



DRAFT DETERMINATION

Fair Work Act 2009

s.158—Application to vary or revoke a modern award

Independent Education Union of Australia
(AM2018/9)

EDUCATIONAL SERVICES (TEACHERS) AWARD 2020
[MA000077]

Educational services

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
DEPUTY PRESIDENT SAUNDERS

SYDNEY, XX OCTOBER 2021

Application to vary Education Services (Teachers) Award 2020 on work value grounds.

A. Further to the decisions issued by the Full Bench of the Fair Work Commission on 19 April 2021 [[2021] FWCFB 2051] and 11 October 2021 [[2021] FWCFB 6021], the above award is varied as follows:

1. By inserting the following definition in clause 2 in alphabetical order:

APST means the Australian Professional Standards for Teachers established by the Australian Institute for Teaching and School Leadership.

2. By inserting the following definition in clause 2 in alphabetical order:

full registration has the same meaning as proficient accreditation.

3. By deleting the definition of 5 year trained teacher in clause 2.

4. By deleting the definition of 4 year trained teacher in clause 2.

5. By inserting the following definition in clause 2 in alphabetical order:

proficient accreditation means accreditation as a proficient teacher that meets the requirements for full registration by a body which oversees accreditation and recognition of teachers' professional capacity in any State or Territory. A reference to full registration is a reference to proficient accreditation.

6. By deleting the definition of 3 year trained teacher in clause 2.

7. By deleting the definition of 2 year trained teacher in clause 2.
8. By deleting clause 14 and replacing it with the following:

14. Classifications

14.1 Classification on appointment

On appointment, an employee will be classified according to the criteria set out below and paid in accordance with Clause 17—Minimum Rates.

Classification	Criteria
Level 1	Graduate teacher and all other teachers (as defined) including those holding provisional or conditional accreditation /registration
Level 2	Teacher with proficient accreditation/registration or equivalent
Level 3	Teacher with proficient accreditation/registration or equivalent after three years' satisfactory teaching service at a proficient level
Level 4	Teacher with proficient accreditation/registration or equivalent after six years' satisfactory teaching service at a proficient level
Level 5	Teacher with Highly Accomplished / Lead Teacher accreditation / registration or equivalent

14.2 Period of teaching service

- (a) Subject to the provisions of clause 14.2, **teaching service** means the total period a person has been employed as a teacher by any employer (as defined in clause 2).
- (b) Teaching service does not include employment as a teacher in a TAFE program (unless the teacher is employed to teach a Vocational and Educational Training (VET) program) or in an English Language School.
- (c) Service as a part-time teacher will normally accrue on a pro rata basis according to the percentage of a full-time teaching load undertaken in any year. However, subject to clause 11.3, where the hours are more than 90% of a full-time load, service will count as a full-time year.
- (d) In the case of a casual employee, the equivalent of a full-time year of teaching service is 200 full casual days in Australian schools.
- (e) In the case of an early childhood/preschool teacher, the following will count as service:
 - (i) teaching experience in preschools, kindergartens, multi-purpose centres, early intervention services, long day care centre and other similar services;

- (ii) teaching experience of children from 4 to 8 years (or in the infants department) of a school registered and/or accredited under the relevant authority in each state or territory;
- (iii) service as a lecturer in early childhood education or child development, as a child development officer or equivalent; and
- (iv) service as a diploma qualified childcare worker, at the rate of one year for every 3 years' service up to a maximum of 4 years.

14.3 Satisfactory teaching service

- (a) For the purpose of progression to Levels 3 and 4, **satisfactory** teaching service shall mean:
 - (i) maintenance of proficient accreditation/registration as a teacher, where applicable; and
 - (ii) compliance with the requirements of the APST.
- (b) An employee will be deemed to have complied with the APST unless the employer has, in the 12-month period immediately preceding the date upon which the employee is due for progression to Level 3 or Level 4:
 - (i) identified, in writing, that the employee has not complied with the requirements of the APST in specified respects on an ongoing basis; and
 - (ii) afforded the employee a reasonable period of time, with the provision of support, training and feedback, to bring the employee's performance into compliance with the APST; and
 - (iii) assessed the employee, in a formal and documented review of performance, as still not complying with the requirements of the APST on an ongoing basis.
- (c) If the employee disputes an assessment that the employee has not complied with the requirements of the APST such as not to qualify for progression, the employer shall seek to resolve the dispute with the employee in accordance with the dispute resolution procedure in accordance with clause 31 of this award. This shall include, if necessary, reference of the dispute to the Fair Work Commission by the employer pursuant to clause 31.4.

14.4 Evidence of qualifications and teaching service

- (a) On engagement, the employer may require that the employee provide documentary evidence of qualifications and teaching service.
- (b) If an employer considers that the employee has not provided satisfactory evidence, and advises the employee in writing to this effect, then the employer may decline to recognise the relevant qualification or experience until evidence

is provided. The employer will not unreasonably refuse to recognise the qualifications or teaching experience of an employee.

- (c) Where an employee has completed further teaching service with another employer (for example during unpaid leave) or additional qualifications after commencement of employment, they will be entitled to be classified accordingly and back paid from the date of completion of the experience or qualifications, provided the employee provided satisfactory evidence to the employer within 3 months of completion. In all other cases the employee will be classified and paid from the date satisfactory evidence is provided.

14.5 Equivalency to proficient accreditation

- (a) For the purpose of Levels 2, 3 and 4 of the classification structure in clause 14.1, an employee will have the equivalent to proficient accreditation if:
 - (i) the employee works in a State or Territory where there is no requirement applicable to the employee to be accredited or registered as a proficient teacher and there is capacity for the employee to voluntarily obtain such accreditation or registration; and
 - (ii) the employee meets the APST applicable to a proficient teacher.
- (b) For the purpose of clause 14.5(a)(ii), an employee will meet the APST applicable to a proficient teacher if the employer is assessed by the employer as doing so.
- (c) The following provisions apply to the assessment of an employee under clause 14.5(b):
 - (i) An assessment must be conducted by the employer if the employee requests such an assessment at any time after the completion of the first year of teaching service, provided that no more than one such request may be made in any calendar year.
 - (ii) An assessment must be conducted by the employer when the employee has completed two years' teaching service, even if the employee has not requested such an assessment.
 - (iii) If the employer fails to conduct an assessment in accordance with clause 14.5(c)(ii), the employee will be deemed for the purpose of Levels 2, 3 and 4 of the classification structure in clause 14.1 to have the equivalent to proficient accreditation.
 - (iv) The assessment must be conducted in consultation with the employee.
 - (v) The employer and employee may agree to an identified expert assessor to conduct the assessment.
 - (vi) If an employee is assessed as not meeting the APST applicable to a proficient teacher and this is disputed by the employee, the employer shall

seek to resolve the dispute with the employee in accordance with the dispute resolution procedure in accordance with clause 31 of this award. This shall include, if necessary, reference of the dispute to the Fair Work Commission by the employer pursuant to clause 31.4.

14.6 Equivalency to Highly Accomplished/Lead Teacher accreditation

- (a) For the purpose of Level 5 of the classification structure in clause 14.1, an employee will have the equivalent to Highly Accomplished/Lead Teacher accreditation if:
 - (i) the employee works in a State or Territory where there is no capacity for the employee to obtain such accreditation; and
 - (ii) the employee meets the APST applicable to a Highly Accomplished/Lead Teacher.
- (b) For the purpose of clause 14.6(a)(ii), an employee will meet the APST applicable to a Highly Accomplished/Lead Teacher if the employer is assessed by the employer as doing so.
- (c) The following provisions apply to the assessment of an employee under clause 14.6(b):
 - (i) An assessment must be conducted by the employer if the employee requests such an assessment at any time after the completion of the first year of teaching service at Level 4, provided that no more than one such request may be made in any calendar year.
 - (ii) An assessment must be conducted by the employer when the employee has completed three years' satisfactory teaching service at Level 4, even if the employee has not requested such an assessment.
 - (iii) If the employer fails to conduct an assessment in accordance with clause 14.6(c)(ii), the employee will be deemed for the purpose of Level 5 of the classification structure in clause 14.1 to have the equivalent to Highly Accomplished/Lead Teacher accreditation.
 - (iv) The assessment must be conducted in consultation with the employee.
 - (v) The employer and employee may agree to an identified expert assessor to conduct the assessment.
 - (vi) If an employee is assessed as not meeting the APST applicable to a Highly Accomplished/Lead Teacher and this is disputed by the employee, the employer shall seek to resolve the dispute with the employee in accordance with the dispute resolution procedure in accordance with clause 31 of this award. This shall include, if necessary, reference of the dispute to the Fair Work Commission by the employer pursuant to clause 31.4.

- (d) If the employer considers that a Level 5 employee to whom clause 14.6(a)(i) applies is no longer meeting the APST, the employer may conduct a re-assessment of the employee in accordance with the requirement in clauses 14.6(c)(iv) to (vi) once upon every five-year anniversary of the employee's progression to Level 5. If the employer does not conduct such a re-assessment, the employee will be deemed for the purpose of clause 14.1 to have equivalency to Highly Accomplished/Lead Teacher accreditation for the following five years.

14.7 Returning to teaching

- (a) A teacher with at least two years' teaching service who was previously registered/accredited as proficient or who was not required to be registered/accredited as proficient who:

- (i) is returning to teaching following a break of teaching service, where they have not obtained or maintained proficient status; or

- (ii) otherwise does not hold proficient accreditation/registration status;

shall be classified on Level 2 for one year full-time equivalent teaching service, during which period the teacher may apply for proficient teacher accreditation or registration or apply for mutual recognition (in the case of an interstate teacher) with the relevant teacher accreditation authority. Upon attaining proficient teacher accreditation or registration, the teacher will progress to the relevant Level between Level 2 and Level 4 based on their service at a proficient level. All service, in excess of two years, will count as service at a proficient level where that service has followed the attainment of a recognised teaching qualification.

- (b) If the teacher does not attain proficient teacher accreditation or registration within the one year full-time equivalent teaching service, the teacher will be paid at Level 1 until the teacher achieves proficient teacher accreditation. On such date the teacher will progress to the relevant Level between Level 2 and Level 4 based on their teaching service at a proficient level. All teaching service, in excess of two years, will count as teaching service at a proficient level where that teaching service has followed the attainment of a recognised teaching qualification.
 - (c) If a teacher to whom clause 14.7 applies is employed in a State or Territory that has not yet introduced a requirement for teachers (or a subset of teachers) to be accredited as proficient/ fully registered, then clause 14.5 applies.

14.8 Support for new teachers

- (a) It is the responsibility of the individual Level 1 teacher to achieve accreditation or registration at the level of proficient teacher within the required timeframes. The employer will support the Level 1 teacher to obtain accreditation or registration at the proficient teacher standard, which will include reasonable

release from ordinary duties for the Level 1 teacher where operationally practicable.

- (b) If a Level 1 teacher has concerns regarding the support being provided by the employer, they should discuss the matter with the employer. If the matter remains unresolved, the matter may be dealt with in accordance with clause 31—Dispute Resolution.

14.9 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.

9. By deleting the table in clause 17.1 and inserting the following:

Classification	Criteria	Minimum weekly rate - preschools and schools (full time employee)	Minimum annual salary - preschools and schools (full time employee)	Minimum weekly rate - long day care centres (full time employee)	Minimum annual rate - long day care centres (full time employee)
		\$	\$	\$	\$
Level 1	Graduate teacher with provisional or conditional accreditation where applicable	1169.70	61,034	1216.50	63,475
Level 2	Teacher with proficient accreditation or equivalent	1278.50	66,712	1329.60	69,380
Level 3	Teacher with proficient accreditation after three years' satisfactory teaching service at Level 2	1391.80	72,625	1447.50	75,530
Level 4	Teacher with proficient accreditation after three years' satisfactory teaching service at Level 3	1505.20	78,539	1565.40	81,681

Classification	Criteria	Minimum weekly rate - preschools and schools (full time employee)	Minimum annual salary - preschools and schools (full time employee)	Minimum weekly rate - long day care centres (full time employee)	Minimum annual rate - long day care centres (full time employee)
		\$	\$	\$	\$
Level 5	Teacher with Highly Accomplished/ Lead Teacher accreditation	1,618.50	84,452	1,683.20	87,830

10. By deleting clause 17.2 and inserting the following:

17.2 The rates for long day care centres in clause 17.1 apply to a full-time employee who works in a children’s or early childhood service which usually provides services over a period of at least 8 hours each day for 48 weeks or more (such as a long day care centre). This rate is an additional **4%** on the rates set out in clause 17.1 for preschools and schools on the basis that the employee is not covered by the provisions of clause 15—Ordinary hours of work.

11. By deleting the words “Level 8” in clause 17.5(a)(i) and inserting the words “Level 3”.

12. By deleting the table appearing at clause 19.2(b) and inserting the following:

Level	Number of places	\$ per annum
1	Up to 39 places	7018.91
2	40–59 places	8697.35
3	60 or more places	10558.88

13. By deleting the table appearing at 19.3(g)(i) and inserting the following:

Category	\$ per annum		
	A	B	C
Level 1	4882.72	4272.38	3845.14
Level 2	3356.87	2899.12	2441.36
Level 3	1678.44	1434.3	976.54

14. By renumbering clause 19.4 as clause 19.5.

15. By inserting the following at clause 19.4:

19.4 Wage-related allowances—educational leader

- (a) Clause 19.4 applies only to a teacher in the children’s services and early childhood education industry.
- (b) The allowance is based on a percentage of the standard rate.

- (c) An educational leader's allowance of \$3845.14 per annum will be paid to an employee who is required to discharge the responsibilities of the educational leader designated under regulation 118 of the *Education and Care Services National Regulations (2011)* NSW or the equivalent provision in any other State or Territory.
- (d) The educational leader's allowance is payable in addition to any director's allowance payable under Clause 19.2.
- (e) Where an employee is required to act as educational leader for less than 5 days per week, the annual allowance prescribed by clause 19.4(c) 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.

16. By inserting the following sentence at the end of clause 31.5:

In respect of a dispute notified pursuant to clauses 14.3, 14.5 or 14.6 the parties can agree that it be referred to an independent person with expertise in assessing the requirements of the APST for determination.

17. By deleting clause B.1.1 and inserting the following:

B.1.1 Casual employees—full day rates

	All employees (excluding Schedule A)	Teachers employed in early childhood services operating for at least 48 weeks per year (Schedule A)					
		Full day rate	Early morning shift ²	Afternoon shift ³	Night shift (rotating) ⁴	Night (non-rotating) ⁵	Saturday
		% of casual full day rate ⁶					
		100%	110%	115%	117.5%	130%	125%
		\$	\$	\$	\$	\$	\$
Level 1	292.43	304.13	334.54	349.75	357.35	395.37	380.16
Level 2	319.63	332.40	365.64	382.26	390.57	432.12	415.50
Level 3	347.95	361.88	398.07	416.16	425.21	470.44	452.35
Level 4	376.30	391.35	430.49	450.05	459.84	508.76	489.19
Level 5	404.63	420.80	462.88	483.92	494.44	547.04	526.00

¹ Where an employee is engaged for less than 5 consecutive days, the minimum rate payable to a casual employee will be no higher than the wage at Level 3.

² **Early morning shift** means a shift commencing at or after 5.00 am and before 6.00 am.

³ **Afternoon shift** means a shift finishing after 6.30 pm and at or before midnight.

⁴ **Night shift (rotating)** means a shift finishing after midnight and at or before 8.00 am, or a shift commencing at or after midnight and before 5.00 am, which rotates with day or afternoon shifts.

⁵ **Night shift (non-rotating)** means a shift finishing after midnight and at or before 8.00 am, or a shift commencing at or after midnight and before 5.00 am, which does not rotate or alternative with other shifts so as to give the employee at least one third of their shift off night shift in each roster cycle.

⁶ The casual full day rate for teachers employed in early childhood services operating for at least 48 weeks per year (**Error! Reference source not found.**) incorporates an additional 4% as per clause 0.

18. By deleting clause B.1.2 and inserting the following:

B.1.2 Casual employees—half day rates

	All employees (excluding Schedule A)
All employees	Half day rate
	\$
Level 1	146.21
Level 2	159.81
Level 3	173.98
Level 4	188.15
Level 5	202.31

¹ Where an employee is engaged for less than 5 consecutive days, the minimum rate payable to a casual employee will be no higher than the wage at Level 3.

19. By deleting clause B.1.3 and inserting the following:

B.1.3 Casual employees—minimum rates of pay for teachers employed in early childhood services NOT operating for at least 48 weeks per year

Level	2-hour rate	4-hour rate
	\$	\$
Level 1	76.96	153.92
Level 2	84.12	168.24
Level 3	91.56	183.12
Level 4	99.02	198.04
Level 5	106.48	212.96

¹ Where an employee is engaged for less than 5 consecutive days, the minimum rate payable to a casual employee will be no higher than the wage at Level 3.

20. By deleting clause B.1.4 and inserting the following:

B.1.4 Casual employees—minimum rates of pay for teachers employed in early childhood services operating for at least 48 weeks per year

Level	2-hour rate	4-hour rate	Overtime - first 3 hours	Overtime - after 3 hours
	% of minimum hourly rate			
	100%	100%	150%	200%
	\$	\$	\$	\$
Level 1	80.04	160.08	60.03	80.04
Level 2	87.48	174.96	65.61	87.48
Level 3	95.24	190.48	71.43	95.24
Level 4	102.98	205.96	77.24	102.98
Level 5	110.74	221.48	83.06	110.74

¹ Where an employee is engaged for less than 5 consecutive days, the minimum rate payable to a casual employee will be no higher than the wage at Level 3.

21. By deleting clause C.1.1 and inserting the following:

C.1.1 The following wage-related allowances are based on the standard rate as defined in clause 2—Definitions as the minimum annual rate applicable to Level 1 in clause 17.1= **\$61,034**.

Allowance	Clause	% of standard rate	\$	Payable
Director's allowance:	19.2(b)			
Level 1		11.5	7018.91	per annum
Level 2		14.25	8697.35	per annum
Level 3		17.3	10,558.88	per annum
Leadership allowance:	19.3(g)(i)			
Level 1A		8.0	4882.72	per annum
Level 1B		7.0	4272.38	per annum
Level 1C		6.3	3845.14	per annum
Level 2A		5.5	3356.87	per annum
Level 2B		4.75	2899.12	per annum
Level 2C		4.0	2441.36	per annum
Level 3A		2.75	1678.44	per annum
Level 3B		2.35	1434.30	per annum
Level 3C		1.6	976.54	per annum

Educational leader allowance	19.4(c)	6.3	3845.14	per annum
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22. By inserting the following in Schedule H:

Schedule H—Transitional Arrangements

H.1 This Schedule applies to employees who are employed in a position covered by this award immediately prior to 1 January 2022 and who:

- (a) do not as at 1 January 2022 hold proficient teacher accreditation/registration and are not as at 1 January 2022 subject a requirement to hold proficient teacher accreditation/registration; or
- (b) hold proficient teacher accreditation/registration.

H.2 Employees to whom this clause applies shall be classified on and from 1 January 2022 in accordance with the following table, despite clause 14.1, except where classification pursuant to clause 14.1 would result in the employee being classified at a higher level:

Classification prior to 1 January 2022	Classification on and from 1 January 2022
Level 5	Level 2
Level 6	Level 2
Level 7	Level 2
Level 8	Level 3
Level 9	Level 3
Level 10	Level 3
Level 11	Level 4
Level 12	Level 4

H.3 For the purpose of progression under the new classification structure:

- (a) an employee classified at Level 2 pursuant to the table in clause H.2 shall be deemed to have reached 3 years’ teaching service at Level 2 when the employee has 5 years of teaching service in total; and
- (b) an employee classified at Level 3 pursuant to the table in clause H.2 shall be deemed to have reached 3 years’ teaching service at Level 3 if the employee has 8 years of teaching service in total.

This Schedule remains subject to the requirements in clause 14.3 concerning satisfactory teaching service.

23. By updating cross references accordingly.

B. This determination comes into operation on 1 January 2022. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after 1 January 2022.

VICE PRESIDENT