

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 13 September 2020, the Commission published a Statement [2020] (FWCFB 5459) (**the Statement**) in relation to finalising the outstanding matters as part of the review of the *Children’s Services Award 2010 and the Educational Services (Teachers) Award 2010* (**the Awards**).
2. At [2] of the Statement the commission lists four matters collectively known as ‘the outstanding matters’. United Workers Union makes these submissions in reply to address two of the listed matters: 2.1 Part time employment and 2.2 Educational Leaders – non contact time.

2.1 Part time employment:

3. United Workers Union agrees with the Commission’s view at [19] to not change the proposed clause to allow for agreement to occur via telephone. Ensuring that there are sufficient records in writing to the fact that those hours are agreed are essential to ensure that pay disputes are able to be clearly resolved.
4. United Workers Union does not agree with the position of the AFEI that the proposed changes creates a new entitlement to overtime in circumstances where an employee is required to stay past their ordinary hours due to an emergency. In the circumstances of an emergency the waiving of the seven days’ notice allows for the compulsion of the employee to stay for the required time, and negates the employee’s right to refusal. If clause 27(b)(i) did not exist, the employee would have a right to refuse to perform the work. Where there is no right to refusal on behalf of the employee, in this case because of a clear and specific emergency, the obligation to pay overtime exists.

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2.2 Educational Leaders – non contact time

5. United Workers Union rejects the CCSA submission that suggests that the proposed clause set out in the draft determination of the September Decision ([2020] FWCFB 5176) creates a possibility for a reading of the entitlement to apply cumulatively.
6. We also reject the suggestion to include the words 'room leader' into the description of who is able to access the entitlement to two hours non-contact time. The current entitlement to two hours contact time is based on a description of the duties to be undertaken and is not restricted to a particular job title or classification. This addition would add a new restriction on the interpretation of this entitlement.
7. However to assist with the resolution of the concerns listed by the CCSA United Workers Union proposes the following alternative wording:
8. '5. By deleting clause 21.5(a) and inserting the following:

*(a) An employee **who is not appointed as Educational Leader and** is 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 four 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 **not** 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 noncontact time per week.'*

UWU

14 October 2020