

BEFORE THE FAIR WORK COMMISSION

Fair Work Act 2009 (Cth)

Title of matter: 4 yearly review of modern awards – *Award stage* — *Group 4 awards* – Substantive Issues

Section: s.156

Matter Number: AM2018/18 and AM2018/20

Awards: *Children's Services Award 2010* and *Educational Services (Teachers) Award 2010*

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Introduction

1. On 13 June 2019 the Commission released a Background Document in matter AM2018/18 and AM2018/20, the 4-yearly review of the *Children's Services Award 2010* and *Educational Services (Teachers) Award 2010* ('the Background Document').
2. The Background Document does not purport to be a comprehensive discussion of the issues involved in the matter, and it does not represent the view of the Commission on any issue.¹
3. The Background Document includes sections for each of the substantive claims in the proceedings. Most sections include a summary of the positions of the parties, as well as various extracts from submissions. Some sections include extracts from the Awards, reference to legislation, and material based on census data. The Background document also poses a number of questions to the parties. The purpose of these submissions is to address questions in the Background document directed to AFEI.
4. While AFEI does not otherwise comment on the content of the Background document in these submissions, this should not be taken as an acceptance of any propositions in the Background Paper which do not relate to a question directed to AFEI.

Chapter 1. Background

Q1. Are the lists at Appendices 1, 2 and 3 accurate? [pg6]

5. The only issue with the Appendices identified by AFEI is the reference to transcript for Ms James, on page 79. The reference should be PN3374 – PN3382.

¹ Background Document, Page 1

Chapter 2. The Children's Services Award 2010

Q2. Is it generally agreed that most award reliant employees covered by the Children's Services Award are 'low paid' within the meaning of s134(1)(a)? [pg12]

6. For its part, AFEI is not in a position to accept the proposition that most award reliant employees covered by the Children's Services Award are low paid.
7. This is because none of the data represented in Chart 1² is directed at the incidence (i.e. frequency) of employment at any of the classification levels in the award and therefore the Chart does not show (or even purport to show) the classification level(s) at which '*most*' employees are employed.
8. To the extent that the Chart represents award derived data, that data is confined to the minimum weekly wages in the award effective 1 July 2018 – it does not represent actual amounts that are paid. As one example, it does not include pay point progression within classification levels based on service within the industry,³ noting that a Level 3 employee will progress after two years, to Level 3.3, the same wage rate as applicable to Level 4A.1.
9. Consequently, even if it were the case that full time weekly wages for classifications below Level 4A.1, and Level 3.3 were below the CoE and the EEH measures⁴, that comparison is incapable of providing any reasonable platform to support the proposition that '*most*' award reliant employees are 'low paid'.

² See Background Document at p.12, Chart 1: Comparison of minimum full-time weekly wages in the Children's Services Award 2010 and two-thirds of median full –time earnings.

³ Clause 14.1

⁴ See Background Document at [26]

Chapter 3. United Voice claims

3.1 United Voice allowance claims

Q4. *Is it common ground that United Voice allowance claims do not seek to vary modern award minimum wages such that the limitation in s156(3) does not apply? [pg15]*

10. For its part, AFEI accepts that s. 156(3) does not apply to the allowance claims pursued by United Voice. The limitation at s. 156 (3) is directed to the variation of ‘*modern award minimum wages*’; having regard to the meaning of that expression at s. 284(3) and the meaning of ‘*varying modern award minimum wages*’ at s. 284(4), neither of the United Voice allowance claims represents a proposal for ‘*a determination varying modern award minimum wages*’.

Q5. *If s156(3) does not apply, is the relevant test whether it is necessary to vary the awards to include the claimed allowance to achieve the modern awards objective? [pg15]*

11. Section 138 represents the boundary within which the Commission exercises its statutory task. The relevant test in s138 is however, two-fold. The Commission must be satisfied that the claimed allowance is a term that is permitted or required to be included in a modern award; and in respect of the modern awards objective, the Full Federal Court has explained the task of the Commission as follows:

Viewing the statutory task in this way reveals that it is not necessary for the Commission to conclude that the award, or a term of it as it currently stands, does not meet the modern award objective. Rather, it is necessary for the Commission to review the award and, by reference to the matters in s 134(1) and any other consideration consistent with the purpose of the objective, come to an evaluative judgment about the objective and what terms should be included only to the extent necessary to achieve the objective of a fair and relevant minimum safety net.⁵ (AFEI underlining)

⁵ *Construction, Forestry, Mining and Energy Union v Anglo American Metallurgical Coal Pty Ltd* [2017] FCAFC 123 (per Allsop CJ, Northey and O’Callaghan JJ) at [29].

12. In addressing whether the term is permitted to be included in an Award, s139(g)(ii) provides that a modern award may include terms about allowances for responsibilities or skills that are not taken into account in rates of pay. To the extent that United Voice relies on s139(g)(ii), the Commission must also be satisfied that the responsibilities or skills associated with the claimed allowances are not taken into account in rates of pay. In this instance, however, the skill/responsibility associated with the claimed allowances are already taken into account in rates of pay. This has been addressed in our previous submissions, and also in response to Question 7 below.

Q6. Is it common ground that the modern awards objective is a composite expression which requires that modern awards, together with the NES, provides 'a fair and relevant minimum safety net of terms and conditions,' taking into account the matters in ss134(1)(a) to (h)? [pg15]

13. For its part, AFEI accepts that the question captures the modern awards objective insofar as the objective is a composite expression and does express a positive requirement to consider the matters in s. 134(1)(a)-(h). Relevantly, the Full Bench has described the modern awards objective in the terms described in the question,⁶ and that approach was confirmed by the Full Court of the Federal Court of Australia.⁷ That said, the Full Court has explained that the considerations at (a)-(h) *'do not necessarily exhaust the matters which the FWC might properly consider to be relevant to that standard'*⁸ and the subject matter, scope and purpose of the *Fair Work Act* will determine the range of matters that may be taken into account.⁹

⁶ Re 4 Yearly Review of Modern Awards – Penalty Rates [2017] FWCFB 1001; (2017) 265 IR 1 at [128].

⁷ Shop, Distributive and Allied Employees Association and Anor v AIG and Others [2017] FCAFC 161; (2017) 253 FCR 368 at [42]-[43], [48]-[49].

⁸ Shop, Distributive and Allied Employees Association and Anor v AIG and Others [2017] FCAFC 161; (2017) 253 FCR 368 at [48].

⁹ Shop, Distributive and Allied Employees Association and Anor v AIG and Others [2017] FCAFC 161; (2017) 253 FCR 368 at [48], citing *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 39-40.

Q7. *In considering whether the claimed allowances are 'fair' is it relevant to look at the value of the work being undertaken by employees designated as Educational Leaders or Responsible Persons? In particular is it relevant to look at the level of skill or responsibility involved in undertaking these roles? [pg15]*

14. The level of skill or responsibility are unavoidable matters for consideration. That said, it is submitted there are two important qualifications to this. *First*, primary attention should be given to establishing proof of the existence of identifiable skill or responsibility. *Second*, the Commission should approach a consideration of the relative worth (value) of the skill or responsibility only where it is satisfied that identifiable skill or responsibility has not been taken into account in the current award.
15. With respect to the second condition, any fair deliberation will take notice of the significance of skill and responsibility to the current classification structure. And it will assist to note the matters that an employer must take into account in classifying employees under the award. These are disclosed in the introductory paragraph of Schedule B – Classification Structure which reads:

All employees will be classified by the employer into one of the levels contained in this Schedule in accordance with the employee's skills, responsibilities, qualifications, experience in the industry and duties.

From this introductory paragraph, it can be seen that the classification exercise is informed by five matters: skills, responsibilities, qualifications, industry experience, and duties. Each of these is taken into account in the definitions for the individual classification levels which characterise the classification structure. Because the classification levels align with minimum weekly rates and minimum hourly rates,¹⁰ it follows that skills and responsibilities (and the other considerations such as qualifications and experience) are taken into account in the rates of pay in the current award.

¹⁰ See award at clause 14.1.

16. It is also relevant that the classification levels in the structure at Schedule B typically describe duties in wide, not narrow terms. The listed duties are presented as ‘**Indicative**’ duties. Therefore, the classification structure serves to indicate what may be required/ expected from an employee at the level; however, the lists are not exhaustive. Thus an employee can be classified at a particular level as long as the employee’s actual duties correspond with, or are comparable to, those indicated and it is not essential that the employee’s actual duties fall within the exact terminology of the indicative duties. Thus, the range of duties that can be accommodate by the structure is wider than the listed indicative duties. It is submitted that the classification structure is designed to suit contemporary circumstances of the industry and it can accommodate change in those circumstances from time to time. That quality ensures that the award is relevant.¹¹
17. With regard to educational leader and responsible person, the current classification structure of the award is fair and relevant because it responds adequately to the skill or responsibility that may be expected from a person designated as an educational leader or from a person who is present at the times that the service is educating and caring for children. This is demonstrated in the terminology of the indicative duties for classification level 6 - Director: ¹²
- *Responsible for the overall management and administration of the service.*
 - *Supervise the implementation of developmentally appropriate programs for children.*
 - *Recruit staff in accordance with relevant regulations.*
 - *Maintain day-to-day accounts and handle all administrative matters.*
 - *Ensure that the centre or service adheres to all relevant regulations and statutory requirements.*
 - *Ensure that the centre or service meets or exceeds quality assurance requirements.*
 - *Liaise with families and outside agencies.*
 - *Formulate and evaluate annual budgets.*
 - *Liaise with management committees as appropriate.*

¹¹ In Re 4 Yearly Review of Modern Awards – Penalty Rates [2017] FWCFB 1001, the Full Bench said this at [120]: “*In the context of s.134(1) we think the word 'relevant' is intended to convey that a modern award should be suited to contemporary circumstances*”.

¹² See Indicative Duties at B.1.10 Level 6 – Director.

- *Provide professional leadership and development to staff.*
 - *Develop and maintain policies and procedures for the centre or service.*
18. It is demonstrated in the terminology of the indicative duties for classification level 5 (which includes, in its scope, Assistant Director):¹³
- *Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs.*
 - *Contribute, through the Director, to the development of the centre or service's policies.*
 - *Co-ordinate centre or service operations including Occupational Health and Safety, program planning, staff training.*
 - *Responsible for the day-to-day management of the centre or service in the temporary absence of the Director and for management and compliance with licensing and all statutory and quality assurance issues.*
 - *Generally supervise all employees within the service.*
19. It is demonstrated in the terminology of the classification level 4 description:¹⁴
- *Responsible, in consultation with the Assistant Director/Director for the preparation, implementation and evaluation of a developmentally appropriate program for individual children or groups.*
 - *Responsible to the Assistant Director/Director for the supervision of students on placement.*
 - *Responsible for ensuring a safe environment is maintained for both staff and children.*
 - *Responsible for ensuring that records are maintained accurately for each child in their care.*
 - *Develop, implement and evaluate daily care routines.*
 - *Ensure that the centre or service's policies and procedures are adhered to.*
 - *Liaise with families.*

¹³ See Indicative Duties at B.1.8 Level 5.

¹⁴ See Indicative Duties at B.1.6 Level 4.

20. As noted above, an employee's qualification(s) are directly relevant to the exercise of classifying under the award. It is relevant to take into account that the award classification structure references a wide range of contemporary qualifications which are significant to the classification exercise including:

- *University degree in early childhood education,*¹⁵
- *AQF advanced Diploma,*¹⁶
- *AQF Level V Diploma in Children's Services or equivalent,*¹⁷
- *Diploma in Children's Services or equivalent,*¹⁸
- *AQF Certificate III in Children's Services or an equivalent qualification.*¹⁹

21. Having regard to these matters of skill, responsibility and qualifications, it is submitted that the rates of pay in the current award already take into account the responsibilities or skills that could be expected from an employee designated as an Educational Leader, and the expectations associated with being present at the service as a responsible person.

Q8. *Are the contentions set out at [47] to [49] above contested? [pg17]*

22. In responding to this question, it will assist to revisit the form of the obligation at Regulation 118 of the *Education and Care Services National Regulations*. This regulation reads:

The approved provider of an education and care service must designate, in writing, a suitably qualified and experienced educator, co-ordinator or other individual as educational leader at the service to lead the development and implementation of educational programs in the service.

¹⁵ See description at B.1.10 Level 6 – Director.

¹⁶ See description at B.1.10 Level 6 – Director

¹⁷ See description at B.1.8 Level 5.

¹⁸ See description at B.1.6 Level 4.

¹⁹ See description at B.1.4 Level 3

23. The Regulation is brief in terms and does not comprehensively describe the expectations of the person so designated, but at least it conveys that the judgment of who is designated is informed by the suitability of the individual's qualifications and experience. However, as the role is within the scope of the individual's qualifications and experience, the Regulation itself does not require more from the designated individual than what can be expected from the person in their usual or normal role. It is submitted that the classification descriptions of the current award reflect contemporary circumstances and are capable of accommodating skills or responsibilities associated with educational leader (particularly at classification levels 4 to 6 as shown above).
24. Further, within the context of the industry of children's services and early childhood education, it would be reasonable to expect that there are many individuals who are, by virtue of their industry specific qualifications and experience, able to lead the implementation and development of educational programs in the service.

Q9. Is the submission set out at [50] above contested? [pg18]

25. For its part, AFEI considers the submission supportive of the position which AFEI has put above in response to question 8 insofar as the qualifications that may inform the decision to designate an educational leader correspond with qualifications which are already taken into account in the current award e.g. diploma qualification, early childhood teacher qualification, certificate III.

Q10. Are the assertions set out in [59] generally agreed? [pg20]

26. Insofar as United Voice asserts that the nominated supervisor is generally the Director of the centre, that assertion is not disputed by AFEI. However, the assertion is supportive of the AFEI position that the responsibility of a nominated supervisor is a matter that has been taken into account in the classification structure, notably at level 6 where the indicative duties of a Director reflect a level of overarching responsibility. With respect to the responsibilities, these are essentially responsibilities to educate and care for children and to supervise children when in the care of the service. Those

responsibilities reflect the essential nature of the industry to which the award applies²⁰ and are responsibilities addressed in the award's classification structure.

27. In respect to the further contentions at paragraph [59], A person's exposure to penalty under statute is not a consideration which should inform questions of remuneration under modern awards - such a proposition finds no support in the Fair Work Act, nor any historical support. In any event, the responsibilities which United Voice put in support of the allowances are responsibilities which are already recognised by the award and are taken into account in the rates of pay.

Q11. What is the distinction between the Nominated Supervisor and the Responsible Person? [pg20]

28. A requirement of the national law is that there must be present at a service at all times one of the following persons:²¹

- An approved provider (or person with management of conduct of the service operated by the provider);
- A nominated supervisor;
- A person in day to day charge of the service.

29. Each of these is a responsible person. A nominated supervisor is an individual who is nominated (and has accepted nomination) by the service provider to be a nominated supervisor.²² Nomination is significant for the purposes of service approval as an application for service approval must include the nominated supervisor(s).²³ Thus, the individuals who are capable of being a responsible person includes nominated supervisor but is wider than that group.

²⁰ The definition of the industry at clause 3 reads: **children's services and early childhood education industry** means the industry of long day care, occasional care (including those occasional care services not licensed), nurseries, childcare centres, day care facilities, family based childcare, out-of-school hours care, vacation care, adjunct care, in-home care, kindergartens and preschools, mobile centres and early childhood intervention programs.

²¹ Children (Education and Care Services) National Law (NSW), s. 162(1).

²² Children (Education and Care Services) National Law (NSW), s.5

²³ Children (Education and Care Services) National Law (NSW), s.44(1)(d).

Q12. Is the contention at [62] contested? [pg21]

30. Yes, AFEI contests the contention at [62] of the Background Paper.
31. At [62] it states *'UV contends that it is common for the employee designated as Responsible Person to be expected to carry out their substantive role in addition to their duties as Responsible Person, without any additional pay...'*
32. We have already addressed above at Question 7, the duties associated with being designated as responsible person are taken into account in the Award's classification structure.
33. A suggested example is given at [62] of *'a...Level 3.4 (Diploma) grade may be designated Responsible Person on a shift from 10am to 6.30pm because the Director (the Nominated Supervisor) is off site in training...'* where it is contended that *'the employee would be expected to continue to carry out their substantive duties during that period, in addition to the role of Responsible Person.'* This example is of limited relevance, as there is no basis to conclude that it involves a realistic arrangement. There is notably, no evidence before the Commission that an employee classified at a level below Associate Director will perform the role of 'responsible person' for an entire shift.
34. Even the case of an employee designated as responsible person at a classification below Level 4, they may not, during the period of their designation, perform any additional duties.²⁴

Q19. Does the argument advanced by the individuals overlap with the ERO/Work Value proceedings? [pg28]

35. The question of comparability between educational leaders in ECEC and primary school teachers has been a subject of the ERO/Work Value proceedings in C2013/6333 and AM2018/9.

²⁴ Evidence of Ms Llewellyn at PN4365.

36. In C2013/6333 and AM2018/9, the IEU have not sought to distinguish an early childhood teacher from an early childhood teacher designated as educational leader, because it is their evidence that early childhood teachers are the educational leader in ECEC. As such, the IEU have relied on evidence of early childhood teachers designated as educational leader in seeking a comparison between early childhood teachers and male primary teachers in the NSW public sector.
37. In respect to educational leaders in ECEC, AFEI submissions in C2013/6333 have drawn attention to the absence of any requirement that the designated educational leader is an early childhood teacher.
38. It is relevant to the ERO/Work Value proceedings that there is further evidence (and argument) in these proceedings (AM2018/18) of the designated educational leader in an ECEC not requiring teacher degree qualifications, or even diploma qualifications in some instances. This is consistent with AFEI's submission in those proceedings.
39. Whilst not raised as a question in the Background Document, there is also the issue of more apparent overlap between the United Voice claim for an educational leader allowance in the Teacher's Award, and the ERO/Work Value proceedings.
40. There is the apparent risk of double-counting of remuneration for skill/responsibility associated with being designated as educational leader, to the extent that it has been contended (albeit by different unions) that such skill/responsibility should be taken into account in the Teacher's Award rates of pay (in the ERO/Work Value proceedings), and in an allowance (in these proceedings). It is critical that the skills/responsibilities of designation as educational leader are not double-counted by being remunerated in both an allowance and in the rate of pay for Award classifications.

Q20. If so, how should we deal with such overlap? [pg28]

41. Designation as educational leader is an issue that is more focal to these proceedings than the ERO/Work Value proceedings (which are much broader, and involve consideration of an application that seeks to avoid disaggregation of designation as an educational leader in an ECEC). These 4-yearly review proceedings also address

designation as an educational leader in ECEC without limitation to only one Award or another, noting that a single ECEC is likely to employ staff under both Awards.

42. To deal with overlap, the Commission should therefore reserve its judgement in the ERO/Work Value proceedings, until a decision is handed down in these proceedings. There should then be an opportunity for parties to make submissions on the relevance (including potential implications) of the decision to the ERO/Work Value proceedings.

3.2 Increased non-contact time claim

*Q27. Is the above extract from United Voice's submission (at [118]) contested?
[pg35]*

43. The essential underlying proposition in this submission is that the work of employees contributes to the service provider's ability to comply with obligations. That proposition is not controversial and finds support in the current classification structure. In this regard, it will assist to note several indicative duties from which it can be said that employees can be expected to contribute to educational program development and implementation.

44. From Level 4 there are these particular indicative duties:

- *Responsible, in consultation with the Assistant Director/Director for the preparation, implementation and evaluation of a developmentally appropriate program for individual children or groups.*
- *Responsible to the Assistant Director/Director for the supervision of students on placement.*

45. From Level 5, there are these particular indicative duties:

- *Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs.*
- *Contribute, through the Director, to the development of the centre or service's policies.*

46. And from Level 6, there are these particular indicative duties:
- *Responsible for the overall management and administration of the service.*
 - *Supervise the implementation of developmentally appropriate programs for children.*
 - *Ensure that the centre or service adheres to all relevant regulations and statutory requirements.*
 - *Ensure that the centre or service meets or exceeds quality assurance requirements.*
 - *Develop and maintain policies and procedures for the centre or service.*

3.4 Laundry and clothing allowance

Q30. Are the propositions set out at [141] contested? [pg40]

47. Proposition 1 includes '*Educators spend a significant amount of time outside.*' United Voice refer to the evidence of a single witness. AFEI do not accept that this proposition is accurate for all educators covered by the Award, on the basis of a single witness.
48. Whilst proposition 2 is cited from the Guide to the NQF, it excludes additional relevant information, including that '*an area of unencumbered indoor space may be included in calculating the outdoor space of a service that provides education and care to children over preschool age if the regulatory authority has given written approval and this space has not already been included in calculating the indoor space – that is, it cannot be counted twice.*'²⁵
49. Whilst the Guide to the NQF is cited by the United Voice in support of proposition 3, the reference cited does not support the proposition that a service is assessed on the '*extent*' to which children are engaged in meaningful experiences in outdoor environments.
50. AFEI does not contest proposition 4 or 5.

²⁵ Guide to the NQF, page 390

3.5 Higher Duties

Q.32 *What are the particular regulatory requirements of this sector which are said to support clause 18.1(e)? [pg43]*

51. Clause 18.1(e) of the Award replicates Clause 17.4 of the *Children's Services (Victoria) Award 2005* (AT840807CRV), and was proposed for inclusion in the Children's Services Award 2010 by the United Voice in Part 10A Award Modernisation proceedings, following initial discussions with other unions and with registered associations of children's service industry employers concerning the proposed award.²⁶

52. AFEI is not in a position to state exhaustively all the regulatory requirements which may have been taken into account in the drafting of Clause 17.4 of the *Children's Services (Victoria) Award 2005*. It is notable however that there currently exists regulatory requirements to maintain ratios of educators to children in an ECEC, which will be a relevant consideration to staffing arrangements when another staff member is attending training, and are particular to this industry.

Q34. *What do employers say about UV's alternate claims (to delete (including in-service training))? What does 'in-service' training encompass? [pg43]*

53. The term 'in-service' training may be distinguished from 'pre-service' training. That is, a reference to continuing/ongoing training undertaken by staff as distinct from training which may be associated with a traineeship or other training course that is undertaken as a pathway to employment in a particular substantive role.

54. AFEI opposes the United Voice alternative claim. There is no probative evidence to satisfy the Commission that such variations to the modern award safety net are necessary.

²⁶ LHMU Pre-draft consultation, 6 March 2009

3.6 Annual leave

Q35. All parties are invited to comment on whether this claim should be dealt with by the Substantive Issues Full Bench or the Plain Language Full Bench? [pg44]

55. AFEI agrees with ABL's 1 April 2019 submissions in the Plain language proceedings (AM2016/15) concerning Shutdown Provisions from paragraph [6]. In particular, AFEI agrees with the submission at 6.14 that substantive changes to shutdown provisions should only be made if there is a cogent basis to do so (which would likely include evidence supporting the merit for such changes). This is consistent with AFEI's previous submissions in these proceedings.
56. The changes to annual leave provisions in the Award proposed by the United Voice in these proceedings, and by the Commission in the plain language proceedings, are uncontroversially substantive changes to the current Award provisions.
57. In both these proceedings, and in the Plain Language proceedings, there is a lack of evidence currently before the Commission for substantive change to the annual leave provisions in the Children's Services industry, in the Children's Services Award.

Chapter 5. Educational Services (Teachers) Award 2010

5.3 Independent Education Union of Australia claims

Q51. Do the employers contest the IEU's interpretation of clause 14.5 and, if so, what do they contend is the correct interpretation of the clause? [pg75]

58. AFEI is uncertain as to the IEU's interpretation of Clause 14.5(b), although it appears that the IEU's proposed variation in 14.5(b)(ii) would result in more uncertainty.

Q52. Do the employers dispute the proposition that the correct interpretation of the clause is in accordance with the IEU's proposed drafting? [pg75]

59. See our submissions above at Question 51. To the extent that any ambiguity exists, it is better resolved by reference to the minimum payment, reflecting on quarter of a 7.6 hour day, or for such time actually worked.

Q53. Clause 14.5 appears to place a cap on the salary payable to a casual employee who is engaged for less than five consecutive days. (i) What is the parties' understanding of how this cap operates? (ii) What is the rationale for the imposition of such a 'cap'? (iii) what is the history of this provision, and, in particular, has the 'cap' been the subject of an arbitral determination? [pg76]

60. In relation to questions 53(i) and (ii), the 'salary level' for a casual employee is based on years of experience as a teacher more generally, except that for shorter casual engagements, that is less than 5 consecutive days subject to a cap of 8 years' service, with longer engagements not so capped, noting that casual engagement periods are also capped at 4 weeks, or by agreement no more than 10 weeks.

61. In relation to question 53(iii), AFEI is unaware of the history of this particular provision but notes that the predominant state awards in NSW appear to contain lower caps of 4 years' service, relating casual pay levels. In both cases the caps reflect the short term nature of casual engagements and potentially limited opportunity for employees with general teaching service to contribute to the operation of the particular service.