

IN THE FAIR WORK COMMISSION

**APPLICATION BY THE INDEPENDENT EDUCATION UNION OF
AUSTRALIA (AM2018/9)**

**SUBMISSIONS IN REPLY FILED BY CATHOLIC EMPLOYMENT
RELATIONS LIMITED**

30 JULY 2021

Introduction

1. The Full Bench of the Fair Work Commission issued a decision on 19 April 2021 with respect to the IEU's application for an Equal Remuneration Order and Work Value Decision
2. The Full Bench issued directions on 7 June 2021, with subsequent amendment on 9 July 2021, interested parties filed proposed award variations to give effect to the Decision along with any evidence and submissions concerning the matters identified in paragraph [665] of the Decision. Submissions in response are to be filed by 30 July 2021.
3. Catholic Employment Relations Ltd (**CER**) provided submissions with respect to the matter on 14 July 2021. Submissions were also provided by, or on behalf of:
 - a. The Independent Education Union of Australia (IEU)
 - b. Australian Childcare Alliance (ACA) and Australian Business Industrial (ABI)
 - c. Australian Education Union (AEU)
 - d. I and E Arrabalde (Arrabalde)
 - e. Community Connections Solutions Australia (CCSA).
4. CER provides further submissions in reply to those submission referred to above.

Operative date

1. At point 20 of the IEU Submissions, the IEU considers 1 January 2022 is an appropriate operative date for the reasons given therein. CER in its submissions of 14 July 2021 (CER Submissions) nominated 1 July 2022 as the most appropriate operative date, relying on section 166(1) of the *Fair Work Act 2009* (Cth).
2. Clause 31 of the ACA Submissions notes an agreement between the ACA and IEU to an operative date of 1 January 2022. CCSA also supports an operative date of 1 January 2022 in its submissions. The AEU Submissions are silent on an operative date. The Arrabalde Submissions only submit that an educational leader allows should be introduced without delay.
3. None of the submissions provided by parties other than CER address section 166(1). CER submits that the onus is on the parties seeking an operative date other than 1 July 2022 to provide evidence and/or submissions as to why the alternative date is appropriate.
4. At point 21 of the IEU Submissions, the IEU submits that the Decision (being the decision to amend the EST Award) was handed down on 19 April 2021. Section 166(1) refers to a Determination rather than a Decision. In submitting that no Determination has been made, CER relies on clause 9 of the CER Submissions.

Phasing-in arrangements

5. The IEU Submissions submit that the "modest nature of the increases are not such that phasing-in arrangements are necessary" at point 24. ACA at points 32 and 33 of the ACA Submissions note that had the Decision affected more employees and had been a more significant magnitude, then "staged phasing would have been warranted".

6. CER submits that an average increase of 10% is not necessarily modest and further relies on *Application by Queensland - Training and Employment Recognition Council*¹, as referenced in the CER Submissions at point 19, where any increase to apprentice rates of pay above 5% was to be phased-in over two periods.

Definition of satisfactory service

7. The IEU and ACA consent position is that *“service is satisfactory unless that is put in issue by an employer”* (at point 31 of the IEU Submissions). The proposed 14.3(a) of the draft IEU/ACA EST Award requires consideration of satisfactory service be determined on a yearly basis in accordance with the Australian Professional Standards for Teachers (APST), and where the employer considers, overall, that a teacher has failed to meet the APST the employer will need to engage with Clause 31 of the EST Award and lodge a dispute with the Fair Work Commission. The draft IEU/ACA EST Award also allows for any dispute with respect to satisfactory service to be referred to an independent person with expertise in assessing the requirements of the APST.
8. CER accepts an alignment between satisfactory service and the APST is appropriate. However, CER does not agree that the onus should rest with the employer to apply to the Fair Work Commission if an employee’s service, in the employer’s view, has not been satisfactory when measured against the APST. CER prefers the view it expressed at point 28 of the CER Submissions.

HALT Accreditation

9. The IEU and ACA consent position is that *“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 the provisions of Clause 31 – Dispute Resolution to seek recognition that they meet the requirements of the APST for a highly accomplished or lead teacher”* and such teachers will meet the HALT status if they meet the requirements of the APST for a HALT (14.9(a) and (b) of the draft IEU/ACA EST Award).
10. CER notes the progression to Level 5 by this method is limited to teachers in States or Territories without a method of obtaining HALT accreditation and supports, the ability of those teachers to be able to progress to Level 5. However, the draft IEU/ACA EST Award does not appear to address circumstances where a teacher outside a jurisdiction that provides for accreditation as a HALT progresses to Level 5 and then transfers to a teacher role within a jurisdiction that does provide for accreditation as a HALT.

Educational Leader Allowance

11. The CER Submissions noted that the educational leader allowance *“should be paid on a pro-rata basis for part-time or casual employees undertaking these duties (at point 42.1).”*
12. CER notes that it is unlikely a casual employee would be designated as an educational leader. CER also notes that the requirements under regulation 118 of the National Regulations for the designation of an educational leader and regardless of the employment

¹ [2013] FWCFB 5411

status of a teacher so designated (that is full-time or part-time) the responsibilities of an educational leader remain the same.

Catholic Employment Relations Ltd