

**Submission s.156—4 yearly review of modern awards**  
**4 yearly review of modern awards—Children’s Services Award 2010 and Educational Services**  
**(Teachers) Award 2010—Substantive Issues**  
**(AM2018/18 and AM2018/20)**

26 April 2019

- [1] This submission is made with reference to Directions issued on 11 December 2018 and revised on 7 March 2019 and relates to the *Children’s Services Award 2010* and the *Educational Services (Teachers) Award 2010* (outlined in Statement [2018] FWC 7505). It addresses the opposing claims made by ACA, ABI and NSWBC in their submission dated 16 April 2019.
- [2] This submission does not repeat information given in previous submissions but rather provides new evidence in support of the proposed introduction of an Educational Leader allowance and a Responsible Person allowance in the *Children’s Services Award 2010* and the *Educational Services Teachers Award 2010* to address issues raised by ACA, ABI and NSWBC.
- [3] Our claims for the introduction of an Educational Leader allowance and Responsible Person allowance are similar to those pursued by United Voice.

**Early childhood educational leadership in Australia: A brief history**

- [4] In 2008, the *Charles Sturt University Early Years Learning Framework Consortium* was formed and charged with the creation of a document to guide and inform early childhood teaching and learning in Australia.<sup>1</sup> In 2009, Australia’s first nationally approved learning framework *Belonging, Being and Becoming: The Early Years Learning Framework for Australia* (EYLF)<sup>2</sup> was introduced.<sup>3</sup> Given a political climate of change and optimism at the time of drafting the EYLF, the writers recognised an opportunity to develop an aspirational curriculum document

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<sup>1</sup> The Hon Julia Gillard MP, Joint media release with The Hon Maxine McKew MP, Parliamentary Secretary for Early Childhood Education and Child Care. *Experts to develop the Early Years Learning Framework*, Thursday 2 October 2008. <https://ministers.jobs.gov.au/gillard/experts-develop-early-years-learning-framework>

<sup>2</sup> Australian Government Department of Education Employment and Workplace Relations (DEEWR). (2009). *Belonging, being & becoming: The Early Years Learning Framework for Australia*. Canberra: Commonwealth of Australia.

<sup>3</sup> Sumsion, Jennifer, Sally Barnes, Sandra Cheeseman, Linda Harrison, Anne Kennedy, and Anne Stonehouse. “Insider Perspectives on Developing Belonging, Being & Becoming: The Early Years Learning Framework for Australia.” *Australasian Journal of Early Childhood* 34, no. 4 (December 2009): 4–13.

underpinned by democratic and social justice ideals.<sup>4</sup> It was envisioned that the document would be socially progressive and have transformative potential,<sup>5</sup> affording multiple possibilities and explicit opportunities for educators to question and reflect on practice and exercise their professional judgement.<sup>6</sup>

[5] The writers of the EYLF recognised that educational leadership led to improved teaching and learning outcomes<sup>7</sup> and envisioned the potential contributions or duties of pedagogical leaders in 2009,<sup>8</sup> prior to the formalisation of the role of Educational Leader in the *National Quality Framework* in 2012.<sup>9</sup>

<i>Contributions of Pedagogical Leaders</i>	
<b>Model professional and ethical practice</b>	<ul style="list-style-type: none"> <li>▪ Promote the use of the Early Childhood Australia’s <i>Code of Ethics</i> as a guide for pedagogical decisions</li> <li>▪ Invite critical reflection and conversations that allow consideration of different perspectives and approaches</li> <li>▪ Use their knowledge of current research and practice to inform discussions and decision-making</li> <li>▪ Clearly articulate their learning and teaching intentions through documenting plans and evaluations of learning experiences</li> <li>▪ Justify their decisions about the theoretical perspectives and philosophical approaches they adopt</li> </ul>
<b>Mentor others</b>	<ul style="list-style-type: none"> <li>▪ Facilitate others’ learning through professional conversations, sharing resources, and coaching</li> <li>▪ Actively contribute to the ongoing development of early childhood settings as learning communities</li> <li>▪ Establish networks with other professionals, including internet-based networks to connect</li> </ul>

<sup>4</sup> Millei, Zsuzsa, and Jennifer Sumsion. “The ‘Work’ of Community in Belonging, Being and Becoming: The Early Years Learning Framework for Australia.” *Contemporary Issues in Early Childhood* 12, no. 1 (March 2011): 71–85.

<sup>5</sup> *ibid.*

<sup>6</sup> Sumsion, et al., *op. cit.*

<sup>7</sup> The seminal ELEYS study (an extension of the REPEY study) gave the concept of educational leadership traction.

See, Siraj-Blatchford, Iram, and Laura Manni. 2007. *Effective leadership in the early years sector: The ELEYS study*. London, UK: Institute of Education, University of London.

<sup>8</sup> Charles Sturt University (CSU) Early Years Learning Framework Consortium. 2009. *Document 1: Pedagogical Leadership*.

<https://www.educationaleadersela.org/education/ewExternalFiles/1%20Pedagogical%20leadership.pdf>

<sup>9</sup> Australian Children’s Education and Care Quality Authority (ACECQA)(a). 2019. *The Educational Leader Resource*. <https://www.acecqa.gov.au/sites/default/files/2019-03/TheEducationalLeaderResource.pdf>

	professionals working in isolated settings
<b>Commit to ongoing professional learning and enquiry</b>	<ul style="list-style-type: none"> <li>▪ Actively seek out a range of professional learning experiences</li> <li>▪ Participate in practitioner inquiry</li> </ul>
<b>Build partnerships with colleagues, families, schools, community workers and allied health professionals to promote the best learning opportunities for all children</b>	<ul style="list-style-type: none"> <li>▪ Create opportunities for exchanging ideas and sharing curriculum knowledge and for clarifying intentions and expectations</li> <li>▪ Communicate the importance of relationships, listening and play in children’s learning</li> </ul>
<b>Act as advocates</b>	<ul style="list-style-type: none"> <li>▪ Advocate for children in their community contexts and in their transitions to other settings to ensure that their learning needs are well represented</li> <li>▪ Advocate for high quality early childhood settings by promoting greater understanding of the lifelong benefits to all children</li> <li>▪ Advocate for the early childhood profession</li> </ul>

[6] Given that the value of educational leadership in early childhood received recognition in 2007<sup>10</sup> and its applicability to the Australian context was merely idealistic and conceptual in 2009,<sup>11</sup> it is extremely unlikely that the role of the Educational Leader was considered during the drafting of the Awards in 2009;<sup>12</sup> or that many, if any, Australian early childhood providers had educational leaders prior to the introduction of the *Children’s Services Award 2010* and the *Educational Services (Teachers) Award 2010* or indeed before the position was mandated in the *National Quality Framework* in 2012.<sup>13</sup>

### **The role of educational leader in early childhood is new to Australia**

[7] Educational leadership is an “emerging discipline area”<sup>14</sup> in early childhood.

[8] According to Rhonda Livingston<sup>15</sup>, National Education Leader, ACECQA:

The role of educational leader in an EC setting was first introduced in 2012 in the National Quality Standard (NQS) and underpinning the National Law and Regulations. (Emphasis added).

[9] The *Educational Leaders Association*<sup>16</sup> attributes the challenges of being an Educational Leader to the lack of a history of early childhood leadership in Australia:

<sup>10</sup> Siraj-Blatchford and Manni, op. cit.

<sup>11</sup> Charles Sturt University (CSU) Early Years Learning Framework Consortium, op. cit.

<sup>12</sup> ACA, ABI and NSWBC submission (16 April 2019) at 2.8

<sup>13</sup> ACECQA(a), op. cit.

<sup>14</sup> Waniganayake, Manjula, Sandra Cheeseman, Marianne Fenech, Fay Hadley, Wendy Shepherd. 2017. *Leadership: contexts and complexities in early childhood education*. South Melbourne: Oxford University Press. p. 101.

<sup>15</sup> *ibid.*

Educational Leaders are influential in inspiring, motivating and also challenging and extending the pedagogy and practice and practice of Educators in every approved education and care service.

It is a challenging role, made more so as this is the first generation of Educational Leaders. (Emphasis added).

### **Educational Leaders have additional duties and accountability**

[10] By consistently describing the Educational Leader as merely a “title”<sup>17</sup>, ACA, ABI and NSWBC underestimate the role of Educational Leaders and do not provide best-practice examples of how the role is being undertaken:

To be an “Educational Leader”, an educator does not require additional training, has no additional responsibilities or penalties under the National Laws or Regulations so there is no need for an allowance.<sup>18</sup>

[11] This is inconsistent with information provided by ACECQA which suggests that the role of Educational Leader is more than a title and should not be taken at face value:

The policies and legislation have only given us a starting point for understanding the role. The real measure of the depth of this leadership role will be created by the leaders themselves and those who enable their work to flourish.<sup>19</sup>

[12] What this statement suggests is that the role and duties of an Educational Leader is largely determined by both the individual and their workplace.

[13] Although the role of Educational Leader affords a certain degree of professional autonomy, the performance of an Educational Leader is measured through Assessment and Rating with the quality of educational leadership directly correlating with the quality of an early childhood education and care setting.<sup>20</sup>

Assessment and rating results highlight the importance of the educational leader’s role and the impact they can have on the educational program and practice as well as the value of their work within services and communities.<sup>21</sup>

[14] Consequently:

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<sup>16</sup> Educational Leaders Association, *Education: Policy*.

<https://www.educationaleadersela.org/education/policy.html>

<sup>17</sup> For example, ACA, ABI and NSWBC statement (16 April 2019) at 2.13, 3.4, 5.7 and 5.11

<sup>18</sup> Viknarasah statement (11 April 2019) at 120

<sup>19</sup> ACECQA(a), op. cit, p. 127

<sup>20</sup> ACECQA(a), op. cit, p. 13

<sup>21</sup> Waniganayake et al., op. cit., p. 107

The educational leader's accountability is both contractual and through the NQF (if you are a teacher, then in some states it includes the teaching legislation).<sup>22</sup>

[15] Educational Leaders have a pivotal role in the Assessment and Rating Process<sup>23</sup> which ACA have previously argued to be a considerable source of administrative burden:

The paperwork that is required as evidence to meet the Assessment and Ratings (A&R) process is growing exponentially. The increased demand on providing evidence of reflective process across all seven Quality Areas is new and if the process is applied as written, the requirements for ongoing written evidence of such practice is particularly onerous.<sup>24</sup>

[16] In March 2019, ACECQA published *The Educational Leader Resource*,<sup>25</sup> a 148-page document detailing the role, responsibilities and duties of an Educational Leader. It is counterintuitive that ACECQA would produce such a timely and comprehensive document if 'Educational Leader' was merely a title.<sup>26</sup>

### **Educational leadership in early childhood settings and school settings**

[17] Educational leadership in schools is an established concept while educational leadership in early childhood is a relatively recent phenomenon:

Educational leadership, its role in outcomes for learners, and how it is best undertaken, has long been the subject of research. While much of this research has been generated in the primary and secondary school space, increasing numbers of researchers and policy-makers are examining this role in the early childhood and outside school hours care contexts. The findings of this collective research point to the role's significant capacity to support improvements in teaching, learning and children's wellbeing, and therefore how outcomes for children are realised.<sup>27</sup>

[18] The suggestion is that there is equivalency in the role of educational leaders in schools and early childhood settings,<sup>28</sup> not that schools and early childhood settings are similar.

[19] ACA, ABI and NSWBC highlights differences between the size of early childhood education and care settings and schools as grounds for opposing the claim for an Educational Leader allowance:<sup>29</sup>

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<sup>22</sup> ACECQA(a), op. cit, p. 145

<sup>23</sup> Australian Children's Education and Care Quality Authority (ACECQA)(b). 2017. *Leadership and management in education and care services: An analysis of Quality Area 7 of the National Quality Standard, Occasional Paper 5 August 2017*. <https://www.acecqa.gov.au/sites/default/files/2018-02/OccasionalPaper5-LeadershipManagementEducationCareServices.PDF>

<sup>24</sup> Australian Childcare Alliance (ACA). 2018. *ACA Submission to Red Tape Committee 2018*, <https://childcarealliance.org.au/documents/media-releases/submissions/91-aca-submission-to-red-tape-committee/file>, p.11

<sup>25</sup> ACECQA(a), op. cit.

<sup>26</sup> ACA, ABI and NSWBC submission (16 April 2019) at 3.6

<sup>27</sup> ACECQA(a), op. cit, p.7

<sup>28</sup> Waniganayake et al., op. cit.

The Individuals submit that there is an existing educational leadership allowance (in the Teachers Award) that should be applied to the ECEC sector. This allowance is provided to those nominated for a leadership position who are in charge of 100 - 600 students at a school. This is a very different role to an Educational Leader in long day care or OSHC service.

[20] Despite this statement, several of the centres described in the ACA, ABI and NSWBC statements have more than 100 licenced places:

*Summary of licenced places and total number of staff from ACA, ABI and NSWBC witness statements*

<b>Witness</b>	<b>Centre</b>	<b>Licensed places</b>	<b>Total staff</b>
Viknarasah	Lidcombe Preschool Kindergarten	44	8
	Choice Preschool	44	7 (or 8 – there is an inconsistency in the statement)
McPhail	Pachamama Early Education and Childcare	69	45
	Pachamama Activity Centre	81	
Llewellyn	Kool Kidz Mill Park	130	43
Tullberg	Knox Childcare and Kindergarten	60	23
	Wallaby Werribee	149	66
	Wallaby Greensborough	87	38
	Wallaby Epping	159	62
Mahony	Glanadore Childcare and Private Kindergarten	95	28
	Brooklyn Park Private Kindergarten	45	7
Maclean	Big Day Out Care & Education, Peregian Springs	103	31
	Big Day Out Care & Education Peregian Beach	97	30
Fraser	Little Scholars Yatala	133	165
	Little Scholars Staplyton	65	
	Little Scholars Ashmore	82	
	Little Scholars Deception Bay		
	[21] Little Scholars Redland Bay	83	
	[22] Little Scholars Nerang	86	
	[23] Little Scholars George St	108	

	(Brisbane CBD)		
	Natural Elements Early Learning Centre Eagleby	75	21
	Hatchlings Early Learning Centre - Waterford West	74	
	Natural Elements Early Learning Centre Pottsville	90	
	Smartland Boutique Early Learning Maroochydore	56	
	Smartland Boutique Early Learning Minyama	63	

[24] At Wallaby Epping, for example, the Educational Leader would be responsible for the educational programs of up to *159 children per day* and leading the educational program and practice of up to *62 staff*.

[25] While the Viknarasah statement recognises:

The largest centres in New South Wales can accommodate approximately 300 children<sup>30</sup>

[26] There are early childhood education and care settings in Australia with as many as 400 approved licenced places.<sup>31</sup>

[27] As at 20 April 2019, there were 2,179 approved education and care services with 100 licenced places or more.<sup>32</sup>

[28] While schools have stability in attendance patterns (with the same students attending five days per week), the attendance patterns in early childhood education and care are discretionary with families choosing how many hours or days their child attends.<sup>33</sup> This means that the number of licenced places is less than the total number of children being educated and cared for at a centre.

<sup>30</sup> Viknarasah statement (11 April 2019) at 22

<sup>31</sup> National registers available at: <https://www.acecqa.gov.au/resources/national-registers>

<sup>32</sup> *ibid.*

<sup>33</sup> In 2017, Australian children attended ‘childcare’ an average of 16.0 hours per week. See, Australian Bureau of Statistics, 2018, *4402.0 - Childhood Education and Care, Australia, June 2017*, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4402.0> for more information.

## **The role of educational leader is not captured in the *Children's Services Award 2010* and specifically excluded in the *Educational Services (Teachers) Award 2010***

[29] The Llewellyn statement provides a tenuous comparison between select duties of an Educational Leader and the *Children's Services Award 2010*.<sup>34</sup> The comparison does not accurately interpret the role of an Educational Leader by ignoring its complexities<sup>35</sup> and highlights a coincidental relationship between some of the duties of an Educational Leader with four different classifications of the *Children's Services Award 2010*.

[30] Aside from the dubious nature of the comparison (for example “mentoring” is equated with “generally supervise” in Level 4 and Level 5), the Llewellyn statement matches a number of the duties of the Educational Leader to duties classified as Level 6.<sup>36</sup> It is notable that Llewellyn states the Educational Leader at her centre is being paid at a level 5 classification.<sup>37</sup> This would perhaps suggest that the Educational Leader has either been misclassified or the current classifications in the *Children's Services Award 2010* do not accurately represent the role of educational leader.

[31] The Leadership Allowance in the *Educational Services (Teachers) Award 2010* only applies to teachers in schools.<sup>38</sup>

[32] Therefore, the role of Educational Leader in early childhood education and care should attract an allowance.

### **Educational Leaders with multiple roles within a service**

*Being a room leader is not the same as being the Educational Leader*

[33] The Mahony statement positions the role of Educational Leader as distinct from room leader:

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<sup>34</sup> Llewellyn statement (9 April 2019) at 97

<sup>35</sup> See, for example, Australian Children's Education and Care Quality Authority (ACECQA). 2019. The Educational Leader Resource. <https://www.acecqa.gov.au/sites/default/files/2019-03/TheEducationalLeaderResource.pdf>

<sup>36</sup> Llewellyn statement (9 April 2019) at 97

<sup>37</sup> Llewellyn statement (9 April 2019) at 93

<sup>38</sup> *Educational Services (Teachers) Award 2010* clause 15.2



My Centres and the ECEC sector have always had room leaders whose responsibilities included the programming and the taking of children's observations and advancing their educational and care development in a play based environment.<sup>39</sup>

...the National Quality Standards has additional requirements for the Education Leader to be a strong influence on the program across the centre and have the time to carry out this role in consultation with the room leaders who in turn need time to work with the Education Leader.<sup>40</sup>

*Positional leadership is not the same as educational leadership*

[34] It is accepted that there are Directors who perform the role of Educational Leader yet the role of Educational Leader is distinct. According to Rhonda Livingston,<sup>41</sup> National Education Leader, ACECQA:

We have long had positional leadership roles such as director and coordinator, but for the first time the important role of educational leader was recognised, acknowledged and embedded in the National Quality Framework (NQF). (Emphasis added).

### **Providing a “fair and minimum safety net of terms and conditions” through the proposed Educational Leader allowance**

[35] ACA, ABI and NSWBC oppose the proposed introduction of a universally applicable Educational Leader allowance in the *Children's Services Award 2010* and the *Educational Services (Teachers) Award 2010*<sup>42</sup> despite some witnesses recognising and remunerating the role of educational leader through above-Award payments:

At Pachamama's Long Day Care, our Responsible Person is usually the Centre Manager who is also the Nominated Supervisor and Educational Leader. Because of these many valued roles, she is on a salary and bonus structure significantly above her applicable Award.<sup>43</sup>

My Centre's Educational Leader is already being compensated for doing her job and the allowance is unnecessary<sup>44</sup>... The Knox and Wallaby Centre's Educational Leader is paid under the Teacher's Award and is paid \$2.50 an hour above the Award rate plus an additional 2 weeks of paid annual leave per year<sup>45</sup>...

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<sup>39</sup> Mahony statement (11 April 2019) at 96

<sup>40</sup> Mahony statement (11 April 2019) at 54

<sup>41</sup> Waniganayake ,et al., op. cit., p. 106

<sup>42</sup> ACA, ABI and NSWBC submission (16 April 2019) at 2.7

<sup>43</sup> McPhail statement (12 April 2019) at 83

<sup>44</sup> Tullberg statement (9 April 2019) at 101

<sup>45</sup> Tullberg statement (9 April 2019) at 103

The Parents and Citizens Association Award 2016 (Qld) which applies to 137 OSHC services in Queensland provides for an hourly educational leader allowance when an employee below level 4A steps up into this role. This acknowledges that the role of the Educational Leader in OSHC is only one part of the responsibilities that exist for employees in levels 4 and above. The hourly allowance is \$1.16 for employees working at centres with approximately 100 children in care.<sup>46</sup>

[36] The introduction of the proposed Educational Leader allowance would ensure that *all* Educational Leaders are fairly remunerated for their work, consistent with the modern award objectives “to provide fair and relevant minimum safety net of terms and conditions.”<sup>47</sup>

### **The role of Responsible Person *did not exist* in all Australian states and territories prior to 2012**

[37] ACA, ABI and NSWBC<sup>48</sup> asserts that:

there were always Directors and Assistant Directors in charge of a service who assumed responsibility for the centre (both in a legal and operational sense). The term Responsible Person merely harmonises and codifies the requirement that already existed (that someone be ‘in charge’ and ‘responsible’ at all times).

[38] This statement is not accurate.

[39] With reference to the Tullburg<sup>49</sup> statement, it is acknowledged that the concept of Responsible Person and associated duties existed in Victoria in superseded legislation:

#### **30. Nominated person to be in charge of children's service**

The licensee of a children's service must ensure that the licensee or any person nominated by the licensee and notified to the Secretary as the person having management or control of the service in the absence of the licensee is present at the premises where the children's service is operating at all times when any child is being cared for or educated by the service at the premises.<sup>50</sup>

[40] The Brannelly statement<sup>51</sup> confirms that the role of Responsible Person is akin to the role of Director:

During my time working in the sector, the duties of being ‘responsible’ and being ‘on-site’ existed well before the NQF was implemented. This role and its duties have been called the following names in OSHC over time:

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<sup>46</sup> Brannelly statement (15 April 2019) at 50

<sup>47</sup> *Fair Work Act 2009*, Section 134(1)

<sup>48</sup> ACA, ABI and NSWBC submission at 2.12

<sup>49</sup> Tullberg statement (9 April 2019) at 90

<sup>50</sup> *Children's Services Act 1996*, Act No. 53/1996.

[http://www.legislation.vic.gov.au/Domino/Web\\_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/68cd709894c56b2fca256e5b00213b3b/\\$FILE/96-053a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/68cd709894c56b2fca256e5b00213b3b/$FILE/96-053a.pdf)

<sup>51</sup> Brannelly statement (15 April 2019) at 42

- (a) Director; or
- (b) Coordinator; or
- (c) Assistant Coordinator.

[41] However, a similar position did not exist in NSW (for example) which only required an authorised supervisor to be present at least 50% of the time with no provisions for nominating another individual to be in day-to-day charge in their absence:

## **56 Supervision by authorised supervisor**

### **(1) All children's services**

The licensee of a children's service must ensure that the authorised supervisor for the service has the overall supervision of the provision of the service.

(1A) The licensee of a children's service must ensure that records are made and kept up to date of the name of the authorised supervisor who has the overall supervision of the provision of the service at any time the service is operating.

### **(2) Centre based children's service**

The licensee of a centre based children's service must ensure that the authorised supervisor for the service is, each week:

- (a) in the case of a school based children's service—present on:
  - (i) where the relevant school is located on one premises only, the premises of the school on which the service is based for no less than 50% of the time that the service is provided, or
  - (ii) where the relevant school is located on 2 or more premises, the same premises of the school as the premises of the school on which the service is based for no less than 50% of the time that the service is provided, or
- (b) in the case of any other children's service—present on the premises of the service for no less than 50% of the time that the service is provided.<sup>52</sup>

[42] While by today's standards this seems counterintuitive, there was no legal requirement that there was person 'in charge' who was physically present at all times<sup>53</sup> and so children's services in NSW could feasibly remain operational without paying a person to be in charge up to 50% of the time.

[43] In November 2011, the Department of Education and Communities issued email correspondence<sup>54</sup> confirming that the *role of responsible person was new* to NSW and so it would be "taking a pragmatic approach" to the responsible person requirements:

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<sup>52</sup> *Children's Services Regulation 2004*, <https://www.legislation.nsw.gov.au/inforce/19127704-ceed-eba3-c112-8192747b31da/2004-260.pdf>

<sup>53</sup> *ibid.*

<sup>54</sup> Copy of email is attached.

### **Further Information from the Department of Education and Communities on Implementing the Regulations**

“The Department of Education and Communities, as the regulatory authority for NSW, recognises that services will require some time to adjust to new requirements being introduced under the National Law and Regulations. As a result, we will be taking a pragmatic approach during early 2012 to the requirement that a responsible person (the approved provider, the nominated supervisor, or a certified supervisor placed in day to day charge) is present at all times the service is educating and caring for children.

[44] Therefore, the introduction of a Responsible Person Allowance for employees who are placed in day-to-day charge and nominated as the Responsible Person is consistent with Modern Awards Objective 1(e) “the principle of equal remuneration for work of equal or comparable value”.

### **The *Children’s Services Award 2010* and *Educational Services (Teachers) Award 2010* do not compensate Responsible Person duties**

[45] Prior to the introduction of the role of Responsible Person, “room leaders” were paid at Level 4 or higher in the *Children’s Services Award 2010*. Since the introduction of the role of Responsible Person, room leaders at some centres continue to be paid at Level 4 despite taking on this additional role:

The Room Leaders at Mill Park are currently paid at Level 4 of the Children’s Services Award. Being Responsible Person for a few hours a day is already encompassed into the Level 4 classification structure.<sup>55</sup>

All educators who are asked to be the Responsible Person, primarily at opening and closing times, are delegated the responsibility for short periods and are paid at the award rate for level 4 which is reflective of the respective levels of responsibility, keeping in mind that the number of children present is significantly reduced at opening and closing times.<sup>56</sup>

[46] According to this logic, any Responsible Person who is classified at Levels 4-6 would receive the same remuneration as any other employee classified as Levels 4-6.

[47] Although, some employers are paying above award rates to employees undertaking the role of Responsible Person:

We do not at present pay any extra money for acting in the role of a Responsible Person. However, the employees we select to perform that duty are also likely to be those we pay above award rates (or at higher levels under the award) because they have demonstrated they are responsible, good

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<sup>55</sup> Llewellyn statement (9 April 2019) at 89

<sup>56</sup> Mahony statement (11 April 2019) at 90

team members who have shown they are capable and trustworthy and able to take on responsibility with grace.<sup>57</sup>

[48] The *Educational Services (Teachers) Award 2010* identifies the duties of employees covered by the Award:<sup>58</sup>

**Duties of an employee**

The duties of a teacher may include in addition to teaching, activities associated with administration, review, development and delivery of educational programs and co-curricular activities.

[49] These duties do not include (or allude to) being placed in day-to-day charge of a service.

[50] Therefore, a Responsible Person allowance should be payable.

**Calculating the proposed Responsible Person allowance should not be challenging**

[51] The McPhail statement<sup>59</sup> suggests that calculating the proposed Responsible Person allowance is challenging due to so many employees being allocated the role in a payroll period:

This is practically next to impossible to calculate and administer who receives the nominal amount chosen for every hour of every day across both Centres.<sup>60</sup>

[52] The Llewellyn statement agrees calculation is difficult due to the haphazard allocation of this role:

I would also find it difficult to administer such an hourly allowance as whenever another employee fills the Responsible Person role, it could be for 23 minutes or an hour and 42 minutes per day which is completely dependent on my schedule and when I am not carrying out the role.<sup>61</sup>

[53] An accurate record of the Responsible Person must be made consistent with Regulation 150 and Regulation 177(2) of the *Education and Care Services National Regulations*.<sup>62</sup>

[54] The Responsible Person record must be retained for three years after the last date that the employee worked at the service consistent with Regulation 183(2)(f) of the *Education and Care Services National Regulations*.<sup>63</sup>

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<sup>57</sup> Maclean statement (15 April 2019) at 107

<sup>58</sup> *Educational Services (Teachers) Award 2010* clause 13.1

<sup>59</sup> McPhail statement (12 April 2019) at 89

<sup>60</sup> McPhail statement (12 April 2019) at 92

<sup>61</sup> Llewellyn statement (9 April 2019) at 88

<sup>62</sup> *Education and Care Services National Regulations*,  
<https://www.legislation.nsw.gov.au/#/view/regulation/2011/653/full>

<sup>63</sup> *ibid.*

[55] These records could be used for payroll purposes and used to calculate the proposed allowance without significant administrative burden being imposed on employers.

### **An allowance is a fair way of remunerating a Responsible Person who has multiple roles**

[56] In the event that a Director (classified at Level 6) is the Responsible Person, an allowance remains an appropriate form of remuneration. A Director is not necessarily the Responsible Person and may not be the Responsible Person at all times:

I am the Responsible Person for the majority of the time that the Mill Park Centre is open. When I am not on-site which is usually only for a few hours a day, I have another experienced member of staff such as the Room Leader 'fill in' as the Responsible Person.<sup>64</sup>

If I was sick one day I may ask three different employees to be the Responsible Person at any point in the day depending on their shifts.<sup>65</sup>

...during periods when the Director was unavailable, the second in charge (2IC) who would fulfil the role of being 'responsible' for the centre. If the 2IC was not available, then a Group Leader (who was typically an experienced employee with a Diploma and a First Aid certificate) would fulfil this role momentarily.<sup>66</sup>

[57] While a Director or Assistant Director may "undertake the lion's share of responsibility"<sup>67</sup>, a Responsible Person allowance would ensure that the employee who is physically present and placed in day-to-day charge as the appointed Responsible Person is being appropriately remunerated. This is a reasonable expectation which is already occurring at some centres:

Currently we already pay our Directors above the Award rate to be the responsible person in charge of our centres.<sup>68</sup>

[58] In the event that a Director or Assistant Director is performing multiple roles and working as the Responsible Person, the Educational Leader or both, the proposed allowances should still be payable given the well-documented additional administration and compliance burdens imposed since these roles were introduced with the *National Quality Framework*.<sup>69</sup> In a submission to the Senate Red Tape Committee, ACA argued:

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<sup>64</sup> Llewellyn statement (9 April 2019) at 85

<sup>65</sup> Llewellyn statement (9 April 2019) at 91

<sup>66</sup> Fraser statement (15 April 2019) at 114

<sup>67</sup> Mahony statement (11 April 2019) at 90

<sup>68</sup> Maclean statement (15 April 2019) at 109

<sup>69</sup> In 2018, only 3% of services did not perceive the National Quality Framework 'not at all burdensome'.

The burden of meeting these regulations via the recording and documentation of data, has decreased the amount of time early childhood educators can dedicate to their primary task of implementing the early years education and care of the children.<sup>70</sup>

[59] Further:

The government must acknowledge the increase of paperwork and stress that has been introduced to the sector over the past 10 years. It is disappointing when our governing body minimises this by stating that paperwork has reduced.<sup>71</sup>

[60] These statements confirm that there is in fact a “greater degree of difficulty in the work of Educational Leaders or Responsible Persons”<sup>72</sup> and therefore these roles should be remunerated through the introduction of the proposed allowances.

**Isabelle Arrabalde and Elizabeth Arrabalde**  
**26 April 2019**

**Attachment: Email correspondence regarding introduction of Responsible Person**

**From:** CCSA Office [mailto:office@ccsa.org.au]  
**Sent:** Friday, 4 November 2011 4:08 PM  
**To:** XXXXXXXX Child Care Centre  
**Subject:** National Regulations Update 3 Nov

**National Regulations Update**  
**3 November 2011**

CCSA has put together another document to assist you with your transition to the National

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See p. 51, Australian Children’s Education and Care Quality Authority (ACECQA), 2018. *National Quality Agenda National Partnership Annual Performance Report*, <https://www.acecqa.gov.au/sites/default/files/2018-12/NationalPartnershipAnnualPerformanceReport2018.PDF>

<sup>70</sup> ACA, op. cit., p. 9

<sup>71</sup> ACA, op. cit., p. 11

<sup>72</sup> ACA, ABI and NSWBC submission (16 April 2019) at 2.14

Regulations. This is a timeline that shows when certain regulations must be implemented.

As with our previous documents this is a working document and may be amended as more information becomes available. Click here for [the timeline](#).

### **Further Information from the Department of Education and Communities on Implementing the Regulations**

“The Department of Education and Communities, as the regulatory authority for NSW, recognises that services will require some time to adjust to new requirements being introduced under the National Law and Regulations. As a result, we will be taking a pragmatic approach during early 2012 to the requirement that a responsible person (the approved provider, the nominated supervisor, or a certified supervisor placed in day to day charge) is present at all times the service is educating and caring for children. We anticipate that we will receive a large number of applications for supervisor certificates over the coming weeks, and we appreciate that it may not be possible for a provider to place a person with a supervisor certificate in day to day charge of the service until the applications lodged by their staff are determined by us.

We also appreciate that it will take some time before all nominated supervisors and certified supervisors placed in day to day charge of a service in NSW have completed an approved course in child protection.

We have been informing people of this approach at the more recent information sessions, and we are currently developing further information to include on our website regarding these issues.”

*(Email from Celia Murphy, R/Executive Director, Early Childhood Education and Care, circulated to CCSA)*

### **DEEWR National Quality Framework October Update**

The [National Quality Framework October update](#) is available from the DEEWR Website