

**IN THE FAIR WORK COMMISSION  
AT SYDNEY**

**MATTER:** AM2018/18; AM2018/20

4 YEARLY REVIEW OF MODERN AWARDS – EDUCATIONAL SERVICES  
(TEACHERS) AWARD; CHILDREN'S SERVICES AWARD

**IEU SUBMISSIONS RE CASUAL MINIMUM ENGAGEMENT AND PROVIDING A  
PORTAL TO THE EDUCATIONAL SERVICES (TEACHERS) AWARD 2020 IN THE  
CHILDREN'S SERVICES AWARD 2010**

**INTRODUCTION**

1. In its decision in *4 yearly review of modern awards – Award stage – Group 4 awards – Children's Services Award 2010 and Educational Services (Teachers) Award 2010 – Finalisation of substantive claims* [2020] FWCFB 5176 (**the Decision**) the Full Bench invited interested parties to file further written submissions on a number of matters including:
  - a. at [61], the Commission's provisional view that the *Educational Services (Teachers) Award 2010 (Teachers Award)* should be amended to include a 2-hour minimum engagement period for teachers engaged as casual employees; and
  - b. at [78], the commission's proposal to amend the *Children's Services Award 2010 (Children's Services Award)* to include a schedule setting out wage rates for teachers who, while employed in certain ECEC establishments, remain covered by the *Teachers Award*.

**MINIMUM ENGAGEMENT FOR CASUAL EMPLOYEES**

2. At [61], the Decision provides:

*It is our provisional view that there is utility in harmonising the casual minimum payment provisions relating to 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). Parties are invited to comment on this provisional view in accordance with the process set out in Section 3, 'Next steps', of this decision.*

3. The IEU, in light of the Full Bench's findings in earlier decisions, accepts that this would, in practical terms, replicate with more clarity the present entitlement

for casual teachers engaged for what is presently described as a 'quarter day' or less.

4. However, it is with respect unclear whether the Full Bench's proposal is to merely amend the quarter day reference, or to introduce a 2-hour minimum in lieu of *all* the present conditions provided by cl.17.5 of the Teachers.
5. This would in practical terms operate to reduce wage outcomes for casual teachers who are engaged for what is presently described as more than a quarter day but less than a half day, or for those engaged more than a half day but less than a full day.
6. By way of illustration, and assuming a 8-hour day:

<b>Hours engaged</b>	<b>Pay under current clause 17.5</b>	<b>Pay under Commission proposal</b>
1	Quarter day – 2 hours	2 hours
3	Half day – 4 hours	3 hours
6	Full day – 8 hours	6 hours

7. It is worth noting that award dependent casuals working short days are, as a matter of common sense, likely to be low-wage earners and vulnerable workers. No party put forward any material indicating that this would be necessary or justified. At its highest, the employer case is that it is difficult to understand what is meant by 'quarter day'.
8. The IEU does not understand that the Full Bench's provisional view is intended to reduce wage outcomes for any worker solely to make the Children's Services Award tidier. As such, the provisional view is best given effect by amending cl.17.5 of the Teachers Award to read:

### **17.5 Casual employee**

#### **(c) Minimum payments**

- (ii) A casual employee in a children's service or early childhood education service will be paid for a minimum of:
  - (x) where they are required to work for up to 2 hours, 2 hours;
  - (xx) where they are required to work for up to 4 hours, 4 hours;

and

(xxx) where they are required to work for more than 4 hours, 8 hours,  
based on their appropriate hourly rate.

## **PROPOSED WAGES SCHEDULE**

9. From paragraphs [76]-[78] of the decision, the IEU understands that the Full Bench's proposal is to, without altering the coverage of either the Teachers Award or the Children's Services Award, include for administrative convenience a wages schedule for teachers working in ECEC centers in the Children's Services Award.
10. The proposed Draft Determination is expressed as a schedule to the Children's Services Award; i.e. a substantive and operative clause imposing obligations on employers and providing entitlements to employees.
11. This appears to create a difficulty. An award can only impose obligations on or provide entitlements to a person when it is expressed to cover that person: ss.46,47,48 of the *Fair Work Act 2009* (Cth). The schedule cannot have operative effect in respect of employees outside the scope of the Award – i.e. teachers.
12. In addition, the IEU is concerned that the proposed schedule will create more confusion than it resolves. It is easy to see how it could lead unsophisticated employers into a conclusion that the Children's Services Award applied to teachers in ECEC sectors, leading to inadvertent non-compliance to the detriment of employees.
13. The proposal is better expressed as a note to cl.14, ideally with a hyperlink, indicating that wage rates for teachers are found in the Teachers Award. This would seem to achieve the stated goal of simplicity and ease of use, without sacrificing security of employee entitlements.
14. Alternatively, a note could be included directing employers to the convenient wage schedules produced by the Fair Work Ombudsman, by which employers – noting that multiple award coverage is far from unusual, and not an anomaly unique to the ECEC sector – can easily check the appropriate wage rates for all of their employees. The convenience and ease of this, as well as the reality of whether the present system causes actual inconvenience for employers, are matters which the IEU would have put into evidence had this issue been live during the hearing of this matter. In the event that this is controversial, the IEU would seek leave to put on such material.

15. In the further alternative, in the event that the Full Bench is minded to pursue a schedule, the IEU's proposed draft determination is attached and marked "Annexure IEU1".
16. This draft determination both simplifies and expands on the provisions set out in Schedule J of the Draft Determination set out by the Full Bench in [2020] FWCFB 5176. Where text is underlined, it is suggested that a dynamic hyperlink be made to the latest Teachers Award.
17. Annexure IEU1 only shows the rates of pay applicable to a teacher employed full-time in a children's or early childhood service which usually provides services over a period of at least eight hours each day for 48 weeks or more (such as a long day care centre).
18. With respect to casual employees, it incorporates the changed structure of subclause 17.5 of the *Educational Services (Teachers) Award 2020* and includes a specific reference/link to Tables B.1.1 and B.1.2.
19. The list of clauses that apply in Note 2 as found in the Full Bench's Draft Determination have been expanded to provide more clarity in subclause J.3.2. of IEU2.

**LUCY SAUNDERS**

GREENWAY CHAMBERS

9 OCTOBER 2020

## Annexure IEU1

# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

### **4 yearly review of modern awards**

(AM2018/18)

### **CHILDREN’S SERVICES AWARD 2010**

[MA000120]

JUSTICE ROSS, PRESIDENT

DEPUTY PRESIDENT CLANCY

COMMISSIONER LEE

MELBOURNE, XX MONTH 2020

*4 yearly review of modern awards -Award stage -Group 4 awards -Children’s Services Award 2010-Substantive issues.*

A. Further to the Full Bench decisions issued by the Fair Work Commission on 10 June 2020 [[2020] FWCFB 3011] and XX MONTH 2020 [[2020] FWCFB XXXX], the above award is varied as follows:

By inserting a new Schedule J as follows:

### **Schedule J—Minimum salary and Related Matters—Teachers employed in early childhood services operating for at least 48 weeks per year**

#### **J.1 Purpose of this schedule**

- J.1.1 The purpose of this Schedule is to assist employers of teachers who work in early childhood services operating for at least 48 weeks per year to easily reference the relevant provisions of the *Educational Services (Teachers) Award 2020*, which is the Award that covers teachers.
- J.1.2 The operative Award that covers such teachers remains the *Educational Services (Teachers) Award 2020*. This Schedule acts as a note only. It is expected that this Schedule will be updated whenever there is a change in the *Educational Services (Teachers) Award 2020*.
- J.1.3 If a provision in this Schedule (or a provision referred to in this Schedule) is inconsistent with another provision in this award, the provision in this Schedule (or the provision referred to in this Schedule) prevails to the extent of the inconsistency.

## J.2 Minimum salary

- J.2.1 The rates of pay for a teacher employed full-time in a children's or early childhood service which usually provides services over a period of at least eight hours each day for 48 weeks or more (such as a long day care centre) will be determined in accordance with the provisions of clause 14-Classifications, Clause 17- Minimum rates and Schedule B of the Educational Services (Teachers) Award 2020.
- J.2.2 As a result of the operation of the Educational Services (Teachers) Award 2020, the minimum salary per annum payable to a teacher employed full-time in a children's or early childhood service which usually provides services over a period of at least eight hours each day for 48 weeks or more (such as a long day care centre) is:

Level	Per year
	\$
1	54,516.80
2	55,640.00
3	57,154.24
4	59,215.52
5	61,278.88
6	63,199.76
7	65,119.60
8	67,180.88
9	69,245.28
10	71,307.60
11	73,372.00
12	75,432.24

Note: these rates reflect the rates of pay required to be paid under subclauses 17.1 and 17.2 of the Educational Services (Teachers) Award 2020.

- J.2.3 The weekly rate of pay for an employee will be determined by dividing the annual rate by 52.18 and the fortnightly rate by dividing the annual rate by 26.09 [17.3]

### J.2.4 Part-time employee

A teacher employed part time in the children's services and early childhood education industry which usually provides services over a period of at least eight hours each day for 48 weeks or more (such as a long day care centre) will be paid pro rata, at the same rate as a full-time employee in the same classification, in accordance with the provisions of clause 11 of the Educational Services (Teachers) Award 2020. [17.4]

### J.2.5 Casual employee

- (a) The salary payable to a casual employee will be:
- (i) where the employee is engaged for less than 5 consecutive days - no higher

than the salary at Level 8 in clause J.2.2; or

- (ii) where the employee is engaged for five or more consecutive days - the salary will be the appropriate salary for the classification as specified in clause 14- Classifications of the *Educational Services (Teachers) Award 2020*.
- (b) The minimum rate for a casual employee will be calculated in accordance with the following table:  
  
Full day Weekly rate calculated in accordance with clause J. 1.3 divided by 5 plus 25%  
Half day Weekly rate calculated in accordance with clause J. 1.3 divided by 10 plus 25%  
Quarter day Weekly rate calculated in accordance with clause J. 1.3 divided by 20 plus 25%
- (c) **Minimum payments**
  - (i) Where a day is the usual required attendance time for an employee at a particular school and a half day is half the usual required attendance time; a casual employee in a school will be paid for a minimum of half a day.
  - (ii) A casual employee in a children's service or early childhood education service will be paid for a minimum of a quarter day.
- (d) The casual rates of pay for teachers employed in a children's or early childhood service which usually provides services over a period of at least eight hours each day for 48 weeks or more (such as a long day care centre) are found at Table B.1.1 and Table B.1.2 of the *Educational Services (Teachers) Award 2020*. Refer to columns under the heading: *Teachers employed in early childhood services operating for at least 48 weeks per year (Schedule A)*.

### **J.3 Other provisions**

- J.3.1 As indicated in J.1.2 the operative Award that determines the minimum salaries and conditions of teachers is the *Educational Services (Teachers) Award 2020*.
- J.3.2 The following clauses in the *Educational Services (Teachers) Award 2020* are a list of the main provisions that apply to teachers employed in a children's or early childhood service which usually provides services over a period of at least eight hours each day for 48 weeks or more (such as a long day care centre):
  - (a) Definitions – clause 2;
  - (b) Coverage – clause 4;
  - (c) Requests for flexible working arrangements – clause 6;
  - (d) Types of employment - clauses 8-13;
  - (e) Classifications - clause 14;
  - (f) Paid meal break – subclause 16.2;
  - (g) Minimum rates – clause 17;
  - (h) Payment of wages – clause 18;

- (i) Allowances - clause 19 (including Director's Allowance at subclause 19.2);
- (j) Annual leave – clause 21 (and Schedule A -clause A.6)
- (k) Annual leave loading – subclauses 23.1-23.2; 23.5-23.6.
- (l) Termination of employment – subclauses 32.2-32.7.
- (m) Redundancy – clause 33
- (n) Schedule A—Hours of Work and Related Matters—Teachers employed in early childhood services operating for at least 48 weeks per year. This schedule includes specific provisions relating to:
  - i. Ordinary hours of work - clause A. 1
  - ii. Rostered days off - clause A.2
  - iii. Breaks - clause A.3
  - iv. Overtime - clause A.4
  - v. Shiftwork - clause A.5
  - vi. Annual leave - clause A.6
- (o) Schedule B – Summary of Rates of Pay (Table B.1. provides the full day rates for Teachers employed in early childhood services operating for at least 48 weeks per year. Table B.2. provides the half day rate and quarter day rate for Teachers employed in early childhood services operating for at least 48 weeks per year.).
- (p) Schedule C—Summary of Monetary Allowances (including Director's Allowances in the table found at subclause C.1.1).

B. This determination comes into operation from (DATE). In accordance with s.165(3) of the *Fair Work Act 2009*, this determination does not take effect until the start of the first pay period that starts on or after (DATE)

PRESIDENT