

Submission s 158 - Application to vary or revoke a modern award
Application to vary Education Services (Teachers) Award 2020 on work value grounds
(AM2018/9)

14 July 2021

- [1] This submission is made in response to Amended Directions issued on 9 July 2021 with reference to Decision [2021] FWCFB 2051 on 19 April 2021 and supports the view *that is necessary to make provision for additional remuneration for any early childhood teacher appointed to the statutory role of Educational Leader.*
- [2] We have previously submitted substantive claims proposing the introduction of an Educational Leader allowance as individuals who are employed as Early Childhood Teachers in the 4-yearly review of modern awards (AM2018/18 and AM2018/20).
- [3] It is submitted that the introduction of an Educational Leader allowance for early childhood teachers is necessary to achieve the modern awards objective in s134 and is consistent with the minimum wages objective in s284(1).
- [4] The educational leader allowance provides appropriate recognition of the role and responsibilities of early childhood educational leaders and is not likely to significantly increase business costs or impact upon service viability.
- [5] The allowance should be introduced without delay and phasing-in arrangements should not apply.

The proposed educational leader allowance is appropriate and fair

- [6] The work of educational leaders in early childhood education and care (ECEC) settings is of equal or comparable value to the work of educational leaders in school settings. The introduction of an educational leader allowance for early childhood teachers of equal value to the Level 1 allowance for schools in (category C) not only provides recognition of the responsibilities of educational leaders but acknowledges that teaching is “one profession”¹ whether teachers work within schools or prior-to-school settings.

¹ Australian Institute for Teaching and School Leadership (AITSL), *One Teaching Profession: Teacher Registration in Australia* (September 2018), <https://www.aitsl.edu.au/docs/default-source/national-review-of-teacher-registration/report/one-teaching-profession---teacher-registration-in-australia.pdf>

The educational leader allowance should be introduced without delay

- [7] Over the last 18 months, the role of the educational leader has become more important, complex and demanding. COVID-19 has required educational leaders to become increasingly flexible and innovative in their practice. Many educational leaders have been required to devise and deliver online learning programs for children to learn from home while also leading the educational program of the children attending the centre. During periods of significant community transmission, children's attendance patterns have been unpredictable² which makes planning and leading the educational program significantly more challenging.
- [8] Throughout the pandemic early childhood education and care has consistently been regarded as an essential service and has been subject to exemptions from public health orders³ which have limited the operations (and therefore profitability) of other businesses. Early childhood education and care centres have been largely unaffected by shutdowns unless specifically directed to close by a health authority.⁴ While schools have closed, early childhood education and care centres have been actively encouraged to continue operating.⁵
- [9] In early 2020, when attendance (distinct from enrolment) levels began falling because families chose to self-isolate due to increasing uncertainty surrounding COVID-19, approved early childhood education and care providers were guaranteed a minimum level of income through the Early Childhood Relief Package.⁶ This package was designed to work in conjunction with JobKeeper⁷ and provided income certainty and stability until 12 July 2020 when a transition package was introduced in lieu of these payments to supplement fee revenue.⁸ Eligible businesses and not-for-profit organisations also received cash flow boost payments through the Australian

² Australian Children's Education and Care Quality Authority (ACECQA) (2020), *National Quality Framework Annual Performance Report*, ACECQA, Sydney., <https://www.acecqa.gov.au/sites/default/files/2021-02/NQF-Annual-Performance-Report2020.pdf>

³ See for example, *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021*, https://legislation.nsw.gov.au/file/Public%20Health%20%28COVID-19%20Temporary%20Movement%20and%20Gathering%20Restrictions%29%20Order%202021_210711.pdf

⁴ Australian Children's Education and Care Quality Authority (ACECQA) (2020), *National Quality Framework Annual Performance Report*, ACECQA, Sydney., <https://www.acecqa.gov.au/sites/default/files/2021-02/NQF-Annual-Performance-Report2020.pdf>

⁵ Australian Government Department of Education, Skills and Employment (2021), *COVID-19 information for the early childhood education and care sector*, <https://www.dese.gov.au/covid-19/childcare>

⁶ *Media Release*, 02 Apr 2020, Prime Minister, Minister for Education, <https://www.pm.gov.au/media/early-childhood-education-and-care-relief-package>

⁷ Australian Government: The Treasury, *Economic Response to COVID-19: JobKeeper Payment*, <https://treasury.gov.au/coronavirus/jobkeeper>

⁸ Australian Government Department of Education, Skills and Employment, *COVID-19 information for the early childhood education and care sector*, <https://www.dese.gov.au/covid-19/childcare>

Taxation Office.⁹ By July 2020, attendance at centre based ECEC services was back to 100% of pre-COVID levels.¹⁰ Overall, in 2020, there were more children attending approved early childhood education and care than in 2019.¹¹

[10] Given government measures to alleviate the financial impact of COVID-19 on ECEC services and that ECEC has continued to operate throughout the pandemic, it is submitted that the immediate introduction of the proposed educational leader allowance would not place excessive burden on ECEC providers.

[11] The impact of the proposed allowance on employment costs is finite as the position of educational leader may only be held by one person per service and that person does not necessarily require a teaching qualification.¹² While each service requires one educational leader, there is no requirement for the educational leader to be unique to that service. That means that one person may be the educational leader for multiple services however there cannot be multiple educational leaders for one service. As such, while each service requires an educational leader, the inclusion of the educational leader allowance within the *Educational Services (Teachers) Award* does not necessarily mean every ECEC service covered by the *Education and Care Services National Regulations* will bear its cost.

[12] Since the proposed allowance is both finite and payable incrementally, phasing-in arrangements need not apply.

[13] Immediate introduction of the allowance would also serve to mediate the impact of COVID-19 on the Australian ECEC workforce given “reward commensurate with responsibility... is vital to prevent high staff turnover and financial stress...”¹³

⁹ Australian Taxation Office, *Boosting cash flow for employers*, [https://www.ato.gov.au/Business/Business-activity-statements-\(BAS\)/In-detail/Boosting-cash-flow-for-employers/](https://www.ato.gov.au/Business/Business-activity-statements-(BAS)/In-detail/Boosting-cash-flow-for-employers/)

¹⁰ <https://www.acecqa.gov.au/sites/default/files/2021-02/NQF-Annual-Performance-Report2020.pdf>

¹¹ Australian Government Productivity Commission (2021), *Report on Government Services 2021, Part B, Section 3: Released on 2 February 2021, Early childhood education and care*, <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/child-care-education-and-training/early-childhood-education-and-care>

¹² See *Education and Care Services National Regulations* R118, <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653>

¹³ p. 20 in Thorpe, K., Staton, S., Houen, S., & Beaton, T. (2020). Essential yet discounted: COVID-19 and the early childhood education workforce. *Australian Educational Leader*, 42(3), 18-21.

Research suggests

failure to recognise, reward and support the ECEC workforce may well serve to undermine Australia's ambition to provide high quality ECEC programs and support child learning; - both critical in the long-term strategy for economic recovery, post-pandemic. ¹⁴

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¹⁴ p. 20 in Thorpe, K., Staton, S., Houen, S., & Beaton, T. (2020). Essential yet discounted: COVID-19 and the early childhood education workforce. *Australian Educational Leader*, 42(3), 18-21.

19.3 Wage-related allowances—leadership allowance

(a) Eligibility

1. Vary 19.3 (a)(i) as follows:

(i) Clause 19.3 applies ~~only to a teacher in a school~~ to teachers in schools and early childhood settings.

(ii) A leadership allowance will be paid to an employee where the employer requires the performance of administrative, pastoral care and/or educational leadership duties additional to those usually required of teachers by the employer.

(iii) An allowance is linked to a position of leadership rather than tied to an individual employee.

(iv) The principal of the school determines who holds a position that is eligible for a leadership allowance.

(v) The person designated, in writing, as educational leader for the purpose of Regulation 118 of the *Education and Care Services National Regulations* at an early childhood service is eligible for a leadership allowance.

(b) Notification

Schools

(i) The principal will provide written advice to an employee in receipt of an allowance of the position, its tenure, the duties required and the allowance to be paid.

(ii) The principal will advise the employee of the level to which the position equates.

Early childhood settings

(iii) The approved provider, or person authorised to act on behalf of the approved provider, will provide written advice to an employee in receipt of an allowance of the position, its tenure, the duties required and the allowance to be paid.

(iv) The staff record will include the name of the person designated as the educational leader.

(c) Structure of leadership allowances

Leadership allowances will be determined by student numbers and the level of responsibility undertaken, as follows:

(i) School size

Category	School size
Category A	School with more than 600 students

Category B	School with between 300–600 students
Category C	School with between 100–299 students or any early childhood setting

(ii) Level of responsibility

The level of additional responsibility can be categorised as either administrative, pastoral care or educational leadership, or a combination of these, as follows:

Level 1	Positions of leadership such as responsibility for the management of a major department or a pastoral care or educational leadership position of equivalent status.
Levels 2 and 3	Positions of leadership such as small learning area department heads, additional responsibilities such as co-ordination of a school publication, sports co-ordinator or similar responsibilities.

A school will apply these allowances to positions of responsibility which are appropriate to its structure. The level of responsibility for an educational leader in an early childhood setting is taken to be equivalent to Level 1.

(d) The assignment of a position to a particular level in clause 19.3 will reflect the graduation of responsibilities exercised in each school, whether, administrative, pastoral care or educational leadership, with Level 1 being the most significant level of responsibility.

(e) Positions of leadership will be available in both primary schools, and secondary schools and early childhood settings.

(f) A school with less than 100 students will determine positions of responsibility and allowances which are appropriate to its structure.

(g) Amount

[19.3(g)(i) varied by PR729336 ppc 01Jul21]

(i) The allowances are based on a percentage of the standard rate. The following allowances apply:

Category	\$ per annum		
	A	B	C
Level 1	4298.48	3761.17	3385.05
Level 2	2955.21	2552.22	2149.24
Level 3	1477.60	1262.68	859.70

(ii) In a school, where the position of leadership is shared, the payments may also be shared.

DRAFT DETERMINATION

Fair Work Act 2009

s.158 - Application to vary or revoke a modern award

Application by the Independent Education Union of Australia (130N)
(AM2018/9)

Educational Services (Teachers) Award 2020
[MA000077]

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
DEPUTY PRESIDENT SAUNDERS

PLACE, XX MONTH YEAR

Application to vary Education Services (Teachers) Award 2020 on work value grounds

A. Further to the decision [REFERENCE] issued by the Full Bench of the Fair Work Commission on [DATE], the *Educational Services (Teachers) Award 2020* is varied as follows:

1. Vary clause 19.3 (a)(i) as follows:

‘(i) Clause 19.3 applies to teachers in schools and early childhood settings.’

2. Insert a new clause 19.3(a)(v) as follows:

‘(v) The person designated, in writing, as educational leader for the purpose of Regulation 118 of the Education and Care Services National Regulations at an early childhood service is eligible for a leadership allowance.’

3. Following 19.3(b) and preceding 19.3(b)(i) add subtitle ‘*Schools*’.

4. Following 19.3(b)(i) add subtitle ‘*Early childhood settings*’ and insert new clauses 19.3(b)(iii) and (iv) as follows:

‘Early childhood settings

(iii) The approved provider, or person authorised to act on behalf of the approved provider, will provide written advice to an employee in receipt of an allowance of the position, its tenure, the duties required and the allowance to be paid.

(iv) The staff record will include the name of the person designated as the educational leader.’

5. Amend clause 19.3(c)(i) as follows:

'(i) School size

<i>Category</i>	<i>School size</i>
<i>Category A</i>	<i>School with more than 600 students</i>
<i>Category B</i>	<i>School with between 300–600 students</i>
<i>Category C</i>	<i>School with between 100–299 students or any early childhood setting</i>

6. Expand explanatory note under table at 19.3(c)(ii) as follows:

'A school will apply these allowances to positions of responsibility which are appropriate to its structure. The level of responsibility for an educational leader in an early childhood setting is taken to be equivalent to Level 1.'

7. Amend clause 19.3(e) as follows:

'(e) Positions of leadership will be available in primary schools, secondary schools and early childhood settings.'

8. Amend clause 19.3(g)(ii) as follows:

'(ii) In a school, where the position of leadership is shared, the payments may also be shared.'

B. This determination comes into operation from [DATE].