

Wage Justice for Early Childhood Education and Care Workers Bill 2024 Inquiry



Children's Services

Submission by KU Children's Services
October 2024

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ACKNOWLEDGEMENT OF COUNTRY

KU respectfully acknowledges the Traditional Owners of the Countries of Aboriginal and Torres Strait Islander Peoples and communities on which KU services and programs are delivered. The contribution by Aboriginal and Torres Strait Islander Peoples to the education of young children existed long before our story began.

KU STATEMENT OF COMMITMENT TO ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

KU has an organisational responsibility to the revitalisation and advancement of the cultures, histories, and beliefs of Aboriginal and Torres Strait Islander Peoples of Australia as determined by them. Guided by our values and ethical practices, we commit to creating locally led programs and opportunities shaped and determined by Aboriginal and Torres Strait Islander children and families, employees, communities, and organisations.

KU STATEMENT OF COMMITMENT TO CHILD SAFETY AND WELLBEING

As a child safe organisation, we continue our longstanding and unwavering commitment to the safety and wellbeing of children, with zero tolerance of child abuse.

ABOUT KU CHILDREN'S SERVICES

KU is one of the largest not for profit and for purpose providers of early education. Established in 1895 as the Kindergarten Union of NSW, was the first provider of early childhood education (ECE) in Australia and is the nation's most experienced provider.

KU has a long-demonstrated history of providing and supporting high-quality, inclusive early childhood education programs, and continues to lead the way with over 120 services and programs in NSW, VIC, and the ACT, including preschool, kindergarten, long day care, family and early intervention programs and allied health services. In addition, KU is contracted by the Australian Government to provide support for eligible ECE services for the inclusion of children with additional needs. This includes the Inclusion Development Fund (IDF) and Inclusion Agencies in NSW/ACT and QLD and contracted in VIC.

KU's vision is to lead and inspire young children's learning for life. Our achievements in the NQS Quality Ratings to date, far exceed the national average, with all assessed services rated as Meeting or Exceeding the National Quality Standard. Such is KU's experience, expertise, and reputation, that we are often requested to provide specialist advice to other providers, peak bodies, the corporate sector, and all levels of Government.

INTRODUCTION

KU Children's Services (KU) appreciates the opportunity to make a submission to the Senate Education and Employment Legislation Committee's inquiry into the *Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024*.

KU welcomes the announcement of a 15 percent pay rise over two years through *the ECEC Worker Retention Payment Program* (the Program) and government investment of \$3.6 billion over the period of the grant¹. While this falls short of union calls for a 25 percent wage increase, it recognises long-term advocacy for government support of wage increases and is a significant step towards appropriately remunerating the early childhood education and care (ECEC) workforce, especially early childhood teachers and educators for the valuable role that they play in supporting positive outcomes for young children and their families. Accessible ECEC needs a vibrant workforce pipeline and retention strategy to respond to the growing demand and flexible, expanded service responses.

We offer comments for your consideration on the provisions of the Bill and the Explanatory Memorandum.

PROVISIONS OF THE BILL

Part 1 – Preliminary

Clause 3 sets out the objects of the Act. These are well-defined and we applaud the Australian Government for implementing its obligations under the Convention on the Rights of the Child by supporting accessible and affordable ECEC through remuneration increases and addressing workforce shortages. The Program which supports the Bill will improve remuneration to attract and retain skilled and qualified workers and support the availability of ECEC for families.

Part 2 – Wage Justice for Early Childhood Education and Care Workers Special Account

Clause 8 establishes the Wage Justice for Early Childhood Education and Care Workers Special Account. KU supports the provision of a special account for the purpose of the Public Governance, Performance and Accountability Act 2013 to fund remuneration increases. While grants may be funded through existing legislative powers, a special account can provide transparency.

Clause 9 sets out the purpose of the special account to make grants that provide funding for remuneration increases that facilitate access to quality ECEC. This permits payments for remuneration and limits fee increases charged by the recipient, but the Bill does not credit any amounts to the special account, nor does it set out the required wage increases or specific conditions on providers who receive grants, such as fee increase caps. The Explanatory Memorandum notes that the special account will be credited through annual appropriations.

Part 3 – Grants

Clause 10 sets out the legislative authority that will apply to grants made from the special account to approved providers for the remuneration of workers. These grants may be made by way of reimbursement or partial reimbursement of costs or expenses, including associated on-costs such as payroll tax, superannuation and employee entitlements.

The Explanatory Memorandum states that not all grants will be met and a review of decisions to refuse a grant will not be available. Providers may be discouraged by grant uncertainty or even

disadvantaged by a grant refusal after having met the criterion, established a workplace instrument, and limited fee increases.

Clause 11 sets out the terms for a grant to be applied for, complying with the written agreement, and providing for circumstances where the recipient must repay amounts to the Commonwealth. Auditing and acquittal processes will need to be clearly defined.

Part 4 – Miscellaneous

Clause 15 outlines delegation by the Secretary. We note that the Senate Scrutiny of Bills Committee has sought advice on why the guidelines have not been set out in a disallowable legislative instrument that has parliamentary oversight and accountability, and whether the Bill can be amended to include additional guidance on the exercise of powers². KU acknowledges that delegation of functions or powers to officials with appropriate expertise may be needed, with over 10,000 grant agreements expected under the Program.

Clause 17 sets out when the Act will cease to have effect. KU supports the sunset provision with time for conclusion of administration and associated acquittal processes.

Clause 18 describes the making of rules on prescribed matters. KU accepts that Minister's rules are required to carry out the Bill and once tabled will have parliamentary scrutiny. There are no requirements set out currently in the Minister's Rules for comment.

EXPLANATORY MEMORANDUM

Interim Payment

The Program is an interim payment while the Fair Work Commission finalises its gender undervaluation review of priority awards (including the *Children's Services Award 2010*) and the Australian Government considers the Australian Competition and Consumer Commission (ACCC) and Productivity Commission (PC) reports. These processes may see increased pay and better conditions that relieve workforce pressures, but they will increase the cost of providing services through higher wages. The Australian Government states a commitment to the cost of fair wages not being passed on to families through higher fees by longer-term funding arrangements.

Separate processes under the Fair Work Act 2009 and multi-employer bargaining may lead to an increase in wages in the sector, however there is still limited information available about Multi-Employer Agreements for employers outside the bargaining process and noting that two previous equal remuneration order applications to the Fair Work Commission were unsuccessful. It is essential that increases be established in awards as minimum wages and conditions. This will contribute to more equal footing where some providers only pay minimum wage rates.

The Productivity Commission's inquiry report, *A Path to Universal Early Childhood Education and Care*, found that weekly earnings for educators were just above the lowest decile when ranked with other occupations³. *The Early Childhood Education and Care Workforce Capacity Study* found that when comparing earnings of educators to other occupations, educators had lower average weekly earnings than store persons and general clerks, despite requiring much higher levels of qualification⁴. 70% of educators and 29% of teachers were paid award rates only, and rates between Certificate III and Diploma qualified roles are insufficient to motivate further study.

Teachers working in ECEC settings and primary schools often hold equivalent degrees, but median wages for teachers working in ECEC are about 20% lower than those working in schools, and often with fewer leave days and greater workplace pressures⁵. The expansion of preschool programs in many jurisdictions is set to increase demand for teachers in ECEC settings. Awards need to enable similar remuneration for similar work, regardless of the setting in which teachers

and educators are employed. Changes to pay and conditions because of Fair Work Commission's processes will likely contribute towards addressing these structural disparities.

Concerns

A shortcoming of the grant opportunity is that it is not available to ECEC employees in state and territory funded preschool and kindergarten services which creates further pay inequity in the sector that could see an exodus from one part of ECEC to another, as we have seen with teachers in prior to school and school settings. This is an ethical dilemma for KU as we employ staff in both CCS approved and state funded service.

Grant Opportunity Guidelines

Grant Opportunity Guidelines are due for publication but have not been released at the time of this response. At a minimum, there should be clear information for potential applicants, outlining eligibility criterion, and the application and assessment process. This includes identifying who may apply, which roles are eligible, which oncosts are included, and what supporting documentation will be required. There needs clarity on aspects such as:

- Will the 10% be applied at each pay level or based on the relativities?
- Is the 10 and 15% increase in addition to national wage increases already passed down?
- Will casual, agency and inclusion support staff be included under the Program?
- What information will be needed to demonstrate wage spend?
- Will funding amounts apply to accrued liabilities that are not passed on to employees?

While the Bill does not define eligible employees, the questions and answers provided by the Australian Department of Education clarifies eligible ECEC workers as those in eligible CCS-approved centre based day care or Outside School Hours Care and covered by either the *Children's Services Award 2010*, the *Educational Services (Teachers) Award 2020*, a state-based ECEC award, or those undertaking duties included in the stated awards⁶. This would cover teachers, educators and employees performing tasks such as cooking, administration, cleaning and maintenance. KU anticipates this to be clarified in the Grant Opportunity Guidelines.

Workplace Instrument

It is a condition of the Program to have a compliant workplace agreement in place to enforce rights and entitlements. The process and timeframe for establishing this may present hurdles for some providers to respond to applications opening in October 2024.

Examples of workplace instruments have been indicated, such as a single-enterprise agreement, multi-enterprise agreement or Individual Flexibility Arrangement⁷. This is not an exhaustive list and guidance is needed about workplace instruments generally and where an Enterprise Agreement is already in place that is over the award. For example, will it suffice for a single-issue enterprise agreement to address the specifics of the grant, with compliant wage rates and stating that if qualifying for the grant that it will be passed on to eligible employees for the grant period?

Concern

While providers will need to deliver the proposed wage increases through enterprise agreements or other instruments, the government's funding commitment is only for a 2-year period. The Government has indicated that longer-term funding arrangements will be determined as part of its response to the ACCC and Productivity Commission reports. If wage increases involve commitments beyond 2 years, providers will be agreeing to wage increases without certainty as to how they will be funded in the future, even with the Government's assertion that it is not the intention to pass on wage increases to employers or families.

Wage Increases

Information provided by the Australian Department of Education confirms that the wage increase is for all eligible ECEC workers, calculated on the award rate, even for those already paid above award wages. It also indicates that funding will contribute towards associated on-costs such as superannuation and leave liabilities, but funding must be first expended on wages⁸. More information is needed regarding wage rates and eligible on-costs.

KU's commitment to quality sees our surplus funds reinvested into higher qualified and paid educators, and we already pay above the award. The Australian Competition and Consumer Commission (ACCC) Childcare Inquiry⁹ confirms that not-for-profit (NFP) providers are more likely to pay higher wages, be affordable, and have higher quality, due to their social equity purpose. The ACCC *Childcare Inquiry Final Report* found that 59% of centre based day care educators employed by large providers are paid between 7% and 21% above the *Children's Services Award 2010*, and early childhood teachers paid significantly above the *Educational Services (Teachers) Award 2020*¹⁰.

Limiting Fee Growth

The grant is conditional on limiting fee growth by a maximum of 4.4% in the first year, and an indexation amount to be published by the Australian Bureau of Statistics in subsequent periods¹¹. This may not be enough to cover rising overheads, including leases, insurances and wage increases already passed down.

KU recognises the importance of keeping fees low for families and strongly supports the full pass on of funding to eligible employees through wages. However, when the grant ends, this well-deserved wage increase will impact the cost of providing services and could result in higher fees, especially as these will have been held, potentially to a level that may not support non-wage related operational increases. There could be an undesirable corresponding fee rise, post the grant period unless new funding mechanisms are available. This could result in higher out-of-pocket contributions for families.

Concerns

Some providers have increased their fees pre-emptively. KU operates on a calendar fiscal year and, unlike some providers who increase their fees in July each year, have not increased fees since January 2024. KU holds fees as reasonably as possible but if opting in to the payment, will not be able to raise fees beyond the specified percentage until August 2025. KU is already committed to paying 4% increase in salaries in 2025 without accounting for other rising costs.

The condition to cap fee increases may limit grant take-up by some providers already paying above award-wages. Exemptions may be given in exceptional circumstances for providers that can demonstrate fee growth for financial viability and is to be outlined in the grant guidelines¹².

There remains a tension between providing affordable ECEC and pursuing wage justice for the workforce. The limitation of a grants program is that it can end without any guarantees at the conclusion. Like the Early Years Quality Fund that was established in 2013, a special account was set up for application, with a range of conditions and limits for fee increases but was revoked after a change in Government¹³. Bipartisan support is needed to commit to the grants program and longer-term funding arrangements in response to the ACCC and PC reports.

Grant Application

Concern

While it may be administratively easier to pay grants in arrears for expenses already incurred, passing on retrospective funding can create cashflow issues where providers do not have sufficient cash reserves. To avoid administrative burden, the application and acquittal process

should be as simplified as possible, and we suggest that there be operational and technical support for the purpose of grant applications.

CONCLUSION

KU contends that the ECEC workforce has been historically undervalued because of assumptions based on gender and a lack of community awareness and value for the training and sophisticated skills needed to satisfy requirements of the National Quality Framework and the Early Years Learning Framework. Teachers and educators must appropriately differentiate the educational program for children's learning outcomes, ensure children's health, safety and wellbeing, and build collaborative relationships with families and communities, and support children and families with diverse and complex needs. Well trained, skilled, and knowledgeable teachers and educators lift educational outcomes for children. They must receive better pay and conditions that reflect their qualifications and responsibilities.

ECEC is an integral part of the education continuum, laying essential groundwork for building learning dispositions and establishing foundations for children to succeed in school and throughout their lives. The sector needs to attract and retain a skilled workforce. Staffing waivers have risen to worryingly high levels across the country and KU has long advocated for the ECEC workforce to be professionally valued and remunerated.

KU successfully negotiates enterprise-level agreements that achieve wages and conditions above awards and other provider agreements. We continue to advocate for pay parity for teachers working in early childhood education. Without a funding commitment from Government, providers will struggle to pay their employees what they deserve and pay teachers equally to their peers working in schools without passing on fee increases to families. The ECEC Worker Retention Payment Program aims to address this but needs to go further to include those working in non-CCS approved services by substantially increasing the award for all educators and subsidy support.

We acknowledge the aspirations of this Bill, to build a better and fairer early childhood education system, yet there remains uncertainty around government funding for the wage increases beyond the 2-year period of the worker retention payment.

We call on the Australian Government to work closely with sector stakeholders to achieve an enduring funding system that fosters the stable and professionally recognised workforce needed to deliver its ambitious universal access reforms. Investment in long term growth, affordability, and viability of the ECEC sector must remain an explicit objective of the Australian Government.

Overall, KU supports the intent of the Program but is concerned about:

- The Program is not inclusive of all service types and potentially divides the sector
- Pay increases are only supported for two years
- The fee increase cap is not reflective of increasing costs
- Considerable administrative burden on providers to apply and acquit the grant

Thank you for the opportunity to make comment. We welcome further discussion on subjects raised in this submission. If you require more information, please contact Christine Legg, CEO

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- ¹ [Jason Clare MP \(2024\). Speech: Wage Justice for Early Childhood Education and Care Workers \(Special Account\) Bill 2024](#)
 - ² [Parliament of Australia \(2024\). Senate Committee Scrutiny Digest 12/24](#)
 - ³ [Productivity Commission \(2023\). A Path to Universal Early Childhood Education and Care Inquiry Report](#)
 - ⁴ [Jobs and Skills Australia \(2024\). The Future of the Early Childhood Education Profession](#)
 - ⁵ [Productivity Commission \(2023\). A Path to Universal Early Childhood Education and Care Inquiry Report](#)
 - ⁶ [Australian Department of Education \(2024\). Questions and Answers About the ECEC Wage Increase](#)
 - ⁷ [Australian Department of Education. Early Childhood Wages](#)
 - ⁸ [Australian Department of Education \(2024\). Questions and Answers About the ECEC Wage Increase](#)
 - ⁹ [Australian Competition and Consumer Commission \(2023\). Childcare inquiry: Final Report](#)
 - ¹⁰ [Australian Competition and Consumer Commission \(2023\). Childcare Inquiry Final Report](#)
 - ¹¹ [Michael Klapdor, 26 September 2024. Bills Digest No 15](#)
 - ¹² [Australian Department of Education \(2024\). Early Childhood Wages](#)
 - ¹³ [Commonwealth of Australia \(2015\). Administration of the Early Years Quality Fund](#)