

Circular No. 216/2020

31 October 2020

Children's Services Award 2010 & Educational Services (Teachers) Award 2020— 4 Yearly Review of Modern Awards—Update

On 29 June 2020, members were advised in AFEI Circular [128/2020](#) that, on 10 June 2020, the Fair Work Commission (**the Commission**) issued a decision concerning the outcome of claims for variation to the *Children's Services Award 2010 (Children's Services Award)* and the *Educational Services (Teachers) Award 2020 (Teacher's Award)*. The Commission's provisional views were set out in that circular.

Since that time, there have been further Commission proceedings, and submissions filed, regarding the determinations that give effect to the Commission's provisional views. Further decisions and determinations have since been issued by the Commission on 29 September 2020, 19 October 2020 and 28 October 2020. For ease, we attach a copy of the determinations for the Children's Services Award and the Teacher's Award.

- Children's Services Award determination: [PR724049](#)
- Teacher's Award determinations: [PR723627](#); [PR728365](#)

Details of the changes to each of these awards are set out below.

What are the changes to the Children's Services Award?

Communicating ad-hoc agreed changes to an employee's rostered hours: Clauses 10.4(d) and 21.7(b) are varied to permit agreements to be made via electronic means of communication such as text message or email.

Rostering provisions: In a further Commission decision of 29 September 2020, the Commission proposed to re-draft in plain language clauses 10.4(d)(iii) and 21.7(b)(ii), provisions which include exceptions for the requirement to provide 7 days' notice for a change in roster. The Commission's initial draft determinations, however, would have resulted in the automatic payment of overtime, when this is not currently the case. This matter was the subject of further submissions and a hearing during which AFEI opposed such an outcome. Ultimately the Commission decided to cross reference clause 23.2(b) (existing clause in the award which applies where an employee is required to remain at work after normal finishing time due to an emergency) to the circumstances envisaged in clauses 10.4(d)(iii) and 21.7(b)(ii). This is now reflected in the final variation determination. The rostering provisions have also been updated so that the definition of an 'emergency' include: fire at the education and care services premises and emergency government direction.

Educational Leaders: non-contact time: Clause 21.5 is varied to provide that an *Educational Leader* to have a minimum of two hours non-contact time per week. The clause also includes a note to clarify:

- that an *Educational Leader* is as defined in Regulation 118 of the *Education and Care Services National Regulations 2011*;
- the entitlement to non-contact time is cumulative; and
- an *Educational Leader* who also has programming responsibilities for an individual child or group of children will be entitled to a minimum of four hours non-contact time per week.

Clothing Allowance: Clause 15.2(c) shall be varied to include hats and sunscreen lotion.

Award coverage: Despite the Commission's provisional view that the relevant part of the Teacher's Award be transferred to the Children's Services Award due to administrative issues for early childhood sector employers arising from multiple award coverage, it decided that no variation would be made to coverage in the Children's Services Award on the basis that the parties at the hearing did not support the provisional view.

What are the changes to the Teacher's Award?

Casual employee minimum engagements: Clause 17.5(c) of the Teacher's Award concerning casual employee minimum engagement rates is amended. The amendments replace the quarter day rates in clause 17.5(b) with the following minimum engagement payments:

- o where the casual employee in a children's service or early childhood education service (the employee) is required to work for up to 2 hours, 2 hours;
- o where the employee is required to work for more than 2 hours and up to 4 hours, 4 hours;
- o where the employee is required to work for more than 4 hours and up to a full day, the full day rate, based on their appropriate hourly rate.

Two new tables are also inserted into Schedule B (B.1.3 and B.1.4) setting out the minimum payments for 2 hours, 4 hours, and overtime rates according to the employee's classification level.

When do the changes commence?

The changes take effect from the first full pay period commencing on or after **1 November 2020**.

What if I want to know more?

If you have any questions please contact the AFEI Hotline on 02 9264 2000 and one of our advisers can assist you.