

IN THE FAIR WORK COMMISSION

Matter No: AM2018/18; AM2018/20

4 yearly review of modern awards – *Children’s Services Award 2010* and *Educational Services (Teachers) Award 2020*

SUBMISSIONS OF THE UNITED WORKERS UNION

Introduction

1. On 28 July 2022 the Fair Work Commission (**FWC**) issued a Decision in which it confirmed its provisional view that an Educational Leader’s allowance should be added to the *Children’s Services Award 2010* (**the CS Award**)¹. It also expressed a provisional view as to the drafting of the variation to give effect to this decision² and directed interested parties to file any submissions in relation to the provisional view as to the drafting of the variation.
2. In the decision, FWC also expresses the view that this variation to the Award is necessary to achieve the modern awards objective³.
3. UWU submits that the form of the variation outlined in this provisional view is appropriate and gives effect to the decision.
4. In submissions filed on 9 August 2022 on behalf of Australian Childcare Alliance (ACA) and Australian Business Industrial (ABI) (**the ABI submissions**) it is said that:

“ACA/ABI seek to file submissions regarding an operative date of the Educational Leaders Allowance in the CS Award”.

¹ [2022] FWCFB 141

² *Ibid* at [8]

³ *Ibid* at [7]

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5. The ABI submissions go on to assert that the operative date for the variation be 1 January 2023.
6. UWU opposes this view. UWU submits that the operative date of the variation which is the subject of the provisional view should be the first full pay period on or after the date upon which FWC issues a declaration giving effect to the variation. In this regard:
 - (a) A proposition to insert into the CS Award an allowance in respect of an Educational Leader has been before FWC for many years.
 - (b) In April 2021 FWC decided that such an allowance into the *Educational Services (Teachers) Award 2020* and on 1 November 2021 issued a decision giving effect to a variation to that Award.
 - (c) On 17 June 2022 FWC expressed a provisional view that an Educational Leaders Allowance should be inserted into the CS Award.
 - (d) On 28 July 2022 FWC issued a decision confirming its provisional view after interested parties expressed a consent position endorsing the provisional view. In doing so, FWC found that the insertion of the allowance was necessary is necessary to achieve the modern awards objective⁴.
 - (e) Accordingly, employers covered by the CS Award have been on notice about the prospect such an allowance would be inserted into the Award for many years and have had several months' notice that this prospect had become a likelihood. There has been sufficient notice for employers to make such arrangements as might be necessary to deal with the implementation of the new allowance.
 - (f) Representatives for interested employer parties supported the proposition that the allowance be inserted into the CS Award, making no mention when they did that

⁴ *Ibid* at [7]

the allowance would impose an inordinate cost or regulatory burden, or that the operative date of a variation giving effect to such an allowance should be delayed.

(g) There is little before FWC as to the basis upon which the operation of the allowance should be delayed. No material has been produced indicating, for example, that the allowance will impose a significant cost or regulatory burden for employers, such that its operation should be delayed.

(h) In expressing its provisional view as to the form of the variation, FWC indicated that it would issue a determination varying the CS Award in accordance with that view “shortly thereafter”. UWU submits this is the approach that should be adopted.

**Filed on behalf of the
United Workers Union**

9 August 2022