

Ai GROUP SUBMISSION

Senate Education and
Employment Committee

**Inquiry into the Wage Justice for
Early Childhood Education and
Care Workers (Special Account)
Bill 2024**

4 OCTOBER 2024



- 1.1 The Australian Industry Group (**Ai Group**) welcomes the opportunity to make a submission to the Senate Standing Committee on Education and Employment during its inquiry into the Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024 (**Bill**). Ai Group is a peak national employer organisation, and has been acting on behalf of businesses across Australia for more than 150 years. Our membership, combined with that of associations affiliated with Ai Group, includes a range of early childhood education and care (**ECEC**) providers, including in the Outside School Hours Care sector.
- 1.2 The Bill establishes a scheme of grants to support remuneration increases in the ECEC sector, consistent with measures announced by the Government in August 2024. It is supplemented by the associated Early Childhood Education and Care Worker Retention Payment Grant Opportunity Guidelines (**Guidelines**), which were released on 1 October 2024. Given that the Guidelines were published so recently, we have had limited opportunity to assess them in the context of the Bill.
- 1.3 Section 3 sets out the objects of the Bill. It relevantly provides:

3 Objects

- (1) The object of this Act is to support remuneration increases for workers in the early childhood education and care sector, a sector that provides an essential service, in order to:

...

- (d) encourage good faith bargaining and the making of enterprise agreements in the early childhood education and care sector.

...

- 1.4 Sections 10 and 11 establish a process for grants to be made to providers, subject to certain terms and conditions set out in a written agreement between the Commonwealth and the provider. Section 11(3) provides that the terms and conditions '*must*', relevantly:
 - (a) include provisions to permit amounts paid to the recipient under the grant to be used in relation to the remuneration of workers; and
 - (b) include provisions to limit any increase in fees that may be charged by the recipient for providing early childhood education and care.
- 1.5 No further clarity on the scope of these terms and conditions is provided in the Bill, but is contained in the Guidelines as well as the Explanatory Memorandum to the Bill (**EM**).
- 1.6 Relevantly, both the Guidelines and the EM refer to a provider being required to ensure a '*workplace instrument*' is in place in order to be eligible to receive the funding. '*Workplace instrument*' is broadly defined in the *Fair Work Act 2009* (Cth) (**FW Act**) as an instrument made under, or recognised by, a workplace law (including the FW Act), and concerns the

relationships between employers and employees.¹ A workplace instrument is therefore a very broad category of instrument, which would appear to encompass a range of agreements, including enterprise agreements as well as agreements entered into under modern awards (including individual flexibility arrangements (**IFAs**)). The EM notes that one way providers can meet the criterion of having a workplace instrument in place, is by entering into a single-enterprise agreement or multi-enterprise agreement following a good faith bargaining process.²

- 1.7 However, the text of the Bill itself, in the object clause, emphasises only enterprise bargaining. There is no reference to the broader category of ‘*workplace instrument*’ in the Bill at all. This is despite the repeated references in the EM and the Guidelines, as well as our engagement with government to date, which has made clear that workplace instruments, including IFAs, would be permitted.
- 1.8 We are concerned that the approach under the Bill and the Guidelines may not provide sufficient flexibility in this regard (or may not be recognised by industry as providing sufficient flexibility). Ultimately this could result in a delay in wage increases being passed on to workers.
- 1.9 Moreover, it must also be borne in mind that proposing to commence the grant program in December 2024 (only two months away) only affords industry a very short window of time to implement arrangements to qualify for the relevant grant scheme. In this context, the administrative and regulatory burden involved in making enterprise agreements as a precondition to receiving this funding would be unworkable for many and, on any assessment, unreasonable. This would particularly be the case for many small providers across the ECEC sector. Flexibility is essential to ensure that all providers, regardless of their size and extent of back-office resources, can access the funding.
- 1.10 We understand that the Government’s primary objective in the Bill is ensuring wage increases are passed on to workers. To facilitate this, the Bill should expressly clarify that taking reasonable steps to implement an appropriate workplace instrument (including an IFA) will be sufficient to qualify for the grant. This would ensure consistency with the EM, the Guidelines and what we understand the Government’s position to be.
- 1.11 Ai Group also proposes that further flexibility should be provided by permitting the wage increases to be passed on through a written contract, a copy of which is maintained by the employer and provided to the worker.
- 1.12 Given the potential complexities with using IFAs as opposed to a contract, including that IFAs can be unilaterally terminated, and are not able to be offered as a condition of employment, utilising contracts would be a reasonable and practicable alternative that overcomes some of these difficulties. A contract would also be readily enforceable in its own right, particularly in

¹ *Fair Work Act 2009* (Cth) s.12 definition of “workplace instrument”

² Explanatory Memorandum to the Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024, page 10.

light of the increased small claims jurisdiction in the FW Act. This allows employees to initiate a small claims proceeding in relation to safety net contractual entitlements to the value of \$100,000.³

- 1.13 In advancing this submission we accept that the overarching objective of the scheme should be facilitating payment of the grants, and we support this occurring as flexibly as possible. We also acknowledge the Government's flexibility to date, and its willingness to listen to the concerns of industry, including regarding issues of timing. We note our appreciation of this.

³ FW Act s.548.



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