



IN THE FAIR WORK COMMISSION

**APPLICATION BY THE INDEPENDENT EDUCATION UNION OF AUSTRALIA –
EDUCATIONAL SERVICES (TEACHERS) AWARD 2020 (AM2018/9)**

**FURTHER SUBMISSION IN RESPONSE –
COMMUNITY CONNECTIONS SOLUTIONS AUSTRALIA (CCSA) LTD**

13 AUGUST 2021

Introduction

1. On 19 April 2021 the Full Bench in this matter issued Decision [2021] FWCFB 2051 (the Decision) in which it concluded that a new classification and pay structure for teachers covered by the *Educational Services (Teachers) Award 2020* (the Award) is warranted [657]. In addition, the Full Bench concluded that an allowance based on the extant Leadership Allowance in the Award should be payable for any early childhood teacher appointed to the statutory role of Educational Leader [658].
2. Following Directions issued by the Full Bench on 7 June 2021, with subsequent amendment on 9 July 2021, interested parties filed proposed award variations to give effect to the Decision along with any evidence and submissions concerning the matters identified in paragraph [665] of the Decision. Submissions in response were filed by 30 July 2021. CCSA's further submission in response to those filed by other parties is provided below in accordance with the Directions.

Submissions of the Independent Education Union (IEU) and Australian Business Lawyers & Advisors (ABLA) acting for the Australian Childcare Alliance (ACA) and Australian Business Industrial (ABI)

3. As indicated in our submission of 14 July 2021, CCSA supports the proposed consent position that has been put to the Commission by the IEU and ABLA acting for the ACA and ABI. That support comes with the single caveat identified in our submission of 14 July 2021 that further clarification is required regarding the award coverage of diploma-qualified employees with conditional teacher accreditation.
4. In opposing CCSA's proposal for further clarification of the definition of teacher by inclusion of an additional sentence: "So as to remove any doubt, an individual with conditional teacher accreditation working in an early childhood education service must also be being taken to be a teacher for the purposes of the National Regulations in order to be covered by this Award.", the IEU states:

"[CCSA's] proposed definition would not make a practical difference since any person employed as a teacher who has conditional accreditation / registration would be "a teacher for the purposes of the National Regulations"."¹

5. CCSA agrees with the IEU that any person employed as a teacher who has conditional accreditation / registration would be a teacher for the purposes of the National Regulations. However, that is not the point raised in our submission of 14 July 2021.
6. The question is not whether a person employed as a teacher who has conditional accreditation / registration would be a teacher for the purposes of the National Regulations but, rather, the reverse:

Under what circumstances is a person who is taken to be a teacher for the purposes of the National Regulations also to be considered a teacher for the purposes of the Award?

AND

¹ IEU Submission of 30 July 2020, para 11

Under what circumstances is a person who holds conditional accreditation as an early childhood teacher taken to be a teacher for the purposes of the Award?

7. In opposing CCSA's submission, ABLA claims that it would "extend the coverage of the EST Award beyond "teachers" as defined in the EST Award." ² In fact, it is ABLA and the IEU, not CCSA, that are extending that coverage by including conditional accreditation in the criteria for the Level 1 classification at clause 14.2 – Classification on Appointment of their proposed consent position, lodged with the Commission on 14 July 2021.

8. Conditional accreditation is granted to individuals by accreditation agencies such as the NSW Educational Standards Authority (NESA) prior to completion of an accredited initial teacher education program such as a Bachelor of Education. That is, they are not yet degree-qualified teachers. In the early childhood context, the highest qualification they hold is a Diploma in Early Childhood Education or equivalent.

9. Currently, early childhood teachers are required to have completed their degree to be classified against clause 14 – Classifications and the table at clause 17.1 of the Award. Inclusion by ABLA and the IEU of conditional accreditation in their proposed consent position, therefore, extends the range of early childhood employees potentially covered by the Award. Diploma-qualified individuals who have not yet completed their early childhood degree but who hold conditional accreditation could be covered by the Award, rather than the *Children's Services Award 2010* as is currently the case. Rather than seeking to extend the coverage of the Award, as claimed by ABLA, CCSA is seeking to limit any such extension in the early childhood setting.

10. With its present wording, the proposed consent position risks disputation in small to medium early childhood settings, as employees with diploma-level qualifications undertaking degree studies achieve conditional accreditation and expect automatic transfer from the coverage of the *Children's Services Award 2010* to the *Educational Services (Teachers) Award 2020* based on that accreditation.

11. Relevant to this issue, CCSA notes that the *Goodstart Early Learning Enterprise Agreement 2021* (AG2021/5487) was approved by the Commission on 5 August 2021. The Enterprise Agreement covers Australia's largest early childhood provider. Both the IEU and AEU are covered by the Agreement. The Agreement includes a classification of **student Teacher** meaning an educator taken to be an early childhood Teacher under regulation 242 of the National Law as enrolled in an approved early childhood teaching qualification and making satisfactory progress towards completing the course. Student Teachers shall be paid on the first paypoint of the Teachers scale while they are taken to be a Teacher in accordance with regulation 242 of the National Law. Where an employee no longer meets the requirements of the relevant regulation and ceases to be recognised, they shall revert to the relevant pay point of the educators or senior educators pay scale [i.e. as a children's services employee]. Where an Employee completes their [degree] qualification, they shall move to the relevant graduate rate of the Teachers scales [they would then hold provisional, not conditional, accreditation]. This arrangement replicates the limitation that CCSA seeks to have placed on the IEU / ABLA proposed consent position.

² ABLA Submission of 30 July 2020, para 28

12. If a variation of the IEU's position is accepted by the other parties, that CCSA's amendment is unnecessary because being employed as an early childhood teacher is the same as being taken to be a teacher for the purposes of the National Regulations, CCSA would not press the inclusion of its proposed amendment to the definition of teacher in the IEU / ABLA proposed consent position. CCSA would continue to support the inclusion of conditional accreditation in the criteria for Level 1 classification at clause 14.2, notwithstanding that it extends the range of individuals to be covered by the Award but in a limited manner. The extension would, in fact, be an appropriate response to employees being counted as teachers despite not yet holding the formal degree qualification.

13. In the absence of either such an agreement between the parties and the Commission, or the inclusion of an amended definition of teacher, the proposed consent position leaves open the risk of too wide an application to any individual with early childhood teacher conditional accreditation, given the similarities in employment duties of degree and diploma-qualified early childhood educators. In that case, CCSA submits that ABLA's own objections to the inclusion of diploma-qualified educators, detailed at paras 30 and 32 – 34 of their submission of 30 July 2021, would apply to their proposed consent position, resulting in a removal of conditional accreditation from the criteria for Level 1 classifications for early childhood teachers.

14. Absent any of:

(a) an explicit definition,

(b) an agreement between the parties and the Commission as to what constitutes employment as an early childhood teacher, or

(c) removal of conditional accreditation from Level 1

the only remaining option would be to accept that the Level 1 classification will cover all employees who hold conditional accreditation as an early childhood teacher.

15. Other than this one issue, CCSA reiterates its support for the proposed consent position of the IEU and ABLA, acting on behalf of ACA and ABI.