

Submission s.156—4 yearly review of modern awards
4 yearly review of modern awards—Children’s Services Award 2010 and Educational Services
(Teachers) Award 2010—Substantive Issues
(AM2018/18 and AM2018/20)

Response to Background Document dated 13 June 2019

5 July 2019

Q.1 Are the lists at Appendices 1, 2 and 3 accurate?

Yes, to the best of our knowledge.

Q.2 Is it generally agreed that most award reliant employees covered by the Children’s Services Award are ‘low paid’ within the meaning of s.134(1)(a)?

Yes. This is well-documented. The *ECEC Workforce Study* was a three year mixed-methods research study with 1,200 participants from all over Australia:

The study findings highlight the personal cost of choosing to work in ECEC, especially in long day care settings. For many, these costs included: financial hardship; less favourable working conditions, including long and sometimes unpaid work hours; challenging work contexts causing stress and impacting on educator’s mental health and general wellbeing; and a public image that fails to acknowledge the professional and educational nature of the work and thereby devalues those who choose to work in this sector.

...the study also highlighted the challenge of surviving on current wages and revealed cases of extreme financial hardship. An unexpected finding was that many educators said they were only able to work in ECEC because their partner or family financially supported them. The majority of educators in long day care centres felt their wages didn’t reflect their professional work, and the desire for better wages and/or wage parity with colleagues in other education contexts were the most common reasons given for leaving their current centre.¹ (Emphasis added)

Q.3 N/A

Q.4 Is it common ground that UV: allowance claims do not seek to vary modern award minimum wages such that the limitation in s156(3) does not apply?

We do not have sufficient knowledge to comment on s156(3).

Q.5 If s156(3) does not apply, is the relevant test whether it is necessary to vary the awards to include the claimed allowances to achieve the modern awards objective?

¹ Irvine, S., Thorpe, K., McDonald, P., Lunn, J., & Sumsion, J. (2016, May). *Money, Love and Identity: Initial findings from the National ECEC Workforce Study*. Summary report from the national ECEC Workforce Development Policy Workshop, Brisbane, Queensland: QUT. p. 5
https://eprints.qut.edu.au/101622/1/Brief_report_ECEC_Workforce_Development_Policy_Workshop_final.pdf

We do not have sufficient knowledge to comment on s156(3).

Q.6 Is it common ground that the modern awards objective is a composite expression which requires that modern awards, together with the NES, provides ‘a fair and relevant minimum safety net of terms and conditions’, taking into account the matters in ss134(1)(a) to (h)?

This was our understanding.

Q.7 In considering whether the claimed allowances are ‘fair’ is it relevant to look at the value of the work being undertaken by employees designated as Education Leaders or Responsible Persons? In particular is it relevant to look at the level of skill or responsibility involved in undertaking those roles?

Yes. We believe it is relevant to look at the value of the work and the level of skill and responsibilities involved in undertaking the role of Educational Leader or Responsible Person when considering whether or not the allowances are fair. This is because the persons designated in these roles are most likely to be the most qualified, capable and experienced members of a staff team.² Not only is the role of the Educational Leader and the Responsible Person significant, impacting upon the overall quality of an early childhood education and care setting, these roles are mandated by law.

Educational Leaders and Responsible Persons have responsibilities that are in addition to the duties within their Award classification. The evidence before the Full Bench confirms that employees who are designated as the Educational Leader or the Responsible Person are being paid the same as employees within the same classification who are not.³ The proposed allowances would ensure that all employees covered by the *Children’s Services Award 2010* and the *Educational Services (Teachers) Award 2010* who are designated as the Educational Leader or Responsible Person would be paid consistently for their work in keeping with the modern award objective “to provide fair and relevant minimum safety net of terms and conditions.”⁴

Q.8 Are the contentions set out at [47] to [49] above contested?

No. We agree with these contentions.

Q.9 Is the submission set out at [50] above contested?

No. We agree with this submission.

Q.10 Are the assertions set out in [59] generally agreed?

² See Arrabalde submission (27 May 2019) at [31]-[34]

³ See for example, Arrabalde submission (26 April 2019) at [45]

⁴ *Fair Work Act 2009*, Section 134(1)

Yes. However, there is no requirement for a Nominated Supervisor to be a Responsible Person or the Director. It is agreed that Nominated Supervisors have significant responsibilities.

Q.11 What is the distinction between the Nominated Supervisor and the Responsible Person?

Nominated Supervisor⁵	Responsible Person
Must consent to the position in writing. This consent must be submitted to the regulatory authority in the form of a notification in a timely manner.	Must consent to the position in writing.
Is responsible for the day-to-day management of a centre.	Is in day-to-day charge of a centre.
Can be but is not necessarily the Director.	Can be but is not necessarily the Director.
Does not have to be present at all times.	<u>Must be present</u> in order to be classified as the Responsible Person.
Has legal responsibility for compliance with components of the National Law and National Regulations.	The role itself does not attract additional legal responsibilities.
May be <u>more than one</u> at one time.	May only be <u>one</u> at one time.

Q.12 Is the contention at [62] contested?

No. We agree with this contention.

Q.13 N/A

Q.14 N/A

Q.15 N/A

Q.16 N/A

Q.17 N/A

Q.18 N/A

Q.19 Does the argument advanced by the Individuals overlap with the ERO/work Value proceedings?

⁵ For more information see, Australian Children’s Education and Care Quality Authority (ACECQA). *National Quality Agenda Review: Nominated Supervisors*. <https://www.acecqa.gov.au/sites/default/files/2018-03/InformationSheetNominatedSupervisor.pdf>

No. We do not believe there is any overlap. In the transcript for C2013/6333 AM2018/9 from 12 June 2019, the proposed educational leadership allowance was mentioned and identified as a matter for “a different Full Bench”:

PN801

That state of the evidence creates what we would regard as a practical difficulty from the applicant's point of view because it's quite unclear from the evidence which responsibilities the teachers say they have pursuant to each pattern or which function. That is a particularly acute difficulty because it is essential, in my respectful submission, that this Full Bench clearly disaggregate the work value of the teacher position from that of educational leaders and directors. Apart from anything else that is necessary because there is an allowance currently paid to directors - a reasonably substantial allowance - and there is an application reserved, part-heard or reserved, before a different Full Bench for an educational leader allowance. (Emphasis added)

PN802

The other proceeding, the United Voice with the support of the IEUA, is applying for an educational leaders' allowance and lead evidence relevant to that question. That is why we say it is essential that this Full Bench clearly distinguish between the work value attaching to the different positions. That would be true in any case but it's certainly true given the existence of one allowance and the application for another. Given the fact of the other application, this hasn't happened yet but I say this quite (indistinct), but, your Honour, you couldn't be heard to say that the evidence suggests that ECTs are often educational leaders and on that basis the responsibilities of an educational leader should be taken to be the typical responsibilities of an early childhood teacher. We couldn't accept that the evidence makes that out but even if it did, that's a matter to be dealt with by a different Full Bench in the context of an application for an allowance. (Emphasis added)

Q.20 If so, how should we deal with such overlap?

It does not appear that there is any overlap between the substantive claims and the ERO/work value case. While not opposing the proposed educational leadership allowance, the IEU has not actively supported its introduction. The ERO/work value case also does not consider the work of non-teacher educators who are paid under the *Children's Services Award 2010*.

During cross examination on 27 June 2019, Lisa James, an IEU witness (and employee of the union) arguably provided confirmation of the distinct nature of the two cases:

PN4354

*If the claim that's brought in the award review proceedings for an educational leader allowance succeeds, there'll be a pay rise for what proportion of ECTs on your assessment?--
-We didn't actually apply for that, that was United Voice applying for the allowance because in our opinion we believe teachers are the educational leader, and they're degree qualifies them for that. So we didn't seek a separate allowance. But I imagine it will affect - - -*

PN4355

I'm sorry, can I just - Ms James, can I just deal with that. Are you seeking to disassociate yourself from the claim for educational leaders - - -?---We did not make - we did not make a claim for that. That was another union. I'm not saying that I have an opinion about whether they should get it or not. What I'm saying is we didn't pursue that ourselves because we consider it part of a teacher's role.

Q.21 Do you contest that part of the ACA, ABI and NSWBC submission as to what are said to be a difference between the OSHC and Long Day Care sectors set out in the first dot point at [94] above? And if so, how would the Educational Leader allowance work in the OSHC sector.

Yes. The requirement for one person to be designated as the Educational Leader in Regulation 118 equally applies to both OSHC and long day care. A casualised workforce has no bearing on the operation of this Regulation. The allowance would only be payable to the employee designated in writing for the purposes of Regulation 118. Data compiled by United Voice and set out in Table 4 of the Background Document highlights the relevance of using the same centre size categories for the proposed allowances in both OSHC and long day care.

It is acknowledged that there are differences and similarities between OSHC and long day care with respect to programming and planning:

The National Quality Standard acknowledges middle childhood and recreational programs for school age children as distinct from early childhood programs. School age education and care programs supplement children's formal schooling. The educational program is focused on active learning, social development and wellbeing, and recreational or leisure activities to support continuity of learning.⁶

Services are still required to understand all children and their strengths, ideas, abilities and interests and their progress across the learning outcomes as part of the planning cycle. This can be reflected in documenting how and why the education program has been developed to support all children to participate in the program.⁷

However, the requirement to have an educational leader and the significant and complex nature of this role is universal. Therefore, the proposed allowances should apply equally to *all* early childhood settings.

Q.22 N/A

Q.23 UV and the Individuals are invited to respond to AFEI's submission that the quantum of the proposed Education Leader allowance is disproportionate when compared with the compensation for holding other responsibilities under the award.

⁶ Australian Children's Education and Care Quality Authority (ACECQA). 2017. *National Quality Agenda Review: Documenting programs for school age children*. p.1
<http://files.acecqa.gov.au/files/NQF/DocumentingPrograms.pdf>

⁷ Australian Children's Education and Care Quality Authority (ACECQA). 2017. *National Quality Agenda Review: Documenting programs for school age children*. p.3
<http://files.acecqa.gov.au/files/NQF/DocumentingPrograms.pdf>

An educational leader has responsibility for the educational program of all of the children attending a centre and the educational practice of the entire team of educators.⁸ These responsibilities are additional to those usually required of educators and teachers. The allowance sought is not disproportionate nor excessive and is a rather conservative proposition upon reflection of the evidence presented during the hearing. The proposed educational leadership allowance is consistent with the leadership allowance for teachers working in schools.

Q.24 What is the basis for the quantum of the allowance sought? How did UV and the Individuals come up with the quantum proposed?

The proposed educational leadership allowance is based on the structure of the leadership allowance in clause 15.2 of the *Educational Services (Teachers) Award 2010* that is currently only applicable to a teacher working in a school. We chose to structure the allowance in this way based on the Modern Awards Objective 1(e) “the principle of equal remuneration for work of equal or comparable value”. This is because the role of an educational leader in a school as described in the *Australian Professional Standards for Teachers* directly aligns with the role of an educational leader in an early childhood education and care setting.⁹ The suggestion here is that there is equivalency in the role of educational leaders in schools and early childhood settings, not that schools and early childhood settings are similar.

In our submission dated 18 April 2018, we proposed the insertion of Level 4: Position of educational leader in an early childhood education and care setting in clause 15.2.

Category % of standard rate

	A	B	C
Level 1	8.00	7.00	6.30
Level 2	5.50	4.75	4.00
Level 3	2.75	2.35	1.60
Level 4	3.00	2.50	2.00

We proposed a rate that is between Level 2 and Level 3 responsibilities of an educational leader in a school. This is because the role and responsibilities of an educational leader in an early childhood education and care setting is a position of leadership that carries additional responsibilities (Level 2) but as established in the evidence,¹⁰ these responsibilities are more complex than “co-ordination of a school publication, sports co-ordinator or similar responsibilities” (Level 3).

⁸ Arrabalde submission (27 May 2019) at [10]

⁹ See for example, Arrabalde submission (14 March 2019) at [21]

¹⁰ See for example, Arrabalde submission (27 May 2019) at [6]

Being an educational leader permeates every aspect of an educator’s practice when engaged in this role and therefore a percentage amount of the standard or ordinary rate should be paid as an allowance. This extra payment would be commensurate with the employee’s qualification, skill level and experience.

While the leadership allowance in clause 15.2 is based on the number of students in a school, the proposed educational leadership allowance is based on the number of places in the early childhood setting. For consistency, the categories we used are the same categories used in the director’s allowance in clause 15.1.

Following is a reworked version of Table 6 which uses the current rates as at 1 July 2019 and the proposed allowance:

Comparison between current director’s allowance in the *Educational Services (Teachers) Award 2010* and proposed educational leader allowance

Centres with	Current Director’s allowance per annum (as at 1 July 2019)	Educational leader allowance sought per annum	Educational leader allowance as a percentage of the Director’s allowance
No more than 39 places	\$5,751.96	\$1,030.36 (2.00% of the standard rate)	18%
40-59 places	\$7,127.42	\$1,287.95 (2.50% of the standard rate)	18%
60 and above places	\$8,652.94	\$1,545.54 (3.00% of the standard rate)	18%

The wage-related allowances in the *Educational Services (Teachers) Award 2010* are based on the standard rate as defined in clause 3.1 as the minimum annual rate for Level 1 in clause 14.1 which is \$51,518 from 1 July 2019.

For fairness and consistency, we proposed that the same percentages apply to educational leaders covered by the *Children’s Services Award 2010*. As the role and duties of an educational leader is not adequately captured by any classification of the Award,¹¹ we are uncertain of the relevance in

¹¹ See Arrabalde submission (26 April 2019) at [29]-[30]

comparing the pay differential of Diploma educators with varying experience and Assistant Directors with the quantum of the allowance sought. However, for comparative purposes following is a revised version of Table 5.

Centres with	Difference between a Level 4.1 and Level 5.1 per annum*	Difference between a Level 4.2 and Level 5.1 per annum*	Difference between a Level 4.3 and Level 5.1 per annum*	Educational leader allowance sought per annum* for an employee classified as Level 4.1
No more than 39 places	\$2,421.15	\$1,612.36	\$808.79	\$1,060.30 (2.00%)
40-59 places	\$2,421.15	\$1,612.36	\$808.79	\$1,325.37 (2.50%)
60 and above places	\$2,421.15	\$1,612.36	\$808.79	\$1,590.45 (3.00%)

*Annual rates have been obtained by multiplying the weekly rates by 52.18

Please note, there is no minimum engagement for an educational leader in terms of paid hours. The educational leader may not be employed full-time so a per annum calculation may overstate (yet never exceed) the actual allowance payable.

We acknowledge that United Voice has proposed weekly educational leadership allowances in both the *Children's Services Award 2010* and the *Educational Services (Teachers) Award 2010* with different percentage rates. The reason for the variance between our proposed allowance and the allowance sought by United Voice is that our applications were formulated independent of each other.

Q.25 UV and the Individuals are invited to respond to AFEI's submission that the quantum of the proposed Responsible Person allowance is disproportionate when compared to other allowances and pay rates under the Awards.

The *Educational Services (Teachers) Award 2010* identifies the duties of employees covered by the Award:¹²

Duties of an employee

The duties of a teacher may include in addition to teaching, activities associated with administration, review, development and delivery of educational programs and co-curricular activities.

These duties do not include (or allude to) being placed in day-to-day charge of a service which is instead captured within the definition of a director. The proposed allowance is equal to the director’s allowance in 15.1.

Revised version of Table 8: Comparison of Director’s Allowance and Responsible Person Allowance, using current rates as at 1 July 2019.

Centres with	Current Director’s allowance, per annum	Responsible person allowance sought, per annum	Current Director’s allowance per hour	Responsible Person allowance sought per hour
No more than 39 places	\$5,924.57	\$5,924.57	\$2.99 per hour	\$2.99 per hour
40-59 places	\$7,341.32	\$7,341.32	\$3.70 per hour	\$3.70 per hour
69 above about places	\$8,912.61	\$8,912.61	\$4.50 per hour	\$4.50 per hour

The wage-related allowances in the *Educational Services (Teachers) Award 2010* are based on the standard rate as defined in clause 3.1 as the minimum annual rate for Level 1 in clause 14.1 which is \$51,518 from 1 July 2019.

With reference to Table 8, comparing and calculating the proposed Responsible Person allowance on a yearly basis has potentially limited utility. This is because:

1. Early childhood education and care settings are required to have a Responsible Person present at all times when children are present.
 - a. Staff may work hours in excess of this requirement. For example, for setting up and packing up. The allowance would not be payable for this time.
 - b. A centre may operate for longer hours than a full-time employee works.

¹² *Educational Services (Teachers) Award 2010* clause 13.1

2. The Responsible Person may change several times over the course of the day. Each Responsible Person may have a different qualification and associated pay rate.

It is perhaps more appropriate to compare the proposed allowance on an hourly basis. This is why this comparison has been added to Table 8.

In its Reply Submission of 16 April 2019 at [37] AFEI argues that:

The classification structure in the Children’s Services Award already contemplates a higher level of responsibilities and skills than a responsible person at Level 5, Assistant Director, which includes:

“Responsible for the day-to-day management of the centre or service in the temporary absence of the Director and for management and compliance with licensing and all statutory and quality assurance issues.”

If a Level 5 classification captures the role of the Responsible Person (while lower classifications do not), this would mean that all employees covered by the *Children’s Services Award 2010* who are designated as the Responsible Person at any time should be classified as a Level 5. This would mean instead of paying the proposed allowance to the one person designated as the Responsible Person capped by the number of operating hours of a centre, employers would instead potentially pay several employees per day at a Level 5 rate for every hour worked regardless of if they were the current Responsible Person or not. The cost of this would conceivably exceed the proposed allowance.

For the purposes of comparison, following is a revised version of Table 7 which takes into account current rates as at 1 July 2019 and the proposed allowance:

Table 7: Comparison Level 4/Assistant Director differential and the Responsible Person Allowance

Centres with	Difference between a Level 4.1 and Level 5.1 per hour	Difference between a Level 4.2 and Level 5.1 per hour	Difference between a Level 4.3 and Level 5.1 per hour	Responsible person allowance sought, per hour for Level 4.1
No more than 39 places	\$1.22	\$0.82	\$0.41	\$3.08 per hour
40-59 places	\$1.22	\$0.82	\$0.41	\$3.81 per hour
60 and above places	\$1.22	\$0.82	\$0.41	\$4.62 per hour

Q.26 What is the basis for the quantum of the allowance sought? How did UV and the Individuals come up with the quantum proposed?

The proposed Responsible Person allowance is equal to the Director’s allowance in the *Educational Services (Teachers) Award 2010*:

Level	% of standard rate per hour
1	11.50
2	14.25
3	17.30

This is because the roles of both the Responsible Person and the director involve an employee taking responsibility for the day-to-day operations of the service. Similar to a director, the role of the Responsible Person is a position of leadership which has duties and responsibilities.¹³ The Responsible Person must have sufficient knowledge, skills and understandings and an “ability to effectively supervise and manage an education and care service”.¹⁴ The quantum of the allowance sought is consistent with Modern Awards Objective 1(e) “the principle of equal remuneration for work of equal or comparable value”.

A director is not necessarily the Responsible Person and may not be the Responsible Person at all times. In the event that a director or assistant director is performing multiple roles and working as the Responsible Person, the Educational Leader or both, the proposed allowances should still be payable given the well-documented additional administration and compliance burdens imposed since these roles were introduced with the *National Quality Framework*.¹⁵

Q.27 Is the above extract from UV’s submission (at [118]) contested?

No, we are in general agreement with these statements.

Q.28 N/A

Q.29 N/A

Q.30 Are the propositions set out at [141] contested?

No. This is an accurate proposition.

Q.31 N/A

Q.32 N/A

¹³ See Arrabalde submission (27 May 2019) at [25]

¹⁴ Australian Children’s Education and Care Quality Authority (ACECQA). *Responsible Person Requirements for Approved Providers from October 2017*. <https://www.acecqa.gov.au/sites/default/files/2018-09/ResponsiblePersonRequirements.pdf>

¹⁵ In 2018, only 3% of services did not perceive the National Quality Framework ‘not at all burdensome’. See p. 51, Australian Children’s Education and Care Quality Authority (ACECQA). 2018. *National Quality Agenda National Partnership Annual Performance Report*. <https://www.acecqa.gov.au/sites/default/files/2018-12/NationalPartnershipAnnualPerformanceReport2018.PDF>

Q.33 N/A

Q.34 N/A

Q.35 All parties are invited to comment on whether this claim should be dealt with by the Substantive Issues Full Bench or the Plain Language Full Bench?

We do not have an informed opinion on this matter.

Q.36 Do you contest any part of the relevant award history set out in the ACA, ABI and NSWBC submission referred to in [165] above?

We do not have sufficient knowledge to comment on the award history.

Q.37 Do you contest the propositions set out at [167] above, or any of the material set out in Section 12 and 13 of the ACA, ABI and NSWBC submission?

No. We generally agree with these propositions and the material contained in Sections 12 and 13.

Q.38 Do you contest the propositions set out at [169] above?

These propositions provide a very business-oriented view of early childhood education and care, diminishing it to an “industry” where money can be made and saved.

Q.40 Do you contest the propositions set out at [173] above?

Yes.

Extending ordinary hours until 7.30pm will not necessarily mean that centres will be open longer hours. This is because the operating hours of an early childhood education and care setting are not discretionary and instead must comply with local government planning controls and be approved by the regulatory authority. Therefore, the argument that workforce participation will be enhanced through the extension of ordinary hours is inaccurate because extending ordinary hours does not allow centres to stay open later. If centres do not or cannot increase their hours of operation, an extension of ordinary hours would ultimately result in a reduction in pay for employees who continue to work past 6.30pm (for example, if families arrive late to collect their child).

Further, extending ordinary hours should be considered with great caution given the potential ramifications for broader societal change. If an extension of ordinary hours does result in an extension of operating hours, this could potentially normalise children remaining in formal care longer and later. This is a very important consideration given the significant and ongoing impact of children’s experiences during the early years on the rest of their lives.

Q.41 N/A

Q.42 N/A

Q.43 N/A

Q.44 N/A

Q.45 N/A

Q.46 Do you contest the propositions set out [208] above, or any of the material set out in Section 21 of the ACA, ABI and NSWBC submission?

[208] As to the unique rostering requirements in Childcare the Applicants submit that:

(a) Employees in the childcare industry are routinely unavailable at the last minute due to health and other personal reasons. Agreed.

(b) Childcare employers are subject to complex regulations that impact their ability to roster employees including:

*(i) staff:child ratios - depending on the age and number of children who attend the centre each day; This is true to a certain extent. Enrolment patterns are fairly stable. The number of children in attendance cannot exceed the number of licenced places and so there should not be changes to *how many* staff are required per day. Staff/child ratios should not be considered a complexity, rather a simple calculation.*

Many centres calculate ratios and organise staffing based on the number of children of a certain age at a fixed point in time (such as the beginning of the calendar year) or the number of staff may be based on the capacity of a “room” in terms of physical floor space and the age grouping of the children. For example, a room for children aged 2-3 years may have 15 children and 3 staff.

It is acknowledged that some complexity may arise when staff/child ratios are being calculated to minimise costs and maximise profit. In order to reduce costs, some centres minimise how many staff are rostered on and vary the number of staff they employ in the event that children are not in attendance on a particular day or if children have a birthday. For example, if there are nine 3-year old children and one 2-year old child in attendance it is necessary to have two staff members due to ratio requirements. If the 2-year old child is absent or if the 2-year old child turns 3, only one staff member is needed. This could potentially *halve staffing costs* despite the centre’s *fee revenue remaining the same* as daily fees remain payable for non-attendance.

(ii) qualified teacher:child ratios - depending on the number of children who attend the centre each day; This should be a stable number based on children’s recurring enrolment patterns.

(iii) qualification requirements - to ensure at least 50% of the employees in the Centre on any given day are Diploma Qualified (the remaining employees must be at least Certificate III qualified), (collectively the Childcare Regulations). Once again this should be a stable number based on children’s recurring enrolment patterns.

(c) *Childcare employers are routinely required to replace employees in rosters in situations outside their control and which do not constitute an “emergency”. For example, unwell employees, unavailability, absenteeism and other personal reasons.* Agreed.

(d) *The Childcare Regulations mean that the replacement of an absent employee in a roster is required (as opposed to being optional in many other industries). Further, a replacement employee must have certain qualifications in order to comply with the Childcare Regulations.* Agreed.

(e) *The alternatives to replacing an absent employee in a childcare roster are to:*

(i) *act in breach of the Childcare Regulations with risks of incurring fines, losing a centre’s licence or accreditation status; or This is contested. Services may apply for a waiver without any risk:*

Waivers play an important role in helping providers maintain their level of service to families while dealing with special circumstances or unexpected events.

An approved provider may apply to a regulatory authority for a waiver of an element of the National Quality Standard and/or the National Regulations. Approved providers can apply for a service waiver where an issue is likely to be ongoing, or a temporary waiver, where the issue can be addressed within 12 months.¹⁶

(ii) *call parents and ask them to pick-up their children from the centre (so the number of children in the centre decreases and as a result the centre returns to being compliant with the Childcare Regulations).* This would be a decision made by the centre if they believed if their staffing issued posed a risk to the children’s wellbeing.

Q.47 Do you contest the propositions set out [210] above?

No. We generally agree with these propositions.

Q.48 Do you contest the propositions set out [212] above, or any of the material set out in Sections 23 of the ACA, ABI and NSWBC submission?

No. We do not contest these propositions.

Q.49 N/A

Q.50 N/A

Q.51 N/A

Q.52 N/A

Q.53 Clause 14.5(a) appears to place a cap on the salary payable to a casual employee who is engaged for less than five consecutive days:

(i) What is the parties’ understanding of how this cap operates?

¹⁶ Australian Children’s Education and Care Quality Authority (ACECQA). 2018. *Guide to the National Quality Framework*. p. 60. https://www.acecqa.gov.au/sites/default/files/2019-06/Guide-to-the-NQF_0.pdf

(ii) What is the rationale for the imposition of such a ‘cap’?

(iii) What is the history of this provision and, in particular, has the ‘cap’ been the subject of an arbitral determination.

We do not have sufficient knowledge to comment on the cap.

Isabelle Arrabalde and Elizabeth Arrabalde

5 July 2019