

FAIR WORK COMMISSION

For the Attention of Justice Ross, President Fair Work Commission By email:

Chambers.Ross.j@fwc.gov.au

Matter No.: AM2018/18 and AM2018/20

4 yearly review of modern awards –

Children’s Services Award 2010 and Educational Services (Teachers) Award 2010

4 November 2020

Dear Justice Ross

Re: 4 yearly review of the Children’s Services Award 2010 and Educational Services (Teachers) Award 2010 – Finalisation of Substantive Claims (AM2018/18 and AM2018/20)

We write further to the Hearing before a Full Bench on 16 October 2020, and the subsequent Decisions¹ and Determinations² of the Fair Work Commission’s dated 19 and 28 October 2020.

The purpose of this letter is to draw the attention of the Commission to previous Decisions which have not been reflected in the subsequent Determinations. It may be appropriate for further amendments to be made.

The matters to which this letter relates to are:

1. Higher duties payments; and
2. Additional noncontact time for educational leaders.

Higher duties payment

¹ [\[2020\] FWCFB5531](#) and [\[2020\] FWCFB5766](#)

² [MA000120 PR723626](#) and [MA000120 PR724049](#)

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The Commission granted the United Workers Union claim to remove the exemption for paying higher duties in the 10 June Decision [2020] FWCFB 3011³ .

[445] The modern awards objective is to ‘ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions’, taking into account the particular considerations identified in ss.134(1)(a)–(h). We have taken into account those considerations, insofar as they are relevant to the matter before us, and we are satisfied that it is necessary to vary the Children’s Services Award in the manner proposed in order to achieve the modern awards objective. We will vary clause 18.1 by deleting clause 18.1(e).

The Determinations issued on 20 and 28 October does not include this variation to the Children’s Services Award and as such Clause 18.1(e) has not been deleted from the updated Award and does not reflect the Commission’s Decision.

Additional noncontact time for educational leaders

The Commission also granted the United Workers Union claim to provide an additional two hours noncontact time for employees who are appointed Educational Leaders. The Determination issued on 19 October set out the variation to the Children’s Services Award which would give effect to this Decision.

Clause A.3.2 of Schedule A of the Educational Services (Teachers) Award sets out the entitlement for non-contact time for teachers who are employed in early childhood services operating at least 48 weeks per year. Prior to the Determination being issued clause A.3.2 of this schedule reflected the non-contact time provisions contained in clause 21.5 of the Children’s Services Award.

The subsequent variation of the Children’s Services Award but not the Schedule A of the Educational Services (Teachers) Award creates an unintended inconsistency in the application of the 10 June Decision of the Commission between the two awards.

Amendments to the Determinations

³ [\[2020\] FWCFB 3011](#)

The result of these omissions is to not give full effect to the previous Decisions of the Commission. As such we suggest it may be appropriate for further amendments to be issued.

Please feel free to contact me if you require any further information or clarification.

Yours sincerely,

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