



# DECISION

*Fair Work Act 2009*  
s.156—4 yearly review of modern awards

## **4 yearly review of modern awards—*Children’s Services Award 2010 and Educational Services (Teachers) Award 2020*** (AM2018/18)

Children’s services

VICE PRESIDENT HATCHER  
DEPUTY PRESIDENT SAUNDERS  
COMMISSIONER LEE

SYDNEY, 31 AUGUST 2022

*4 yearly review of modern awards – Children’s Services Award 2010 – outstanding substantive issues – Educational Leader’s allowance.*

[1] In our previous decision<sup>1</sup> in relation to this matter we confirmed our *provisional view* that an Educational Leader’s allowance should be added to the *Children’s Services Award 2010* (Children’s Services Award) and that the dollar amount should be the same as for the equivalent allowance in the *Educational Services (Teachers) Award 2020* (Teachers Award).<sup>2</sup>

[2] We also expressed the *provisional view* that this variation to the Children’s Services Award should be inserted as a new clause 15.8 as follows:<sup>3</sup>

### **15.8 Educational leader allowance**

(a) An educational leader’s allowance of **\$4022.05** per annum will be paid to an employee who is required to discharge the responsibilities of the educational leader under Regulation 118 of the *Education and Care Services National Regulations 2011*.

(b) Where an employee is required to act as educational leader for less than 5 days per week, the annual allowance prescribed by clause 15.8(a) will be payable on a pro rata basis calculated by reference to the number of days per week the employee is required to act as educational leader.

NOTE: The allowance prescribed in clause 15.8(a) is the same amount as the educational leader allowance prescribed by clause 19.4 of the *Educational Services*

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<sup>1</sup> [\[2022\] FWCFB 141](#)

<sup>2</sup> Ibid at [7]

<sup>3</sup> Ibid at [8]

(*Teachers*) Award 2020 and will be adjusted each year to reflect the amount set in the *Educational Services (Teachers) Award 2020*.

[3] Interested parties were invited to file any submissions in relation to our *provisional view* as to the drafting of the variation to the Children’s Services Award by 4:00 pm on 9 August 2022.<sup>4</sup> Submissions were filed by:

- Australian Childcare Alliance and Australian Business Industrial (ACA and ABI);<sup>5</sup>
- United Workers Union (UWU);<sup>6</sup> and
- Community Connections Solutions Australia (CCSA) on 10 August 2022.<sup>7</sup>

[4] There was unanimous support for our provisional view as to the drafting of the proposed variation in these submissions. However, the parties disagreed on the operative date for the variation.

[5] The ACA and ABI submitted that the variation should operate from 1 January 2023 to provide employers covered by the Children’s Services Award with sufficient time to prepare for the increase in cost associated with being required to pay the new allowance. This would include time for preschools and kindergartens to provide adequate notice to parents of any fee increases that may be required, which it was submitted, typically occur on 1 January and 1 July each year.

[6] The UWU opposed ACA and ABI’s submission that the variation to the Children’s Services Award should operate from 1 January 2023. Instead, it submitted that the operative date should be from the first full pay period on or after the date the variation is published. In support of this position, the UWU noted that employers covered by the Children’s Services Award have been on notice and have had ample time to prepare for the prospect of an Educational Leader’s allowance being inserted into the award because the proposition has been before the Commission “*for many years*”. Further, the UWU submitted that there was nothing before the Commission to support the operation of the Education Leader’s allowance being delayed and that, in line with our previous decision which stated that a determination varying the Children’s Services Award consistently with our provisional view (if it was not opposed by 9 August) would be issued “*shortly thereafter*”,<sup>8</sup> its position as to operative date should be preferred over ACA and ABI’s position.

[7] The CCSA supported the UWU’s submissions in relation to the operative date for the variation to the Children’s Services Award. In this regard the CCSA submitted that the proposed variation had been “*well-telegraphed*” to the sector and that several centres had already been meeting this cost since January 2022. The CCSA also made submissions in response to the ACA and ABI’s contention that the introduction of the Educational Leader’s allowance would

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<sup>4</sup> Ibid at [9]

<sup>5</sup> [Australian Childcare Alliance, Australian Business Industrial \(fwc.gov.au\)](https://www.fwc.gov.au/australian-childcare-alliance-australian-business-industrial)

<sup>6</sup> [United Workers Union \(fwc.gov.au\)](https://www.fwc.gov.au/united-workers-union)

<sup>7</sup> [Submission \(fwc.gov.au\)](https://www.fwc.gov.au/submission)

<sup>8</sup> [2022] FWCFB 141 at [9]

be a significant impost on employers because it represents “*roughly 8.22% of the Standard Rate*” in the Children’s Services Award. In particular, the CCSA submitted that:

- The figure of 8.22 per cent of the standard rate would only be reached if a Children’s Service Employee Level 3.1 was designated an Educational Leader. In the CCSA’s submission this would be unlikely. In its submission it is “*far more likely*” that such a role, if it were allocated to a Children’s Service Employee under the award, would be allocated to a Level 4 employee with a diploma qualification. In such a case the allowance would represent a smaller proportion of the employee’s wage.
- There is only one Educational Leader per service. For services with two employees it was submitted that the allowance would represent between 3.6 and 3.77 per cent of the total annual wage cost for the service. However the CCSA further submitted that most early childhood services would have more than two employees across a range of award classifications, which would result in the introduction of the Educational Leader allowance having less of an impact on the cost of the total annual wage cost for that service.
- The CCSA also submitted that the increase in total annual wage cost for services where a Children’s Services Employee is appointed as the Educational Leader would have a minimal impact on fees charged for children’s places in the service.

[8] In respect of the introduction of the Educational Leader allowance into the Teachers Award, the Full Bench determined in a decision dated 11 October 2021 that the operative date should be 1 January 2022<sup>9</sup> and, in doing so, took into account that this would be the most convenient operative date because it would allow employers to set their charges for the 2022 calendar year. However, in that case, the allowance was introduced together with minimum salary rate increases for teachers, and thus the overall cost impact on employers was much more significant than here. Furthermore, in this case, the introduction of the Educational Leader allowance has been “on the agenda” for some time and was ultimately the subject of a consent position reached some time ago. Having regard to these matters, the operative date for the variation will be 1 November 2022.

[9] The variation determination to give effect to the Educational Leader allowance will be published in conjunction with this decision.



VICE PRESIDENT

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<sup>9</sup> [\[2021\] FWCFB 6021](#)

[2022] FWCFB 164

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