

**Submissions of the Independent Education Union of Australia  
in response to those filed on 14 July 2021 (DRAFT 4 290721)**

**INTRODUCTION**

1. These submissions respond to submissions filed by the Australian Education Union (AEU), Community Connections Services Australia (CCSA) and Catholic Employment Relations Ltd (CER) on 14 July 2021.

**SUBMISSIONS IN RESPONSE**

**Australian Education Union**

Graduate teacher support and mentoring

2. The Union agrees with the AEU and the ACA that it is appropriate that the issue access to mentors for graduate (provisionally or conditionally accredited) teachers be dealt with as part of the finalisation of these proceedings. The issue has arisen because under the proposed classification structure accreditation is now required in order to progress to the higher salary grades – see subclause 14.2.
3. The witness statement of Cara Nightingale, filed with the AEU submissions provides evidence as to the process to move from graduate status to full registration in Victoria. The evidence of the amount of work that is required and the role of a mentor reflects what is also required for teachers seeking proficient accreditation in NSW. As the statement identifies, the process requires both the graduate teacher and a mentor to spend significant time in addition to their normal work duties to complete the steps necessary to satisfy the regulatory authority that the teacher has satisfied the requirements for registration as a proficient teacher. Absent access to a mentor a teacher would not be able to progress to the next Level.
4. The IEU has reached a consent position with ACA and other parties on support for new teachers (as per subclause 14.11 of the proposed Draft Award). The consent position provides a suitable method to address the issue of the support required to be provided to teachers in the accreditation process.

5. The AEU has proposed a different method to deal with the same issue<sup>1</sup> – which also has merit. While not its position, the IEU does not oppose the AEU’s alternative approach.

#### HA/LT and Level 5

6. The consent position at subclause 14.9 of the proposed Draft Award and the AEU’s alternative approach<sup>2</sup> seek to deal with the same issue, namely that at least one State, Victoria, does not have accreditation processes for Highly Accomplished and Lead Teachers. Both proposals seek to provide an appropriate method to determine when a teacher in such a State has met the Australian Professional Standards for Teachers (APST) requirements to be a HA/LT (and so be classified at Level 5).
7. The consent position reached with ACA is subclause 14.9, which read with proposed amended subclause 31.5, permits, by agreement, any dispute on progression to Level 5 to be referred to an independent expert (which could be a panel).
8. The AEU position is that such disputes would automatically be referred to such a panel, without requiring a dispute process and agreement for such referral.
9. The IEU acknowledges that, in making a determination as to HA/LT status, which involves utilising the APST (and considering the performance of a teacher generally) knowledge of the specific requirements of the APST and teaching is necessary, or at least highly preferred. While not its position, the IEU accepts that the formation of a panel consisting of employer and employee representatives is an alternative option that also has merit.

#### **CCSA**

##### Re Definition of a Teacher

10. The IEU does not consider that the proposed amendment to the definition of “teacher”<sup>3</sup> is necessary for the implementation of the Decision or is an issue that otherwise arises out of these proceedings.
11. In any event, the proposed definition would not make a practical difference, since any person employed as a teacher who has conditional accreditation/registration would be “a teacher for the purposes of the National Regulations”.

---

<sup>1</sup> See AEU submissions of 14 July 2021 at [12]-[13].

<sup>2</sup> See AEU submissions of 14 July 2021 at [9]-[11].

<sup>3</sup> See CCSA submissions of 14 July 2021 at bottom of page 4.

## CER

### Overview

12. CER's submissions are general in nature, provide no proposed drafting of Award clauses, and are not supported by any evidence.
13. They appear to have been drafted in response to a draft Award circulated by the IEU during the conciliation process,<sup>4</sup> rather than the draft consent position reached with the ACA and annexed to the IEU submissions of 14 July 2021. It may be that CER will reconsider its position in light of the consent position and the submissions filed in support of it.
14. Overall, the CER submissions are somewhat surprising, given the position of the for-profit employers regarding operative date and phasing in and (the then) CCER's original submissions that acknowledged "*the legitimate aspirations of early learning teachers for increased rates of pay*".<sup>5</sup>

### Operative Date

15. CER has not provided any rationale for its preference for a 1 July 2022 operative date other than it would provide ten months, rather than four months for employers to prepare for, and implement, the variations to the EST Award. We note that the four-month period is not said by CER to be impracticable and it has also submitted that the operative date "not be earlier" than 1 January 2022.
16. The IEU contends that for the reasons expressed in the 14 July 2021 submissions of both the IEU and the ACA the Commission can be satisfied, pursuant to s166(2), that it is *appropriate* to make 1 January 2022 the operative date.

### Phasing-In

17. The IEU notes that no other party has called for the phasing-in of the increases.
18. The two main employer parties in this matter have estimated that the added cost of the full implementation of the Full Bench's decision will be between 63 cents and \$2.30 per childcare place per day,<sup>6</sup> which does not suggest that the changes are ones that necessitate phasing-in.
19. In fairness, the CER appears to be merely relaying a preference expressed by "a number of [unspecified] operators" of Catholic Early Learning Centres in

---

<sup>4</sup> See CER submissions of 14 July 2021 at [5] and [6].

<sup>5</sup> CCER Submissions dated 14 May 2018, [23]

<sup>6</sup> CCSA Submission dated 14 July 2021 – Annex A; ACA/ABI Submissions dated 14 July 2021 [21].

NSW.<sup>7</sup> CER presents no evidence that phasing-in is required nor the impact of not doing so.

20. Any phasing-in arrangements would make the transitional arrangements much more complicated to implement, which will disadvantage smaller employers (who are most likely to be affected by them) and confuse employees generally.
21. In the absence of any specificity as to the phasing-in sought, via a draft amendment to the Award or otherwise, nor any evidence to support it, it is difficult for the IEU to respond further.

### Satisfactory Service

22. The IEU's position is as outlined in the consent Draft Award. If it had not reached an overall consent position the IEU would have contended that a better approach would be to remove the concept of "satisfactory" altogether given current arrangements in the school and early childhood sectors.
23. Given the prevalence of enterprise agreements applying to teachers working at primary and high schools, the majority of teachers to whom the EST Award will apply are those in the ECEC sector. In particular the EST Award rates are most likely to have a practical impact on the pay of those employed by small operators, where formal annual performance reviews (of the nature the CER submissions identify as 'best practice') are unlikely to occur.
24. Under the classification system proposed by the Full Bench in the [2021] FCFB 2051 Decision, the determination of the rate of pay requires one to know how many years a teacher has had "satisfactory service". In those circumstances it is necessary to have an objective method to determine whether past service was satisfactory. Further, to avoid uncertainty and confusion, it is appropriate, as the consent parties have agreed, for employees to be deemed to have satisfactory service unless otherwise challenged by the employer.
25. The CER has not provided any alternative drafting to that filed by the consent parties. In their submissions, it appears that service will be considered satisfactory only as a result of some unspecified performance review, without any mandated process for an employee to dispute a unilateral determination of unsatisfactory service by the employer or any criteria against which the employee's performance will be judged. In the absence of any objective system, such as the APSTs: how will the employer and employee know if the employee's performance is satisfactory?; and how can one ensure teachers are judged in the same manner against the same criteria?
26. It should be noted that nothing in the IEU's proposed clause prevents or impedes CER's unspecified clients from having a performance review process. Issues can be raised about performance at any time. However, the question of

---

<sup>7</sup> CER submissions of 14 July 2021 at [16].

whether a *pay rise is to be denied* because of satisfactory service concerns, should be, as the consent IEU/ACA formulation provides, a simple mechanism judged against objective criteria (i.e. the APST).

### Educational Leader

27. The CER has submitted that the Educational Leader allowance should be paid on a pro-rata basis for part-time or casual employees. This would permit an employer to appoint to the Educational Leader position one part-time teacher or casual teacher working less than full time hours, and so avoid paying the allowance in full, notwithstanding that the teacher would be required to perform all of the responsibilities required under the National Quality Framework<sup>8</sup>.
28. CER do not provide either a proposed redrafting of the clause, nor any evidence of the need for same.
29. The IEU and ACA have dealt with the issue of part-time teachers who share the responsibility of being the Educational Leader by proposing “Where the position of Educational leadership is shared, the payments may also be shared” – see Clause 19.4 (d) of the Draft Award. This wording is identical to clause 19.3(g) (ii) of the EST Award, in relation to leadership allowances.
30. The CER’s submissions in this respect are out of kilter with the other employer submissions and with practice in the industry. The IEU is unaware of any employer that has ever appointed a casual employee as an educational leader.
31. The role of the educational leader is to collaborate with educators and provide curriculum direction and guidance, support educators to effectively implement the cycle of planning to enhance programs and practices, lead the development and implementation of an effective educational program in the service and ensure that children’s learning and development are guided by the learning outcomes of the EYLF and/or other approved learning frameworks.<sup>9</sup>
32. The educational leadership role is often undertaken by Early Childhood Teachers (ECTs) who are otherwise undertaking teaching roles in early childhood centres. For example, Ms Emily Tempest, an ECT employed by G8, is the educational leader in her Centre – she is full time, and is released for five hours a week for educational leader duties.<sup>10</sup> Undertaking the full gamut of educational leadership roles does not require the employee to be full time.
33. Indeed, the way the educational leadership role is delivered is similar to the leadership role that attracts an additional allowance payable under subclause 19.3 of the EST Award. As per the Full Bench’s decision at [658], this is the allowance that the Commission based the educational leadership on.

---

<sup>8</sup> Exhibit 76, Document 140, *Guide To The National Quality Framework (February 2018)*, p.303

<sup>9</sup> Ibid.

<sup>10</sup> Exhibit 39, *Witness Statement of Emily Jayde Vane-Tempest, Undated*, [1], [3], [40], Exhibit 76, Document 124, *G8 Education Educational Leader Position Description*

34. Finally, it is noted that proposed new subclause 19.4(f) does permit a pro-rata payment, but based on the days that the Centre is open, not on the hours of the incumbent. This would apply to a small number of preschools that operate less than five days per week, most commonly located in remote communities.

**INGMAR TAYLOR SC  
GREENWAY CHAMBERS**

**30 JULY 2021**