

Submission s 158 - Application to vary or revoke a modern award
Application to vary Education Services (Teachers) Award 2020 on work value grounds
(AM2018/9)

30 July 2021

- [1] This submission is made in response to Amended Directions issued on 9 July 2021 with reference to Decision [2021] FWCFB 2051 on 19 April 2021 and submissions filed on 14 July 2021.
- [2] It is submitted that the concept of “satisfactory service” in the proposed pay and classification structure of the *Educational Services (Teachers) Award* is problematic and the word ‘satisfactory’ should be removed.
- [3] The Award should provide a safety net for minimum pay and conditions rather than becoming mechanism for ensuring quality teaching.

Progression through the Award classification structure should not be tied to a teacher’s performance

- [4] Rewarding commitment to an early childhood teaching position through progression through the Award classifications solely in terms of years of service is entirely appropriate given the importance of continuity in staffing for children’s learning and development and ongoing staff retention issues in the sector.¹
- [5] Early childhood teachers have their skills and capabilities formally assessed through the institution awarding their degree; in order to earn teacher registration and for reaccreditation (in jurisdictions which require it); through ongoing professional development; and during assessment and rating.
- [6] The work of an early childhood teacher is highly visible. Early childhood teachers are accountable to their employers, to their colleagues and to the children and families who they work with.
- [7] In the event that an employer considers a teacher’s work to be unsatisfactory, the teacher’s poor performance should be addressed immediately² This is of particular importance given early childhood teachers are responsible for the care and education of very young children.

¹ Australian Children’s Education and Care Quality Authority (ACECQA), *Progressing a national approach to the children’s education and care workforce: Workforce report, November 2019*
https://www.acecqa.gov.au/sites/default/files/2020-10/ChildrensEducationandCareNationalWorkforceStrategy_0.pdf

² Fair Work Ombudsman, *Managing Underperformance*, <https://www.fairwork.gov.au/tools-and-resources/best-practice-guides/managing-underperformance>

[8] If early childhood education and care (ECEC) services utilise best practice guidelines and manage underperformance promptly,³ the inclusion of ‘satisfactory service’ within the Award becomes redundant.

The concept of ‘satisfactory service’ in relation to the Australian Professional Standards for Teachers (APST) is problematic in early childhood education and care services

[9] The language of the APST requires a degree of interpretation to become relevant to an ECT’s work⁴ because the standards were not designed with early childhood teachers (ECTs) in mind:

The APST were developed before the commencement of the NQF and at a time when only one jurisdiction required ECT registration so they are framed firmly in terms of primary and secondary teaching, with teachers in the school system the intended audience.⁵

[10] Similarly, the NSW Teachers Award was not written for early childhood teachers. As the IEU points out:

The NSW Government school sector has a detailed policy that requires teachers to be assessed on an annual basis by reference to criteria in accordance with a detailed procedure, which includes a procedure for a teacher to appeal a decision that their performance is not satisfactory.⁶

[11] Unlike schools, early childhood education and care providers have contextually specific policies and procedures. This means every employer may have a different process for performance evaluation. The inherent subjectivity in the application of the APST adds further complication. There is potential for teachers and their employers to have different expectations and perspectives concerning what constitutes ‘satisfactory service’. What may be considered ‘satisfactory’ for one employer, may not be considered ‘satisfactory’ by another which could undermine Modern Awards Objective 134(1)(e) “the principle of equal remuneration for work of equal or comparable value”.

³ Fair Work Ombudsman, *Managing Underperformance*, <https://www.fairwork.gov.au/tools-and-resources/best-practice-guides/managing-underperformance>

⁴ This is probably most evident in the focus areas of Standard 5 where the links to the work of an ECT are tentative. See for example, *5.3 Make consistent and comparable judgements*, <https://www.aitsl.edu.au/teach/standards>

⁵ Australian Children’s Education and Care Quality Authority (ACECQA), *Progressing a national approach to the children’s education and care workforce: Workforce report, November 2019* https://www.acecqa.gov.au/sites/default/files/2020-10/ChildrensEducationandCareNationalWorkforceStrategy_0.pdf

⁶ IEU submission, 14 July 2021 at [28]

[12] The IEU identifies that it is “predominantly employers of ECTs running for-profit early learning services”⁷ that currently pay teachers the Award minimum. It is conceivable that these employers would maintain an interest in continuing to pay the Award minimum. The insertion of the word “satisfactory” may have the unintended consequence of becoming a barrier to progression through the Award with the associated wage increase being considered as a reward, rather than an entitlement.

[13] The IEU and ACA’s proposed remedy to the challenges of defining “satisfactory service” is the insertion of a clause at 14.3 which deems “service is satisfactory unless that is put in issue by an employer”.⁸ It is suggested that if an issue arises requiring dispute resolution, employees on the Award (who arguably have the least bargaining power) will be put in a position where they must enter into discussions or negotiations with their employer to secure a minimum wage. If a resolution is not achieved, the issue may be referred to an “independent person” or the Fair Work Commission. Identifying an “independent person with expertise in assessing the requirements of the Australian Professional Standards for Teachers (APST)”⁹ who is acceptable to both parties would also prove to be challenging.

[14] The deletion of the word ‘satisfactory’ would maintain employee performance as an internal workplace issue, provide certainty for progression through the classification structure and fairly remunerate early childhood teachers for their service.

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⁷ IEU Submission, 14 July 2021 at [9]

⁸ IEU Submission, 14 July 2021 at [31]

⁹ IEU Draft Determination 14 July 2021, clause 31.5