

BEFORE THE FAIR WORK COMMISSION

Fair Work Act 2009 (Cth)

Title of matter: Application to vary *Educational Services (Teachers) Award 2020*

Matter Number: AM2018/9

Document: Submissions pursuant to Amended Directions dated
9 July 2021

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Lodged by: Australian Federation of Employers and Industries

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Background

1. On 19 April 2021, the Fair Work Commission (the 'Commission') issued a decision concerning the IEU's work value application in respect of the *Educational Services (Teachers) Award 2020* (the 'decision').¹
2. For the purposes of these submissions, the *Educational Services (Teachers) Award 2020* shall be referred to as the '**EST Award**'.
3. The Commission was satisfied that an adjustment to the minimum rates of teachers covered by the EST Award is justified on work value grounds² but did not consider that IEU's proposals would result in a rate structure that properly reflects the work value of teachers.³
4. The Commission found that a classification structure that is based on years of service rather than the essential elements of 'qualifications, displayed competence and acquired experience and responsibility' to be inappropriate,⁴ and considered that a new classification structure should be established which is anchored upon the professional career standards established by the Australian Professional Standards for Teachers (the 'APST Standards').⁵
5. The Commission considered that the current classification structure with its annual increments is anachronistic and does not properly relate to the work value of teachers.⁶
6. The decision proposed modifications to the current remuneration structure in the EST Award to properly reflect the work value of teachers covered by the EST Award,⁷ and produced the following classification and pay structure (the proposed structure):⁸

Classification	Criteria	Weekly salary – preschools and schools \$	Annual salary – preschools and schools \$	Weekly salary – long day care centres \$	Annual salary – long day care centres \$
Level 1	Graduate teacher with provisional or conditional accreditation where applicable	1,141.20	59,545	1,186.80	61,927
Level 2	Teacher with proficient accreditation or equivalent	1,247.30	65,085	1,297.20	67,688
Level 3	Teacher with proficient accreditation after three year's satisfactory service at Level 2	1,357.90	70,854	1,412.20	73,688
Level 4	Teacher with proficient accreditation after three years' satisfactory service at Level 3	1,468.40	76,623	1,527.20	79,688
Level 5	Teacher with Highly Accomplished/Lead Teacher accreditation	1,579.00	82,392	1,642.20	85,688

¹ [2021] FWCFB 2051.

² [2021] FWCFB 2051 at [645].

³ [2021] FWCFB 2051 at [647]. The IEU's primary claim sought to retain existing classification structure, adjust internal relativities to remove compression at higher rate levels, and then add 17.5 percent. The alternative claim also retains the existing classification structure and adds 25 percent.

⁴ [2021] FWCFB 2051 at [647].

⁵ [2021] FWCFB 2051 at [653].

⁶ [2021] FWCFB 2051 at [653].

⁷ [2021] FWCFB 2051 at [660].

⁸ [2021] FWCFB 2051 at [657].

7. The Commission also decided to introduce an annual allowance of \$3,302.46 for early childhood teachers appointed as Educational Leaders.⁹
8. These submissions are filed:
 - a. in response to the ‘consent position’ between the IEU and Australian Business Lawyers & Advisors (‘ABL’) in relation to the Commission’s decision; and
 - b. pursuant to the Commission’s Amended Directions dated 9 July 2021.

Consent Position between IEU and ABL

9. AFEI notes that:
 - a. the IEU and ABL have been in discussions since the issuing of the decision to reach a consent position on the implementation of the proposed structure;¹⁰ and
 - b. AFEI has not been involved in discussions between the IEU and ABL.
10. A summary of the consent position between IEU and ABL is set out at Appendix A to these submissions.
11. The Commission directed interested parties to make submissions on matters identified in paragraph [665] of the decision, including the operative date of the proposed structure, whether any phasing-in arrangements should apply and the capacity of Commonwealth Government and State and Territory Governments to assist in funding the wages of early childhood teachers.
12. We note that the consent position includes alterations to the proposed structure as well as new matters that were not considered in the decision including but not limited to the meaning of ‘satisfactory service’ for classification levels 3 and 4, progression between the levels, how the proposed structure would apply in jurisdictions which do not currently have accreditation, support for teachers seeking to obtain proficient accreditation, and dispute resolution.

Operative Date & Phasing in

13. The IEU and ABL propose an operative date of 1 January 2022 for the implementation of the proposed structure, with no phasing in of rates.¹¹
14. AFEI submits the following operative dates would provide appropriate alternatives to the consent position operative date advanced by the IEU and ABL:
 - a. either 1 July 2022, with no phasing in of rates; or
 - b. if the Commission determines 1 January 2022 as the commencement date, phasing in of the new wage rates should occur, in two equal instalments, the first effective 1 January 2022 and the second effective 1 January 2023, based on transitioning from the current levels shown in the consent position, e.g. EST Award Level 3 to Level 1 Graduate.¹²

⁹ [2021] FWCFB 2051 at [658].

¹⁰ IEU submissions at para. 8

¹¹ IEU submissions dated 14 July 2021 (‘IEU submissions’) at para. 20 and ABL’s submissions dated 14 July 2021 (‘ABL submissions’) at para 31; IEU submissions at para. 24.

¹² The table takes into account the Annual Wage Review Decision [2021] FWCFB 3500.

Classification	Criteria	Annual salary – preschools and schools \$ effective 1/1/2022	Annual salary – preschools and schools \$ effective 1/1/2023	Annual salary – long day care centres \$ effective 1/1/2022	Annual salary – long day care centres \$ effective 1/1/2023
Level 1	Graduate teacher with provisional or conditional accreditation where applicable	58,681	61,034	61,458	63,475
Level 2	Teacher with proficient accreditation or equivalent	63,554	66,712	66,555	69,380
Level 3	Teacher with proficient accreditation after three years' satisfactory service at Level 2	69,418	72,635	72,731	75,530
Level 4	Teacher with proficient accreditation after three years' satisfactory service at Level 3	75,426	78,538	78,996	81,680
Level 5	Teacher with Highly Accomplished/Lead Teacher accreditation	79,398	84,452	83,139	87,830

15. AFEI notes the reference by the Catholic Employment Relations Ltd to a particular Full Bench decision concerning the phasing in of rates of increases of more than 5% above the award rates.¹³ We note wage increases associated with the decision based on the translations from current wage structure in the consent position are significant. For example, an employee on Level 3 (current structure) transitioning to the new graduate level (Level 1 in the proposed structure) is an increase of 8.4%, and higher again for an employee on Level 2 and Level 1 (current structure to proposed structure). For an employee on Level 5 (current structure) transitioning to Level 2 (proposed structure) is an increase of approximately 10.5%, for an employee on Level 8 (current structure) transitioning to Level 3 (proposed structure) is an increase of 9.6%, and for an employee on Level 11 (current structure) to Level 4 (proposed structure) is an increase of 8.6%.
16. The phasing in of such significant wage increases would be consistent with the decision of the Full Bench in Modern Awards Review 2012—Apprentices, Trainees and Juniors.¹⁴
17. AFEI also notes submissions made by ABL, that:
- a. the Commonwealth Government have not provided any direct funding to pay for the new classification structure and minimum rates, and this largely means that employers will either absorb the cost, or pass on the cost through to parents;¹⁵ and
 - b. it is in the nature of a regulated sector, heavily reliant on government funding or subsidy that the capacity to pay increases to wages will be more challenging than might be the case in unregulated sectors.¹⁶

¹³ Submissions by Catholic Employment Relations Limited dated 14 July 2021 at para 19. Case reference: [2013] FWCFB 5411 at [505].

¹⁴ [2013] FWCFB 5411.

¹⁵ ABL submissions at para 28-29.

¹⁶ ABL submissions at para 30.

18. In addition:
- a. the proposed structure increases in costs could not have been budgeted for. Labour costs are the largest item of expenditure for childcare services. Some not-for-profit providers have indicated wage costs comprise about 80% of operating costs.¹⁷ It is highly likely that many employers in this sector would not have budgeted for the proposed wage rates;
 - b. the proposed structure is a significant departure from status quo, and an appropriate timeframe is required for transition. AFEI understand that, until the decision, the process concerning employee accreditation/proficiency rested largely with employees because the current remuneration structure is service, and not APST based, and thus increases in remuneration had little focus on accreditation status;
 - c. Transition from the current structure to the proposed structure would require, at the very least, an assessment of a) relevant employees' documentation with an appropriate regulatory body that oversees accreditation and b) employees' performance. Accordingly, it is likely that a properly assessed transition would take some time.
19. The IEU submit that a "phasing-in arrangement would substantially increase complexity" and that many employers are small businesses whereby the additional complexity would give rise to additional work, with the risk of inadvertent underpayments.¹⁸ Any concerns over complexity of the phasing in of rates is overstated. Furthermore, any concerns in this respect can be overcome. For example, limiting the phase-in of rates over two periods, instead of multiple periods, insertion of a table expressing the applicable rates with commencement dates into the EST award.
20. As a further alternative, the Commission should adopt the commencement date of 1 July 2022, with no phasing in of rates. This option would create no issues with complexities of a phase-in and would provide employers with sufficient time to implement the proposed structure.
21. AFEI notes that Community Connections Solutions Australia ('CCSA') changed its position of a proposed 1 July 2022 operative date and now support an operative date being 1 January 2022 (i.e. the consent position). AFEI notes that the change in position is, according to CCSA, due to Commonwealth Government support to early childhood services Child Care subsidy and recent announcements made in the 2021 NSW budget including the Start Strong Free Preschool funding program.¹⁹

¹⁷ <https://www.pc.gov.au/inquiries/completed/childcare/report/childcare-appendixh.pdf> (page 22).

¹⁸ IEU submissions at para 25.

¹⁹ Submissions of Community Connections Solutions Australia dated 14 July 2021.

22. Child Care Subsidy ('CCS') is a subsidy paid directly to the childcare provider to reduce fees paid by parents. The CCS pays for a proportion of the fees up to a maximum of 85%,²⁰ is dependent on a number of factors including family income, the type of approved child care and age of the child,²¹ and can be subject to an hourly rate cap as follows:²²

Type of child care	Hourly rate cap
Centre Based Day Care – long day care and occasional care	\$12.31
Family Day Care	\$11.40
Outside School Hours Care – before, after and vacation care	\$10.77
In Home Care	\$33.47 per family

23. AFEI understands that where providers are charging fees at or above the hourly CCS cap, parents pay the remainder of the fees. On this point, in the December quarter 2020:
- more than 10% of centres across Australia already charge higher than the hourly cap. These centres have no capacity to charge a higher fee that will be part-paid by CCS. All increase will be borne by the parents;²³
 - many Metropolitan areas particularly within Sydney and Melbourne have a high proportion of centres operating above the cap.²⁴
24. The proposed structure may require many providers, particularly in NSW, to increase fees beyond the hourly cap, and to that extent, CCS would provide limited assistance in funding the wages of early childhood teachers.
25. AFEI makes the following observations in relation to the NSW Start Strong Free Preschool funding program (the 'program'):
- the program eligibility applies to community and mobile preschools 'on contract with the Department of Education' and **not long day care**;
 - the program only applies to community and mobile preschools that 'opt-in';
 - the program applies only to NSW;
 - service level funding calculations have not yet been finalised;
 - each preschool funding will depend on number of children enrolled;
 - the program applies until the end of 2022.²⁵
26. Assistance provided by the NSW Start Strong Free Preschool funding program is limited.

²⁰ <https://www.servicesaustralia.gov.au/individuals/services/centrelink/child-care-subsidy/how-much-you-can-get/your-income-can-affect-it>

²¹ <https://www.servicesaustralia.gov.au/individuals/services/centrelink/child-care-subsidy/how-much-you-can-get/type-child-care-you-use-affects-it#hourlyrate>

²² <https://www.servicesaustralia.gov.au/individuals/services/centrelink/child-care-subsidy/how-much-you-can-get/type-child-care-you-use-affects-it#hourlyrate>; "CCS percentage will apply to the lowest of either the hourly rate cap or fee charged by child care service".

²³ <https://www.dese.gov.au/early-childhood/resources/december-quarter-2020>

²⁴ <https://www.dese.gov.au/early-childhood/resources/december-quarter-2020>

²⁵ <https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/grants-and-funded-programs/start-strong-free-preschool#Who1>

Satisfactory Service

27. The Commission here has considered that the standards-based remuneration structure in the *Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2020* (“**NSW Teachers Award**”), which is built on the APST professional career standards, could be adapted for use in this award. However, it was further considered that the NSW Teachers Award structure “retained service-based requirements which are unlikely to be work-related” and accordingly adopted the NSW Teachers Award structure for this award, but with some modifications.²⁶
28. The proposed structure provides that for a teacher to progress from Level 2 to 3 and Level 3 to 4, the teacher must demonstrate ‘three years’ satisfactory service at Level 2/3’.
29. The satisfactory service requirement appears to be adopted from the NSW Teachers Award which require the demonstration of ‘satisfactory performance of duties’ for progression to occur.
30. The IEU and ABL propose that service is to be deemed satisfactory unless this is put in issue by an employer.²⁷
31. The IEU and ABL propose the insertion of a clause 14.3 as follows:²⁸
- Satisfactory Service**
- (a) *All service will be deemed satisfactory for the purposes of subclause 14.2 unless the employer disputes for a given year that it is satisfactory by notifying the Fair Work Commission of the dispute pursuant to Clause **Error! Reference source not found.**—Dispute Resolution following a formal review and the provision of specific reasons.*
- (b) *Service is satisfactory if the teacher has complied with the requirements of the Australian Professional Standards for Teachers (APST).*
32. AFEI opposes the consent position of the IEU and ABL.
33. *First*, the Commission determined that the ‘essential elements of qualifications, displayed competence and acquired experience and responsibility’ are factors that would properly reflect the work value of teachers.²⁹ The IEU and ABL consent position of service being deemed satisfactory unless disputed by the employer is inconsistent with the Commission’s consideration.
34. *Second*, the reasoning behind this consent position (that is, (a) the NSW Teachers Award includes a procedure for a teacher to appeal a decision that their performance is not satisfactory, (b) employers covered by the EST Award include small businesses who may not adopt a formal annual performance procedure and if such a procedure exists, that criteria may differ between employers and (c) to determine whether service has been satisfactory, there is a requirement to know whether the teachers service has been satisfactory in any given year)³⁰ does not support any departure from the Commission’s determination of the essential factors reflecting the work value of teachers.
35. *Third*, there is no similar requirement for ‘deemed satisfactory service’ in the NSW Teachers Award.³¹ As such, there is no justification for the EST Award to adopt this approach.

²⁶ [2021] FWCFB 2051 at [655] – [656].

²⁷ IEU submissions at para 31.

²⁸ IEU and ABL draft variation determination, at clause 14.3

²⁹ [2021] FWCFB 2051 at [647].

³⁰ IEU submissions at para 28 – 30.

³¹ <http://www.lawlink.nsw.gov.au/irc/ircgazette.nsf/LUPublications/9699B81A9B7A7DEFCA25856C0024D4AF?OpenDocument>

36. *Finally*, AFEI submits that “satisfactory service” should mean:
- a. the maintenance of proficient accreditation by a teacher who has achieved Proficient Teacher accreditation with a body which oversees accreditation and recognition of teachers’ professional capacity in any State or Territory; and
 - b. where an employer has adopted a staff development and performance appraisal scheme, the employer determines through that scheme, that the employee has demonstrated satisfactory performance for the prior 12 months employment;
 - c. where an employer has not adopted an appraisal scheme, the employer otherwise determines that the employee’s service has been satisfactory.
37. This is consistent with the Commission’s consideration of the aspects that constitutes work value of teachers. That is, qualifications, displayed competence and acquired experience and responsibility.³²
38. Satisfactory service should therefore involve employer assessment as well as employee maintenance of proficiency.

Progression within the new classification structure

39. The IEU and ABL propose the insertion of a clause 14.2 as follows:³³

Progression within the new classification to occur as follows:

- a. A teacher on Level 1 will progress to Level 2 from the first full pay period after the teacher has been accredited as Proficient;
 - b. A teacher on Level 2 will progress to Level 3 from the first full pay period after the teacher has completed three years satisfactory service at a proficient level;
 - c. A teacher on Level 3 will progress to Level 4 from the first full pay period after the teacher has completed six years satisfactory service at a proficient level;
 - d. A teacher on Level 4 will progress to Level 5 from the first full pay period after the teacher has attained Highly Accomplished or Lead Teacher accreditation / registration or equivalent.
40. AFEI observes that the consent position alters the proposed structure in relation to progression of teachers between the levels as set out by the Commission at [657] of the decision:
- a. in (b) for progression from Level 2 to Level 3, instead of ‘three years satisfactory service at Level 2’, the consent position simply states ‘three years satisfactory service at a proficient level’;
 - b. in (c) for progression from Level 3 to Level 4, instead of ‘three years satisfactory service at Level 3’, the consent position states ‘six years satisfactory service at a proficient level’;
 - c. in (d) for progression from Level 4 to Level 5, instead of ‘Teacher with Highly Accomplished/Lead Teacher accreditation’, the consent position states ‘Highly Accomplished or Lead Teacher accreditation/registration or equivalent’.
41. Further, clause 14.2 of the IEU and ABL’s draft variation determination appears to substitute accreditation with ‘registration or equivalent’ at all levels.

³² [2021] FWCFB 2051 at [647].

³³ IEU and ABL draft variation determination, at clause 14.2’ IEU’s submissions at para 35

42. Accordingly, the consent position appears to:
- a. disregard the need for employee demonstration of satisfactory performance at Level 2 and Level 3 for the purposes of progression;
 - b. replace the requirement for employee demonstration of satisfactory performance at Level 2 and Level 3 with, simply, years of service at a 'proficient level';
 - c. widen the applicability of the structure to persons who are not formally accredited.
43. AFEI opposes the consent position. The consent position is inconsistent with the Commission's determination that the essential elements of qualifications, displayed competence and acquired experience and responsibility form the work value of teachers.
44. It is not appropriate to treat service (alone) as a proxy for requisite accreditation. It replicates the same deficiencies of the current wage structure, that is unrelated to work value, albeit with the new, higher wage rates based on the national standards and accreditation.
45. Where an employee does not hold accreditation/proficiency, the employee should remain on the current structure and rates until proficiency is obtained. Once proficiency is achieved, the employee would transition to the proposed structure. As a one-off transition, AFEI would not oppose recognition of prior service for placement in the proposed structure, provided accreditation has been achieved.
46. To this end, AFEI proposes transitional provisions as follows:
- a. *First*, automatic commencement of proposed structure for graduate teachers with provisional/conditional accreditation employed from the commencement/operative date of the proposed structure; and employees with accreditation/proficiency.
 - b. *Second*, teachers who are not accredited/proficient remain on current structure until proficiency is obtained. Once proficiency is obtained, transition to the proposed structure.
 - c. *Third*, for existing employees with accreditation/proficiency, a one-off assessment of performance over a period of 12 months should be undertaken by the employer for transition purposes. The criteria for 'satisfactory service' at Levels 2 and 3 would not apply to the transition of existing eligible employees.
 - d. *Fourth*, in respect of movement between proposed classifications, persons responsible for undertaking assessments of 'satisfactory service' must include employer assessment of employee performance, *in addition to* maintenance of proficiency.

How new classification structure applies in jurisdictions without accreditation

47. The IEU submit that:
- a. there is no compulsory accreditation or registration schemes for early childhood teachers in Queensland, Western Australia, Tasmania and Northern Territory;³⁴
 - b. it is not possible in Victoria for a teacher to be recognised as a highly accomplished/lead teacher.³⁵

³⁴ IEU submissions at para 37

³⁵ IEU submissions at para 38

48. The IEU and ABL consent to the following:³⁶
- a. where a State/Territory does not have requirement for accreditation/proficient/registration, teachers to be “deemed proficient” either after 2 years service or on obtaining accreditation
 - b. count all service beyond the first 2 years of service, or after they obtain full registration, as service at a proficient level
 - c. a teacher will not be deemed proficient after 2 years if during the first 18 months service, the employer notifies the Commission of a dispute through the Dispute resolution clause as to whether the teacher has met the requirements of the APST standards for a proficient teacher. Such a dispute may be notified following a formal review and the provision of specific reasons and a reasonable period to respond.
 - d. A teacher who forms the view that they have equivalency to a proficient teacher before they have completed 2 years of service can utilise the dispute resolution clause to seek recognition that they have reached proficient status.
 - e. A teacher in a State or Territory which does not have a method to obtain accreditation as a proficient teacher has that status if they meet the requirements of the APST standards for a proficient teacher.
 - f. These provisions also apply if a State or Territory introduces a requirement for teachers (or a subset of teachers) to be accredited as proficient/fully registered after 1 Jan 2022 in respect of teachers who, as at that date the requirement was introduced had commenced employment.
 - g. a teacher in a State or Territory which does not have a method to obtain accreditation as a highly accomplished or lead teacher can utilise clause 31 – dispute resolution to seek recognition that they meet the requirements of the APST for highly accomplished or lead teacher.
49. AFEI opposes the consent position.
50. *First*, the consent position of ‘deemed proficiency after 2 years service’ is directly inconsistent with the decision. Service should not replace qualifications, displayed competence and acquired experience and responsibility. As identified by the Commission, there was no evidence before it to suggest that the work value of teachers increases year by year for the first seven years of employment.³⁷
51. *Second*, in all instances, AFEI opposes ‘deemed proficiency’. Such a notion could create an unfair outcome where there are two categories of employees, those required to undertake assessments and training to obtain proficient accreditation and those who do not.
52. *Third*, either in this provision or in any part of the EST award, AFEI opposes the proposal that employers would need to bring a dispute to the Commission where it disputes that an employee meets the requirements of the APST standards. We do not agree that the Commission should take the place of the body that is responsible for the assessment of employees in lieu of the APST.
53. *Fourth*, it would not be appropriate for an employee to initiate dispute resolution provisions of the EST Award based on their perception that they have equivalency to a proficient teacher/ seek recognition that they meet the requirements of the APST for highly accomplished or lead teacher. AFEI acknowledges that not all States and Territories are consistent in terms of accreditation requirements. An approach to overcome this inconsistency is to maintain the current structure for employees who do not have accreditation/proficiency status. AFEI refer to paragraphs [45] and [46] above.

³⁶ IEU and ABL draft variation determination clause 14.8 & 14.9

³⁷ [2021] FWCFB 2051 at [647].

Teachers who have had a career break

54. The IEU and ABL consent to the following:

On return from a career break a teacher who, prior to the break, had at least 2 years' service will be paid at level 2 for 12 months (as if proficient) and provided they obtain (or is recognised as having) proficient status in that 12 months they will from the date of achieving that status be classified based on their years of service at a proficient level (with all years of teaching other than the first 2 years being deemed to be at that level).³⁸

55. The consent position is problematic and fails to take into account:

- a. the need for the returning teacher to demonstrate current knowledge in education to maintain proficient status;
- b. how long the teacher has been absent from teaching;
- c. in what capacity the teacher will be returning – full-time or part-time.

Support to new teachers to obtain proficient status

56. The IEU and ABL propose the insertion of clause 14.11 as follows:

Support for new teachers

- (a) It is the responsibility of the individual Level 1 teacher to achieve accreditation or registration at the level of proficient teacher within the required timeframes. The employer will support the Level 1 teacher to obtain accreditation or registration at the proficient teacher standard, which will include reasonable release from ordinary duties for the Level 1 teacher where operationally practicable.
- (b) If a Level 1 teacher has concerns regarding the support being provided by the employer, they should discuss the matter with the employer. If the matter remains unresolved, the matter may be dealt with in accordance with Clause **Error! Reference source not found.** - Dispute Resolution.

57. The consent position places an obligation on employers to provide support to a Level 1 teacher to obtain proficient accreditation, including reasonable release from duties where operationally practicable.

58. AFEI opposes the consent position.

59. *First*, this position creates a new obligation on employers, a new entitlement for employees covered by the EST award and such an entitlement/obligation does not arise from the Commission's decision.

60. *Second*, it is unclear by what is meant by "reasonable release from ordinary duties". This could place employers in conflict with regulatory requirements to be able to have "access" to early childhood teachers ('ECT') for specified proportions of time.³⁹

61. Accordingly, potentially for small providers in particular, the obligation for "reasonable release from duties" may not be "operationally practicable".

Educational Leader Allowance

62. The IEU and ABL propose the insertion of clause 19.4, which provides as follows:

- educational leader allowance of \$3845.14
- no pro rata entitlement for part-time employees
- where position is shared, the payments may also be shared
- in respect of early childhood facility that operates for less than 5 days a week, allowance payable is reduced pro rata.

³⁸ IEU submissions at [54].

³⁹ <https://www.acecqa.gov.au/qualifications/requirements/children-preschool-age-or-under>

63. It is unclear why the allowance is stated as \$3,845.14. Applying the national minimum wage increase of 2.5% to \$3302.46, equates to \$3,385.02 and not \$3,845.14
64. It is unclear why part-time employees would not get a pro-rata entitlement when this is the case with director's allowance. For example, Clause 19.2(c) EST Award provides "a part-time employee who is appointed as a Director will be paid, in addition to the amounts payable under clause 17—Minimum rates, an allowance in accordance with the table in clause 19.2(b), on a proportionate basis to the hours they work".
65. The Educational leader allowance should reflect similar terms as the director's allowance for part-time employees.

Dispute Resolution

66. The proposed structure is sufficiently prescriptive to determine an employee's level and classification. However, the consent position contains 5 references to clause 31—Dispute Resolution in regard to determining an employee's level and classification.⁴⁰ This is excessive, unnecessary and creates a significant burden for the employer.

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⁴⁰ Draft variation determination between IEU and ABL at clause 14.3 (Satisfactory Service), clause 14.8(b) (Jurisdictions without compulsory accreditation/registration of teachers), clause 14.8(c) (Jurisdictions without compulsory accreditation/registration of teachers), Clause 14.9 (Progression to Level 5), Clause 14.11 (Support for new teachers).

Appendix A: Summary of Consent Position between the IEU and ABL

Topic	Consent position
Operative Date	1 January 2022 ⁴¹
Phasing-in arrangements	No phasing-in ⁴²
Satisfactory service	<p>Service is satisfactory unless that is put in issue by an employer.⁴³</p> <p>Proposed insertion of clause:</p> <p>Satisfactory Service</p> <p>All service will be deemed satisfactory for the purposes of subclause 14.2 unless the employer disputes for a given year that it is satisfactory by notifying the Fair Work Commission of the dispute pursuant to Clause 31—Dispute Resolution following a formal review and the provision of specific reasons.</p> <p>Service is satisfactory if the teacher has complied with the requirements of the Australian Professional Standards for Teachers (APST).</p>
Progression within the new classification structure	<p>Progression within the new classification to occur as follows:⁴⁴</p> <p>A teacher on Level 1 will progress to Level 2 from the first full pay period after the teacher has been accredited as Proficient;</p> <p>A teacher on Level 2 will progress to Level 3 from the first full pay period after the teacher has completed three years satisfactory service at a proficient level;</p> <p>A teacher on Level 3 will progress to Level 4 from the first full pay period after the teacher has completed six years satisfactory service at a proficient level;</p> <p>A teacher on Level 4 will progress to Level 5 from the first full pay period after the teacher has attained Highly Accomplished or Lead Teacher accreditation / registration or equivalent.</p>
How new classification structure applies in jurisdictions without accreditation	<p>QLD, WA, Tasmania and NT do not have compulsory accreditation/registration for ECTS.</p> <p>It is not possible for a teacher to be recognised in Victoria as HALT (necessary qualification to achieve level 5)</p> <p>Award requires provisions that do not create State based differences.</p> <p>Proposed consent position:</p> <ol style="list-style-type: none"> where a State/Territory does not have requirement for accreditation/proficient/registration, teachers to be “deemed proficient” either after 2 years service or on obtaining accreditation count all service beyond the first 2 years of service, or after they obtain full registration, as service at a proficient level a teacher will not be deemed proficient after 2 years if during the first 18 months service, the employer notifies the FWC of a dispute through the DR clause as to whether the teacher has met the requirements of the APST standards for a proficient teacher. Such a dispute may be notified following a formal review and the provision of specific reasons and a reasonable period to respond. A teacher who forms the view that they have equivalency to a proficient teacher before they have completed 2 years of service can utilise the dispute resolution clause to seek recognition that they have reached proficient status. A teacher in a State or Territory which does not have a method to obtain accreditation as a proficient teacher has that status if they meet the requirements of the APST standards for a proficient teacher. These provisions also apply if a State or Territory introduces a requirement for teachers (or a subset of teachers) to be accredited as proficient/fully registered after 1 Jan 2022 in respect of teachers who, as at that date the requirement was introduced had commenced employment.

⁴¹ IEU submissions at para. 20 and ABL’s submissions at para 31

⁴² IEU submissions at para. 24

⁴³ IEU submissions at para. 31

⁴⁴ IEU submissions at para. 35

Topic	Consent position
Progression	<p>ABL and the IEU propose the following clause 14.7:⁴⁵</p> <p>(a) Subject to subclauses X-X, an employee on Level 1 will progress to Level 2 from the first full pay period after the teacher has been accredited as proficient.</p> <p>(b) Subject to clauses X-X, progression from Level 2 to Level 3 to Level 4 will occur from the FFPP after the employee has completed the years of service set out in subclause 14.2</p> <p>(c) Provided however the total number of years of service at a proficient level will be deemed to be not less than the total service of the teacher minus two years in the case of teachers covered by the transition provisions pursuant to subclause 14.4</p> <p>In relation to (c) above, the IEU states “such a provision is necessary to determine years of service for those teachers who transition to the new structure who have taught for many years, but who have only been designated ‘proficient’ for the most recent of those years (i.e. since the introduction of the accreditation/registration scheme)”</p>
Teachers who have had a career break	<p>The consent position is that:</p> <p>On return from a career break a teacher who, prior to the break, had at least 2 years’ service will be paid at level 2 for 12 months (as if proficient) and provided they obtain (or is recognised as having) proficient status in that 12 months they will from the date of achieving that status be classified based on their years of service at a proficient level (with all years of teaching other than the first 2 years being deemed to be at that level).⁴⁶</p> <p>Insertion of proposed clause 14.10 Returning to teaching clause</p> <p>A teacher with at least two years’ service who was previously registered / accredited as Proficient or who was not required to be registered/accredited as Proficient who: is returning to teaching following a break of service, where they have not obtained or maintained proficient status; or otherwise does not hold proficient accreditation/registration status;</p> <p>shall be classified on Level 2 for one year full-time equivalent teaching service, during which period the teacher may apply for proficient teacher accreditation or registration or apply for mutual recognition (in the case of an interstate teacher) with the relevant teacher accreditation authority. Upon attaining proficient teacher accreditation or registration, the teacher will progress to the relevant Level between Level 2 and Level 4 based on their service at a proficient level. All service, in excess of two years, will count as service at a proficient level where that service has followed the attainment of a recognised teaching qualification.</p> <p>If the teacher does not attain proficient teacher accreditation or registration within the one year full-time equivalent teaching service, the teacher will be paid at Level 1 until the teacher achieves proficient teacher accreditation; on such date the teacher will progress to the relevant Level between Level 2 and Level 4 based on their service at a proficient level. All service, in excess of two years, will count as service at a proficient level where that service has followed the attainment of a recognised teaching qualification. Subclause 14.10 applies on or after 1 January 2023. Prior to that date, the provisions of subclause 14.4 apply.</p> <p>If a teacher to whom this subclause 14.10 applies is employed in a State or Territory that has not yet introduced a requirement for teachers (or a subset of teachers) to be accredited as proficient/ fully registered, then subclause 14.8 applies.</p>
Support to new teachers seeking to obtain proficient status	<p>Proposed new clause 14.11 Support for New teachers</p> <p>(a) It is the responsibility of the individual Level 1 teacher to achieve accreditation or registration at the level of proficient teacher within the required timeframes. The employer will support the Level 1 teacher to obtain accreditation or registration at the proficient teacher standard, which will include reasonable release from ordinary duties for the Level 1 teacher where operationally practicable.</p> <p>(b) If a Level 1 teacher has concerns regarding the support being provided by the employer, they should discuss the matter with the employer. If the matter remains unresolved, the matter may be dealt with in accordance with Clause Error! Reference source not found. - Dispute Resolution.</p>
Educational Leader Allowance	<ul style="list-style-type: none"> - educational leader allowance of \$3845.14 - no pro rata entitlement for part-time employees - where position is shared, the payments may also be shared - in respect of early childhood facility that operates for less than 5 days a week, allowance payable is reduced pro rata.

⁴⁵ IEU submissions at [48-50].

⁴⁶ IEU submissions at [54].

Topic	Consent position
Dispute Resolution clause 31.5	Clause amended so that where a dispute arises under clauses 14.3 (satisfactory service), 14.8 (jurisdictions without compulsory accreditation/registration for teachers) or 14.9 (progression to level 5), the parties can agree that the matter be referred to an independent person with expertise in assessing the requirements of the APST standards for determination