

## **IN THE FAIR WORK COMMISSION**

### **4 YEARLY REVIEW OF MODERN AWARDS - CHILDREN'S SERVICES AWARD 2010 AND EDUCATIONAL SERVICES (TEACHERS) AWARD 2020 - OUTSTANDING ISSUES**

#### **FILED ON BEHALF OF:**

- **Australian Childcare Alliance (ACA); and**
- **Australian Business Industrial (ABI)**

**15 JULY 2022**

1. This submission addresses paragraph [19] of the Fair Work Commission's (**FWC**) Statement of 17 June 2022 in the AM2018/18; AM2018/20.
2. The FWC has invited parties to file submissions on the provisional view that that the allowance inserted into the *Educational Services (Teachers) Award 2020* by the FWC in AM2018/9 should be inserted into the Children's Services Award 2010 (**CS Award**) so that persons undertaking the role of Educational Leader under each award have an equivalent entitlement (the **Provisional View**).

### **Background to the Educational Leader Allowance**

3. On 19 April 2021, the FWC in matters C2013/6333 and AM2018/9 issued a Decision concerning two applications made by the Independent Education Union of Australia (IEU) (**ERO/Work Value Decision**).
4. In the ERO/Work Value Decision, the FWC determined that an Educational Leader allowance is necessary for Teachers employed in a childcare setting who are appointed to the statutory role of Educational Leader:

*[658] In addition, we consider that it is necessary to make provision for additional remuneration for any early childhood teacher appointed to the statutory role of Educational Leader. As earlier noted, clause 19.3 of the EST Award provides for a regime of leadership allowances payable to school teachers only, with the Level 1 allowance being applicable to positions of educational leadership. We consider that the Level 1 allowance for schools in the smallest category (category C) should also be payable to early childhood teachers who are required to discharge the responsibilities of the education leader under reg 118 of the National Regulations. This allowance is currently \$3,302.46 per annum.<sup>1</sup>*

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<sup>1</sup> 2021 FWCB 2051

5. Simply put, the FWC has determined that the (work) value of performing the role of an Educational Leader is 6.3% of the Standard Rate set out in the EST Award.

### **Educational Leader Allowance in the Children's Services Award**

6. ACA/ABI accepts the Provisional View.
7. The challenge in transporting the Educational Leader allowance between the two awards is to ensure that persons who occupy the role of Educational Leader whether they are a teacher or child care worker receive the same amount.
8. It would be ill conceived and manifestly unfair if the translation lead to employees receiving a different amount for the same role simply because they were under different modern awards.
9. This would be stark should they be employed by the same employer and even more so if they were in the same child care centre.
10. Accordingly, an employee covered by the CS Award that performs the statutory role of Educational Leader should be paid the same allowance as their colleagues in the *Educational Services (Teachers) Award 2020* now and into the future.
11. This monetary amount is currently \$4,022.05 per annum.
12. The issue that arises is how this monetary amount should be translated into the CS Award, given that the allowance is based on a percentage of the standard rate in the EST Award.
13. To address this concern a new clause should be inserted into the CS Award as follows:

#### ***Educational Leader Allowance***

***(a) The Wage-related allowances - Educational Leader set out in clause 19.4 of the Educational Services (Teachers) Award 2020 will apply to an employee who is required to discharge the responsibilities***

*of the educational leader under Regulation 118 of the National Regulations.*

*(b) the monetary amount of the allowance is currently **\$4022.05** per annum.*

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

14. This approach:
  - (a) meets the requirements set out in section 139 (2) of the *Fair Work Act 2009* (the **Act**) by having the allowance “*separately and clearly identified*” in the award; and
  - (b) gives proper effect to the Provisional View and the FWC decision in AM2018/9.
15. Additionally, this approach ensures that regardless of the different rates of pay in the two awards, no employee performing the same role (possibly in the same centre) is paid a different allowance for performing the same role now and in the future following any decisions made in accordance with section 284 of the Act.
16. The FWC should not base the allowance in the CS Award on a percentage of the standard rate in that award as it may not ensure that employees receive the same amount of allowance for the same level of responsibility into the future, which is inconsistent with the Provisional View and the FWC decision in AM2018/9.

**Filed on behalf of ACA and ABI**

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