Inquiry into Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024 [Provisions]

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"The announcement about the Australian Government finally acknowledging the need to fund a pay increase for early childhood educators and teachers is incredible.

A decent increase is definitely welcome and needed to be able to keep up with cost of living, especially living in Sydney.

Our hard work and dedication is finally being recognised as being underpaid and we can't wait to see how this will be rolled out."

Amy Martin
Long day care teacher and IEU member
22 years' experience working in early childhood education

The Independent Education Union of Australia (IEUA) thanks the Senate Education and Employment Legislation Committee for the opportunity to contribute to its Inquiry into the *Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024*.

The IEUA is a federally registered union representing our state and territory IEU branches, who in turn represent university and TAFE educated teachers and educators employed in early childhood education and care (ECEC) services. Our members work in kindergartens, preschools, long day care centres and early intervention services. We also represent staff in faith-based schools, community colleges and post-secondary services in the non-government sector. We are the only union with coverage of principals, educational leaders, teachers, school support staff and early childhood professionals.

Our union has won improvements in pay and conditions for ECEC teachers and educators in community-based centres and negotiated stand-alone agreements for members employed in individual services and larger organisations. The IEUA has approximately 74,800 members. The submission is informed by our extensive stakeholder engagement and the priorities and expertise of our membership and the wider workforce in ECEC settings.

We wish the Senate Education and Employment Legislation Committee well in its consideration of these important matters.

Introductory Comments

The IEUA and other ECEC sector unions and their tens of thousands of members have worked hard to make progress towards the object of this Bill, that is, sustainable wage increases for ECEC teachers and educators. We support the intended outcomes of the Act, each of which this submission will respond to:

- addressing current workforce shortages through improved attraction and retention of ECEC workers;
- contributing to the ongoing professionalisation of the ECEC sector;
- ensuring that ECEC remains accessible and affordable to families; and
- encouraging good faith bargaining and the making of enterprise agreements in the ECEC sector.

Achieving the objective and intended outcomes of the *Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024* depends in large part on protecting the supported bargaining stream that came into operation on 6 June 2023 and led to the *Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024*, and which was successfully legislated as part of reforms in the *Secure Jobs, Better Pay Act 2023*.

Unions campaigned long and hard for fairer bargaining laws and access to a workable model of bargaining for multi-employer agreements for low-paid employees. This is now available to workers via Fair Work Commission (FWC) authorisations within the supported bargaining stream. Prior to the 2023 industrial relations reforms, the vast majority of ECEC workers had been denied participation in collective bargaining.

It is the supported bargaining model that will deliver the 2024 government funded remuneration increase of 15% to ECEC workers. Teachers and educators in the female dominated ECEC sector were, until the 2023 industrial relations reforms, denied the possibility of wage justice due to major difficulties in accessing collective bargaining. The special stream of bargaining for multi-enterprise agreements available to low-paid workers is essential if the federal government is to achieve its objective of universal ECEC, and if it is to make further progress in closing the gender pay gap and delivering wage justice for ECEC workers.

Our union would like to register with the cross-party Committee, on behalf of our members who are teachers and educators in the ECEC sector, our serious concerns with comments made by some LNP Members of Parliament. The Committee may be aware, for example, that former LNP Senator Gerard Rennick claimed on social media on 9 August 2024 that the goal of "Institutionalised Childcare" was to "Destroy the family unit" and "Brainwash children early with the woke mind virus". While the Senator was expressing extreme views in colourful language the essential content of his post – hostility to the ECEC sector and the workplace rights of its workers - does not appear an anomaly.

Shadow Finance Minister Senator Jane Hume stated on 16 September 2024 on ABC Insiders that if the Coalition wins government in 2025 it will look at rolling-back the multi-employer bargaining process. This is the very process that wage justice for ECEC workers depends upon:

> *"Well, we'll certainly look at multi-employer bargaining, because we believe that multi-employer bargaining, going back to that old patent bargaining system of the 1970s is a regressive step that actually reduces productivity and competitiveness of our sector*."

Senator Hume confirmed that an incoming Coalition government would also seek to amend other elements of the *Secure Jobs and Better Pay* and *Closing the Loopholes* reforms, including new definitions and rights for casual workers and right to disconnect laws. Senator Hume's comments align her political party with the interests of big business in opposition to those of the majority of Australia's workers and citizens. In the event of an incoming LNP government, Australia stands to lose critical industrial relations improvements that provide a workable and successful model of bargaining for ECEC and other low-paid workers.

If the objective and intended outcomes of the *Wage Justice Bill 2024* are to be achieved, then supported bargaining laws must remain in place - regardless of the composition of the government post the 2025 election. Political parties and candidates contesting the 2025 federal election must commit to maintain supported bargaining if the *Wage Justice Bill 2024* is to reach full and meaningful implementation for the long-term benefit of the sector.

The IEUA will continue its longstanding campaign for wage justice for all ECEC workers and its engagement with all political parties and stakeholders to achieve pay equity. We joined with the United Workers Union (UWU) and the Australian Education Union (AEU) in seeking the nation's first Supported Bargaining Agreement when the new bargaining laws were introduced in June 2023. It was this union-led process that has ultimately secured the federal government's commitment to fund the 15% pay rise for long day care workers.

Unions and the federal government are to be commended for delivering this historic 15% wage rise for ECEC workers that begins to narrow the gender pay gap. However, we note that the initial joint union bargaining position sought a 25% increase. Contestants in the next federal election should commit to support additional pay rises for the ECEC workforce to ensure wage justice across a diverse and growing education sector.

The IEUA has a proud history of representing members in early childhood education. While structural impediments to ECEC bargaining are significant, our union has sought to develop agreements with hundreds of employers, mainly community-run preschools and kindergartens. The NSW/ACT Branch conducted an extensive legal application for an Equal Remuneration Order from the FWC in 2021 on behalf of ECEC teachers. Our predominantly women members have four-year university qualifications and yet are paid substantially less than men working as primary teachers and in other similarly qualified professions.

While our union has sought to utilise all options at our disposal to secure improved wages and conditions for an undervalued workforce, major legal and structural obstacles have frustrated our efforts to extend wages parity and bargaining into all segments of the ECEC sector. The supported-bargaining stream is a vital new tool available to ECEC workers to lift wages and professional recognition in all ECEC workplaces.

Recommendations for the Committee's consideration, which appear at the end of this submission, centre on the wage justice imperative to protect multi-employer bargaining. This is vital to closing the gender pay gap and delivering wage justice for the workers, overwhelmingly women, who educate and care for children and enable the fuller economic and social participation of women in the workforce.

Object 1(a): Address current workforce shortages by helping to attract and retain early childhood education and care workers

Prevailing pay and conditions in the ECEC sector must be lifted to be on par with teachers and educators in primary schools if the crisis of workforce attraction and retention is to be corrected. This vital lifting of pay and conditions can only occur if the ECEC sector can continue to access multi-employer enterprise collective bargaining.

In order to address current workforce shortages and the workforce attraction and retention crisis, our union strongly encourages the Committee to have regard to the established difficulties employees in the ECEC sector have had in accessing single enterprise bargaining.

In 2021, a Full Bench of the FWC made findings in respect of early childhood teachers and concerns around prevailing rates of pay and conditions in the sector:

> "*Nearly all schoolteachers covered by the EST award receive rates of pay and conditions of employment pursuant to collective agreements that are significantly more beneficial than those in the award, both as it currently stands and under the contemplated modified remuneration structure. The variation of the EST Award will not affect collective bargaining in this area.*
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> *In respect of early childhood teachers, there is a low incidence of collective bargaining. Particularly in the for profit sector. We do not consider this would change if the EST award is varied as proposed. Because the variation of the award will not positively "encourage collective bargaining", this must be regarded as a matter which weighs against the variation, albeit only to a marginal degree*."

Prevailing pay and conditions in the ECEC sector, and the still urgent need for more substantial improvements to pay and conditions, are demonstrably central to solving the sector's need to attract and retain teachers. The FWC acknowledged the issue. The continuing nature of the crisis should not be underestimated.

The Australian Government undertakes a 'Graduate Outcomes Survey' around 4 months post-graduation seeking data on the employment status of graduates. For 'early childhood teacher graduate employment outcomes' the figures are stark:

2017	43% of graduates were employed in early childhood settings
2018	38% of graduates were employed in early childhood settings
2019	36% of graduates were employed in early childhood settings
2020	31% of graduates were employed in early childhood settings
2021	29% of graduates were employed in early childhood settings

Across the same period, 2017-2021, in excess of 50% of early childhood teacher graduates secured employment in schools.

The Federal Government's '*Shaping Our Future, A ten-year strategy to ensure a sustainable high-quality children's education and care workforce 2022-2031'* (coordinated by ACECQA on behalf of Commonwealth and state governments) identified the dominant issue requiring urgent action as the need to improve prevailing pay and conditions. The Strategy, informed by extensive consultation and engagement with the ECEC sector, stated that the need to 'Investigate options for improving workforce pay and conditions' was the number one issue requiring urgent action with outcomes needed over 3 years (announced on September 2021).

The implementation and evaluation plan for *Shaping Our Future Strategy* was released in 2022. It's clear that all identified measures are needed to address the scale of the ECEC attraction and retention crisis.

Object 1.(b): Contribute to the ongoing professionalisation of the ECEC sector

Gender inequality is a causal factor and a reinforcing outcome of inadequate professionalisation in the overwhelmingly women-dominated ECEC workforce, that is, of low wages and labour conditions (and of education, training, and career progression).

ECEC has been specifically identified as a sector requiring attention to address low pay and challenging conditions, including in the Second Reading Speech for the *Secure Job and Better Pay, Bill 2022*. The ECEC workforce is primarily women and addressing pay and conditions is imperative for closing the gender pay gap. It is also central to the revised objectives in the Fair Work Act. We refer the Committee to the Fair Work Act, 'Object of this Act', s.3 a).

We also draw the Committee's attention to the critical nature of the ECEC sector and the role it plays in addressing gender inequality, in addressing disadvantage, facilitating the engagement of adults in employment and of course most fundamentally the care, education and development of children aged 0 to 5 years.

In its terms of reference for the Productivity Commission's inquiry into the ECEC sector the Government was clear on ECEC's critical importance:

> *"The Australian Government recognises that ECEC is an essential part of Australia's education system and is integral to Australia's economic prosperity as a powerful lever for increasing workforce participation. The Government is committed to identifying solutions that will chart the course for universal, affordable ECEC – in the great tradition of universal Medicare and universal superannuation.*
>
> *Participation in quality ECEC has important developmental, social, and educational benefits for Australian children. It can assist with positive early childhood development and provides a foundation for our children's future well-being and success*."

Further, '*Shaping Our Future, A ten-year strategy to ensure a sustainable high-quality children's education and care workforce 2022-2031'* concluded that the critical issue in the ECEC sector is 'professional recognition', which substantively addresses the need to improve pay and conditions. The Strategy also references the Victorian ECEC agreement, *Victorian Early Childhood Teachers and Educators Agreement 2020* in citing 'large scale industrial agreements' as a means of addressing the pay and conditions crisis. The VECTEA covers 383 employers in the Victorian ECEC sector, primarily in the Preschool Sector.

The less beneficial working conditions that long day care teachers are subject to, in comparison to their professional counterparts in schools, are many. Substantive differences apply to release from face to face teaching, term time weeks, hours of employment, professional development and paid parental leave entitlements.

Object 1(c): Ensure that early childhood education and care remains accessible and affordable to families

Ensuring that childcare becomes and remains accessible and affordable to all families requires addressing the ACCC's 2023 finding that the market alone has not met community expectations nor delivered on government objectives for ECEC services and policy. It requires a reassessment of the profit driven ECEC sector. The Australian community does not tolerate this scale of for-profit providers in other areas of education.

The *Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024 [Provisions]* will prevent childcare operators from increasing their fees above a set amount during the period of a grant made out of the ECEC wage justice account (as a condition of funding their grant application). This fee restriction, and the 4.4% cap that will apply until next August, are necessary to make progress towards equitable, accessible ECEC, as Federal Education Minister Jason Clare outlined in his second reading speech to the Bill.

The IEUA also welcomes Federal Education Minister Jason Clare's assurance that the government will require providers to have a registered industrial agreement, to ensure the 15% pay increase "gets in the pockets of early educators", and that the FWC would work with any providers who "need to set up between now and December."

However, system wide change is still needed if universal ECEC is to be delivered. The marketisation and profit driven early childhood sectors have created the conditions for the pursuit by some commercial operators of profit at the expense of reasonable wages and conditions.[1] Insufficiently regulated privatisation on this scale is not accepted in other areas of education. The listing of schools on the stock exchange, for example, would rightly be rejected by the community but is now the case for the education and care of our youngest children.

The Federal Government has a responsibility to ensure that commercial interests do not over-ride the economic dignity of teachers and educators, nor impede its progress on building an equitable, high quality, universal ECEC system.

Providing accessible ECEC must not come at the cost of denying ECEC workers fair pay and conditions. Most commercial operators have continued to pay workers on the minimum award rates, and to charge parents above the government capped rates, while delivering substantial profits for CEOs and shareholders. Average profit margins in the industry were 5.5 per cent in 2023, which is generally regarded as middle range financial performance on the stock exchange. However, because there is variability across the sector, higher profits were gained by some large commercial ECEC operators.[2]

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[1] Woodrow, C., & Press, F, The privatisation/marketisation of ECEC debate: social versus neoliberal models. In L. Miller, C. Cameron, C. Dalli, & N. Barbour (Eds.), *The Sage Handbook of Early Childhood Policy* (pp. 537-550), 2018: https://ebookcentral.proquest.com/lib/uwsau/reader.action.

[2] ACCC, September 2023 Interim Report for the Inquiry into Childcare Services: https://www.accc.gov.au/inquiries-and-consultations/childcare-inquiry-2023/september-2023-interim-report.

The Australian Childcare Alliance representing centre operators presents the view that increasing costs must be covered by a combination of increased government Child Care Subsidies and increased parent fees, or that otherwise operators will cease providing childcare. The number of centres charging above a government cap leapt from 10 to 50 per cent in five years.[3] Australia already pays the highest government subsidy in the world relative to similar economies, yet the cost of childcare remains the highest in the OECD.[4]

One way for the Federal Government to improve the accessibility and affordability of ECEC is to consider more measures to better support not for profits (NFP) providers. In contrast to some commercial operators, many NFPs use revenue (including government subsidies and parent fees) to pay for higher wages and improved conditions for teachers and educators. NFPs are paying employees up to 30% above award rates. Consequently, NFPs have a more stable, qualified workforce delivering high quality ECEC.

NFPs are committed to caring for children from disadvantaged backgrounds without the need to balance profit driven motivations or their share market value. NFPs are committed to equitable access for all children. Government support of this sector is vital for children from First Nations, regional and remote areas, lower educational attainment, and families with less capacity to pay high childcare rates.

Object 1(d): Encourage good faith bargaining and the making of enterprise agreements in the early childhood education and care sector.

Our union strongly advocates for the continued role and purpose of the supported bargaining stream that has led to the Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024.

The policy intent of the *Secure Jobs, Better Pay Bill* was addressed in the Second Reading Speech and Revised Explanatory Memorandum. The Second Reading , relevantly extracted:

In overview:

> "*The urgency of getting wages moving is most acute in feminised industries. The gender pay gap still sits at an unacceptable 14.1 per cent.... To promote job security, to close the gender pay, to get wages moving – we need to change the law. In the design of these reforms, we have deliberately focused on the needs of lower-paid and feminised workforces*."

On gender equity:

> "*Some of the most undervalued workers in our country are workers in female dominated industries. Many are the very workers who put their health and safety on the line to guide us through the shutdown period of the pandemic. Workers in healthcare, aged care, disability support, early childhood education and care, community sector and other care sectors*.

[3] ACCC, September 2023 Interim Report for the Inquiry into Childcare Services: https://www.accc.gov.au/inquiries-and-consultations/childcare-inquiry-2023/september-2023-interim-report.
[4] ACCC, September 2023 Interim Report for the Inquiry into Childcare Services: https://www.accc.gov.au/inquiries-and-consultations/childcare-inquiry-2023/september-2023-interim-report.

Work in these industries is undervalued because of unfair and discriminatory assumptions about the value of the work and the skill required to do the job. *This undervaluation is one of the biggest causes of the gender pay gap, and our reforms take a number of key steps to address it*."

On supported bargaining:

"*The bill will rename and remove barriers to access the existing low paid bargaining stream with the intention of closing the gender pay gap and improving wages and conditions in sectors such as community services, cleaning and early childhood education and care which have not been able to successfully bargain at the enterprise level*.

Unnecessary hurdles to entry in the current low paid stream will be replaced by a broad discretion for the FWC to consider the prevailing rates of pay in the industry, including whether the workers in the industry or sector are low paid.

The Commission must also be satisfied that employers who will be covered by a supported bargaining authorisation have clearly identifiable common interests, for example whether or not they are substantially funded, directly or indirectly by the Commonwealth, a state or a territory."

The Revised Explanatory Memorandum states:

"*Remove unnecessary limitations to access to the low-paid bargaining stream (and rename it the supported bargaining stream) and the single-interest employer authorisation stream; and provide enhanced access to FWC support for employees and their employers who require assistance to bargain … and Improving job security and gender equality by including both concepts in the objects of the FW Act, limiting the use of fixed term contracts, introducing a statutory equal remuneration principle and prohibiting pay secrecy clauses*.

And on the supported bargaining provisions:

"*Part 20 would reform the low-paid bargaining provisions in Division 9 of Part 2-4 of the FW Act and create the supported bargaining stream. The proposed supported bargaining stream is intended to assist those employees and employers who may have difficulty bargaining at the single-enterprise level. For example, those in low paid industries such as aged care, disability care, and early childhood education and care who may lack the necessary skills, resources and power to bargain effectively. The supported bargaining stream will also assist employees and employers who may face barriers to bargaining, such as employees with a disability and First Nations employees*."

The 2023 reforms to workplace laws enable unions to extend our record of collective bargaining success to areas of the workforce left behind under the previous system. Further supported bargaining applications are already underway by the IEU to address the significant pay gaps in other areas.

In NSW, on the 23 September 2024, less than a fortnight before this submission was lodged, the FWC approved an IEU NSW/ACT branch application for an authorisation to bargain for pay rises and improved conditions for teachers and educators in 103 preschools across NSW.

The IEU application to the FWC was only the third of its kind to be granted under the supported bargaining stream. As outlined previously, the process is designed to assist employers and workers, who haven't been able to bargain successfully at the individual enterprise level, to now bargain together as a group. This option is crucial to ECEC and other sectors with high proportions of female workers in disparate and often small workplaces.

The IEU's bargaining process in 103 preschools will enable our union, the NSW government (the primary funding provider for preschools) and employers to bargain together to lift pay and conditions. The preschools, which are run by voluntary parent committees of mums and dads, will be represented by Community Early Learning Australia (CELA).

The IEU's application to the FWC calls for a 25% increase for beginning teachers and more for experienced preschool teachers. Currently in NSW:

- Beginning preschool teachers: earn just $70,045 a year under the applicable modern award, while their colleagues in schools are paid $85,000 a year.
- Experienced preschool teachers: under the modern award, the top rate for an experienced teacher is $90,134 per year. In comparison, a teacher with the same level of experience working in a NSW government school is paid $122,100 a year.

In the New South Wales public school system, a 'proficient level 2' teacher is currently paid $91,413 and in NSW Catholic Schools the comparable 'band 2' is paid $91,423. Under the modern award for teachers in ECEC, the comparable 'proficient level 2' rate is $76,74513.

This is a substantial gap despite the recent squeezing of relativities following the FWC's last two Annual Wage Reviews that addressed the cost-of-living crisis. However, the differential is likely to further increase with the NSW Government increasing pay rates by 4% for public servants generally from 1 July 2023, leading to an expectation that NSW teacher rates will also increase by a minimum of 4%.

IEUA Recommendations

The IEUA urges the Senate Education and Employment Legislation Committee to include the following recommendations in its report to government:

1. That all parties and candidates contesting the next federal election make an explicit commitment to not wind back multi-employer bargaining. This commitment is vital to closing the gender pay gap, to delivering universal ECEC, and to delivering wage justice for ECEC workers.

   To achieve the objective and intended outcomes of the *Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024 [Provisions]* the stream of bargaining for multi-employer agreements for low-paid employees, the supported-bargaining process, must remain in place, regardless of the composition of the Federal Government after the 2025 election.

2. That provision be considered for additional wage support by the Federal Government in the ECEC sector. More than 216,000 workers are employed in this growing and diverse education sector. The initial position sought by the joint union bargaining application identified the need for a increase of 25% to ensure the long-term viability of the sector and the attraction and retention of qualified staff.

3. That the Federal Government improve the accessibility, affordability and quality of the ECEC system by considering how they can better direct targeted funding and support to not-for-profit providers as a priority. Not-for-profit providers of early childhood education have an outstanding record of providing inclusive and high-quality services, while also seeking to work collaboratively with staff and their unions on workforce issues and remuneration.