 48 weeks per year	Employed in early childhood services operating for at least 48 weeks per year (Schedule A)
	\$	\$
Level 1	33.05	34.37
Level 2	33.73	35.08
Level 3	34.64	36.03
Level 4	35.89	37.33
Level 5	37.14	38.63
Level 6	38.31	39.84
Level 7	39.47	41.05
Level 8 *	40.72	42.35
Level 9	41.97	43.65
Level 10	43.22	44.95
Level 11	44.48	46.26
Level 12	45.72	47.55

* Maximum rate for a casual teacher engaged for less than five consecutive days

Award Coverage

CCSA does not support the proposal at [78] of the Decision to replicate the relevant wage rates from the *Educational Services (Teachers) Award 2020* in a schedule to the *Children’s Services Award* and by providing a cross reference to the other applicable clauses in the Teachers Award (with a hyperlink to those clauses).

At [77] of the Decision, reference is made to the *Information Note – Data on child care services* published by the Commission on 25 September 2020, which suggests that a significant proportion of the businesses covered by the Children’s Award are small businesses. CCSA agrees with that proposition, as our membership is overwhelmingly comprised of small not-for-profit and for-profit early childhood services. Our experience is that these small businesses are better served by having the terms and conditions of their employees clearly delineated in specific awards, rather than trying to amalgamate all the various conditions into an omnibus document which tends to cause confusion.

The nature of the ECEC sector means that multiple awards apply in the workplace, beyond the two awards identified. For example, most, if not all, ECEC services will employ administrative staff under the *Clerks – Private Sector Award 2020* ([United Voice v Cuddleprie Early Childhood Learning Centre](#) [2015] FWC 6661). Other awards commonly applicable to the ECEC sector include the *Social, Community, Home Care and Disability Services Industry Award 2010* [MA000100] and the *Health Professionals and Support Services Award 2020* [MA000027]. The approach described at [78] will not obviate the need for ECEC employers to still refer to, and apply, other awards.

Furthermore, the proposed Schedule J only addresses the conditions of employment relevant to early childhood teachers employed in early childhood services operating for at least 48 weeks per year (e.g. long day care and occasional care services). It does not address the conditions of employment relevant to childhood teachers employed in early childhood services operating for less than 48 weeks per year such as preschools / kindergartens which typically operate according to the school year (i.e. 40-41 weeks per year).

CCSA recommends that the issue instead be addressed by inserting a new clause 4.8 of the *Children’s Services Award 2010* to include the following additional awards, including hyperlinks to those awards:

- 4.8 This award does not cover an employee in an early childhood service who is covered by:
- (a) the *Clerks – Private Sector Award 2020* (for administrative staff)
 - (b) the *Educational Services (Teachers) Award 2020* including Schedule A (for early childhood teachers employed as such in early childhood services operating for at least 48 weeks per year)
 - (c) the *Educational Services (Teachers) Award 2020* not including Schedule A (for early childhood teachers employed as such in preschools / kindergartens)
 - (d) the *Health Professional and Support Services Award 2020* (for health professionals employed as such in early childhood intervention and other early childhood services)
 - (e) the *Social, Community, Home Care and Disability Services Industry Award 2010* (for employees in the family day care and social and community services streams)



Megan Mendham
Chief Executive Officer