BCA
Business Council of Australia

3 October 2024

Mr Gerry McInally
Committee Secretary
Senate Education and Employment Committee

Via online upload

Dear Committee

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

Thank you for your invitation to make a submission to this inquiry into the *Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024* (**Bill**)(**Inquiry**).

The Business Council of Australia (**BCA**) recognises the critical importance of early childhood education and care (**ECEC**), both for the children under its care and in ensuring workforce participation, particularly for women. The BCA also acknowledges the vital role played by early childhood education and care workers, and supports workers in the industry earning higher wages.

We are concerned, however, about some key details omitted from the Bill and the impact on ECEC providers. Key matters of substance are left to the future determination of terms and conditions of the funding grants under clause 10 in the Bill. These concerns are summarised as:

- The impact on the profitability of ECEC operators in circumstances where grant funding is accompanied by unspecified fee increase limits (cl 11(3)(b)). It is understood from Ministerial announcements and information published by the Department of Education that the fee increase limit for the year to 5 August 2025 will be 4.4 per cent, but the future fee increase limits are linked to the "ECEC Cost Index to be published by the Australian Bureau of Statistics" which is as yet unknown.
- What the unintended consequences of the fee limit cap will be, including the impact on service quality. This could include ECEC operators needing to make changes in areas other than staff remuneration to maintain their profitability, such as meals and consumables for children in care.
- The opaque references in the explanatory memorandum to the Bill to ECEC providers needing to implement "workplace instruments" to obtain funding coupled with the objects of the Bill, including that remuneration support for ECEC workers is being provided to "encourage good faith bargaining and the making of enterprise agreements in the early childhood education and care sector" (cl 3(1)(d)). While the BCA is supportive of workplace-level enterprise bargaining and multi-employer agreements where employers consent to take part in that process, enterprise agreements will not be appropriate for all ECEC providers, particularly those with small numbers of staff. The BCA does not believe that the purpose of increasing the remuneration of ECEC workers should be to encourage bargaining itself. It should be the decision of the ECEC provider as to what is the most appropriate employment model for their own business and employees. The complex and time-consuming process of bargaining and agreement making may not always be appropriate. In some instances, individual employment agreements are likely to be both compliant with the *Fair Work Act 2009* (Cth) and appropriate to the businesses' context. We would also not want to see this as a vehicle by which it

would force ECEC providers to have union engagement where that does not exist or is against the preference of the employer and the employees.

- The funding in the Bill is a short-term measure, whereas the nominal term of enterprise agreements can last up to four years. Further, due to new changes to how bargaining for replacement agreements can commence and the reduced circumstances in which enterprise agreements can be terminated, once enterprise agreements are in place, they are likely to require renegotiation in perpetuity. This poses a commercial risk to ECEC operators in circumstances where enterprise agreements can lock in wage increases for up to four years; however, funding for those increases in the Bill only supports wage increases for two years.

  While it is appropriate that the Bill, and grant conditions require that grant funds be used solely for the purpose they are provided (e.g. to fund specified wage increase and employment on-costs), it is unnecessary and unreasonable that the Bill or Grant terms seek to impose additional compliance burdens on ECEC providers in the form of 'workplace instruments' when this aim can be achieved in other ways (e.g. by requiring repayment of grant funds where funds have not been used as directed or otherwise via the enforceable grant agreement with operators). At the very least, it is imperative that any Grant conditions requiring ECEC Providers to implement 'workplace instruments' allow for those instruments to include individual flexibility agreements under the applicable modern awards, as opposed to requiring all eligible employers to enter into either the "union-approved sector wide" multi-employer agreement (as yet unfinalised) or an "equivalent" enterprise agreement.[1]

Based on our concerns above, we recommend the Bill be amended to:

1. Remove enterprise bargaining from the objects of the Act as this may not always be the most appropriate model for all ECEC providers
2. Provide greater clarity on how the fee increase limits will be determined
3. Clarify that ECEC employers will have an enforceable obligation to use grant funds solely for wage increases and employment on-costs, but remove any attempt to use grant funds to dictate the lawful industrial arrangements of ECEC operators

It is also important to acknowledge that while increasing wages in this sector is vital recognition of the work done by ECEC staff and assists to grow and retain the ECEC workforce, there remains an urgent need to address productivity. Productivity growth across the economy will be critical to ensure wage increases are sustainable and do not add to inflationary pressures in the economy. The combined effect of several tranches of industrial relations amendments since 2022 has meant that wage increases unlinked to productivity improvements may place further pressure on inflation at the margin. This has occurred in circumstances where the Productivity Commission has reported that the non-market sector (including childcare) registered a 0.9 per cent fall in labour productivity in the June 2024 quarter,[2] with a 2.2 per cent decrease in productivity in the year to March 2024.[3]

Yours sincerely

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[1] Australian Financial review, Labor's $3.6b pre-election pay boost for childcare workers 7 August 2024.
[2] Productivity Commission, *Quarterly productivity bulletin – September 2024* (pc.gov.au)
[3] Productivity Commission, *Quarterly productivity bulletin – June 2024*