

14 July 2021

Re: AM2018/9 – Application by the Independent Education Union of Australia - Educational Services (Teachers) Award 2020

On 19 April 2021 the Full Bench in this matter issued Decision [2021] FWCFB 2051 (the Decision) in which it concluded that a new classification and pay structure for teachers covered by the *Educational Services (Teachers) Award 2020* (the Award) is warranted [657]. In addition, the Full Bench concluded that an allowance based on the extant Leadership Allowance in the Award should be payable for any early childhood teacher appointed to the statutory role of Educational Leader [658].

On 10 May 2021, the Full Bench directed that the matter be listed for conference in Sydney on Monday 24 May 2021 before Deputy President Dean on the basis that there will be no objection to her continuing to sit on the matter. CCSA noted that it had no objection to that course of action by the Full Bench.

After the conference and subsequent report back to the Full Bench on 4 June, Directions were issued by the Full Bench that, with subsequent amendment, direct interested parties to file any proposed award variations to give effect to the Decision and any evidence and submissions concerning the matters identified in paragraph [665] of the Decision by 5.00pm Wednesday 14 July 2021.

CCSA has had the opportunity to review a proposed consent position to be put to the Commission by the Independent Education Union (IEU) and Australian Business Lawyers & Advisors (ABLA) acting for the Australian Childcare Alliance (ACA). ACA represents long day care owners and operators. While CCSA also has some long day care operators as members, our membership is largely concentrated in the not-for-profit, community preschool sector across NSW, with a particular focus on small regional and remote services. In reviewing the proposed consent position, CCSA has concentrated on the workability of the IEU and ABLA/ACA proposal for that particular part of the early childhood sector.

Broadly, CCSA supports the proposed consent position reached between the IEU and ABLA/ACA subject to the caveats shown in the following table.

Reference in Proposed Variation (Clause Number)	CCSA position	Remarks
1. Implementation Date: 1/1/2021	Support	See further remarks linking implementation date to government financial support to the early childhood sector
2. Definitions	Support	Add: National Regulations means the <i>Education and Care Services National Regulations 2011</i>

Reference in Proposed Variation (Clause Number)	CCSA position	Remarks
		See further remarks below regarding application of conditional accreditation in an early childhood setting and proposed variation to teacher definition
14.2. Classification on Appointment	Support	See further remarks below regarding application of conditional accreditation in an early childhood setting
14.3. Satisfactory Service	Support	
14.4. Transitional Provisions	Support	
14.5. Recognition of previous service	Support	
14.7. Progression	Support	
14.8. Jurisdictions without compulsory accreditation / registration of Teachers	Support	
14.9. Progression to Level 5	Support	
14.10. Returning to Teaching	Support	
14.11. Support for new teachers	Support	
17.1. Minimum rates	Support	Updated rates to reflect the Decision and the Annual Wage Review 2020-21
19.2. Wage related allowances – director’s allowance	Support	Updated rates to reflect the Decision and the Annual Wage Review 2020-21
19.3. Wage related allowances – leadership allowance	Support	Updated rates to reflect the Decision and the Annual Wage Review 2020-21
19.4. Wage related allowances – leadership allowance	Support	
31.5. Dispute resolution	Support	
Schedule B	Support	
Schedule H	Support	

Operative date and the capacity of the Commonwealth Government and State and Territory Governments to assist in funding the wages of early childhood teachers

CCSA had originally proposed an operative date of 1 July 2022. However, recent announcements in the 2021 NSW State Budget mean that CCSA can now support an operative date of 1 January 2022 as proposed by the IEU and ABLA/ACA.

Considerations supporting 1 January 2022 include:

- a. The NSW Government’s 2021-22 Budget released on 19 June 2021, included a new program to be known as the Start Strong Free Preschool funding program. This program will deliver approximately \$4,000 per enrolment per year in additional funding to each community preschool that opts-in to the program which will commence on 1 January 2022. This compares with a likely increase in cost per enrolment resulting from the work value increase to early childhood teachers’ wages of less than \$520 per year (see results of modelling at Annex A),

leaving not-for-profit community preschools in a sound financial position to meet the additional wages cost and without needing to pass through increased fees to families. In fact, preschool in NSW will be free for services participating in Start Strong Free Preschool in 2022.

- b. Commonwealth Government support to early childhood services is provided through the Child Care Subsidy, operational details of which have been provided to the Commission through an Aide Memoire lodged on 21 May 2021. In effect, the Commonwealth, through its CCS payments to assist families with the cost of childcare, will meet the increased cost to families of higher teacher wages in direct proportion to their assessed CCS percentage. Updated CCS rates for 2021-22 are:

Family Income	Child Care Subsidy Percentage
\$0 to \$70,015	85%
More than \$70,015 to below \$175,015	Between 85% and 50% The percentage goes down by 1% for every \$3,000 of income the family earns
\$175,015 to below \$254,305	50%
\$254,305 to below \$344,305	Between 50% and 20% The percentage goes down by 1% for every \$3,000 of income the family earns
\$344,305 to below \$354,305	20%
\$354,305 or more	0%

- c. Changes to the operation of the Child Care Subsidy (CCS) arrangements for second and subsequent children, announced in the 2021-22 Federal Budget, are scheduled to commence in July 2022. CCS percentages for the second and subsequent children will be increase by 30 percentage points to a maximum of 95%. This will result in the Commonwealth Government directly supporting increased wages of early childhood teachers through their higher, ongoing contribution to total CCS-approved centres' costs.

Application of conditional accreditation in an early childhood setting

The proposed consent variation lodged by the IEU and ABLA/ACA describes the Level 1 classification criteria to be

“Graduate Teacher and all other teachers (as defined) including those holding provisional or conditional accreditation /registration”.

The teacher definition at clause 2 is

“**teacher** means a person employed as such by a school, children’s service or early childhood education service and who performs duties which include delivering an educational program, assessing student participation in an education program, administering an education program and performing other duties incidental to the delivery of the education program. So as to

remove any doubt, teacher includes a teacher in a senior leadership position, but not a principal or deputy principal.”

In the early childhood sector, unlike the school sector, there is a mix of early childhood teachers and diploma-qualified educators involved in direct contact with children. Some diploma-qualified educators, but not all, are taken to be teachers for the purposes of the *Education and Care Services National Regulations 2011* (the National Regulations), generally after they have completed 50% of an approved early childhood degree. Independently of that purpose, teacher regulatory bodies (e.g. the NSW Education Standards Authority – NESAs) can bestow conditional accreditation on individuals in the last 12 months prior to completion of the degree.

So that only the correct cohort of employees is covered by the *Educational Services (Teachers) Award 2020* (i.e. persons employed as such and holding an appropriate qualification or accreditation), CCSA’s position is that the proposed Level 1 classification should only be applicable to individuals in the early childhood sector who are being taken to be a teacher in accordance with the National Regulations in order to meet teacher to child ratio requirements in Regulations 130 to 134 (i.e. they are being employed as a teacher by their early childhood education service) AND who have received conditional accreditation from their State regulatory body.

Diploma-qualified educators undertaking early childhood degree studies should have coverage as follows:

Taken to be a Teacher for the National Regulations	Conditional Accreditation / Registration	Award Coverage and classification
Yes	Yes	Educational Services (Teachers) Award 2020, Level 1
No	Yes	Children’s Services Award 2010, Level 3.4 or Level 4
Yes	No	Children’s Services Award 2010, Level 3.4 or Level 4
No	No	Children’s Services Award 2010, Level 3.4 or Level 4

CCSA therefore proposes an additional sentence to the definition of **teacher** at clause 2 of the proposed consent variation:

“So as to remove any doubt, an individual with conditional teacher accreditation working in an early childhood education service must also be being taken to be a teacher for the purposes of the National Regulations in order to be covered by this Award.”

ANNEX A TO CCSA SUBMISSION

CCSA has conducted an analysis of the likely cost per enrolment of the increases proposed in the Decision and the implementation arrangements proposed by the IEU and ABLA/ACA. The analysis has been conducted based on the number of early childhood teachers (ECTs) required to be employed under the National Regulations in NSW, as that state has the most stringent teacher to child ratios in Australia and will, therefore, have the highest additional costs resulting from increased teacher wages. The ECT requirement in NSW versus other states is shown in the following table:

Number of approved places / children in attendance	ECTs required in NSW	ECTs required in other States and Territories
Fewer than 25 approved places	1 for at least 20% of the time	1 for at least 20% of the time
25 or more approved places but fewer than 25 children in attendance	1 for at least 20% of the time	1 for at least 20% of the time
25 to 29 children in attendance	1 for at least 6hr per day, or 60% of the operating hours if the service operates for less than 50hr a week	1 for at least 6hr per day, or 60% of the operating hours if the service operates for less than 50hr a week
30 to 39 children in attendance	1 at all times	1 for at least 6hr per day, or 60% of the operating hours if the service operates for less than 50hr a week
40 to 59 children in attendance	2 at all times	1 for at least 6hr per day, or 60% of the operating hours if the service operates for less than 50hr a week
60 to 79 children in attendance	3 at all times	1 for at least 6hr per day, or 60% of the operating hours if the service operates for less than 50hr a week AND 1 for at least 3hr per day, or 30% of the operating hours if the service operates for less than 50hr a week
80 children in attendance	4 at all times	1 for at least 6hr per day, or 60% of the operating hours if the service operates for less than 50hr a week AND 1 for at least 3hr per day, or 30% of the operating hours if the service operates for less than 50hr a week
More than 80 children in attendance	4 at all times	2 for at least 6hr per day, or 60% of the operating hours if the service operates for less than 50hr a week

Therefore, in NSW the cost of one ECT is typically distributed across 20 enrolments.

CCSA's analysis has compared the current and proposed teacher employment costs, including on-costs, by classification level to determine an increased cost per daily enrolment based on 20 children per teacher. Consideration of on-costs has included:

- 10% superannuation
- 17.5% leave loading on four weeks leave plus 10% superannuation on that leave loading
- 2 weeks personal leave per year
- 2 months per 10 years long service leave (NSW rate)
- Workers Compensation premiums (NSW rates for preschools and long day care)
- Payroll tax for for-profit long day care (NSW rate of 4.85%, ignoring waiver for being under the payroll tax threshold)

Utilising the proposed transitional provisions at clause 14.4, the increased costs per place in NSW are:

Service Type	Teacher qualification	Daily Cost increase	Annual Cost increase (205 days for preschool, 240 days for LDC)
Long Day Care	3yr trained	\$0.63 - \$1.98	\$152 - \$474
Long Day Care	4yr trained	\$0.63 - \$1.73	\$152 - \$416
Preschool	3yr trained	\$0.69 - \$2.14	\$164 - \$512
Preschool	4yr trained	\$0.69 - \$1.88	\$164 - \$450