

ELAA Submission on the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022



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Acknowledgement of Country

Early Learning Association Australia acknowledges Aboriginal and Torres Strait Islander peoples as the First Peoples of this nation and the Traditional Custodians of the lands on which we work. We recognise their continuing connection to culture, land, water, and community. We pay our respects to Elders past and present.

About Us

Early Learning Association Australia

Early Learning Association Australia (ELAA) is a peak membership association. Our vision is excellence and equity in early childhood education and care. Our diverse membership base includes 630 service providers managing services at over 1,250 locations with more than 15,000 staff caring and educating 70,000 children. Our members are early years management organisations, independent kindergartens, local governments, long day care services, government, and independent schools and out of school hours care programs.

www.elaa.org.au

Introduction

ELAA is presenting this submission to outline to the Committee the methods in which multi-employer bargaining in the early childhood education and care sector, with government co-funding, has improved the wages and conditions in the Victorian kindergarten context. This is with a view to the potential beneficial impact of the legislation, provided governments co-fund any wage increases.

This submission is being prepared within the context of a protracted workforce shortage in early childhood education and care, in part due to lower wages paid to staff in this sector than the comparable school sector. The lack of access to early childhood education and care is limiting access to employment for tens of thousands of families, so mechanisms to support wage increases in ECEC can have a much broader flow on effect.

We consider the ***Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (Bill)*** in the context of the benefits that it may provide small employers with the expansion of multi-enterprise bargaining, specifically, parts 20 (supported bargaining) and 21 (single interest employer authorisations).

Multi-enterprise bargaining has enabled the workforce to secure superior wages and conditions and improve retention and quality outcomes in early childhood education and care (ECEC). It must be noted that the critical enabler for this has been Victorian government co-funding. ELAA has been the employer representative of close to 400 community kindergartens and Early Years Management organisations across Victoria under the *Victorian Early Childhood Teachers and Educators Agreement (2020) (VECTEA)*.

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Background

The *Victorian Early Childhood Teachers and Educators Agreement* (VECTEA) and its predecessor agreements have been a principal feature of the industrial relations landscape for not-for-profit early education for over 20 years. In its formative years, the predecessor to the VECTEA, the *Multi-Employer Certified Agreement* (MECA), and its variations in 1997, 2000, 2002, and 2005 were designed to provide coverage to early childhood teachers working in sessional kindergarten services.

Since then, its coverage has expanded to include educators in kindergarten programs with the *Victorian Early Childhood Teachers and Assistants Agreement* (VECTAA) in 2009. It was then revised with the VECTEA 2016 and VECTEA 2020. The VECTAA and VECTEA agreements provided beneficial and operationally aligned wages and employment conditions for educators to their teacher counterparts working in the same early education service.

Benefits of the VECTEA

The VECTEA has delivered significantly improved pay and conditions for teachers compared to teachers in other early childhood settings such as Victorian Long Day Care or interstate services who are on the industry award, the *Educational Services (Teachers) Award 2020*. To illustrate, experienced full-time teachers in Victorian sessional kindergarten can earn more than \$100,000 per annum under the VECTEA, compared to wages between \$63,000 and \$88,000 under the *Educational Services (Teachers) Award 2020*.

In addition, the agreement includes an increased 16 weeks of employer-paid parental leave (at ordinary pay) for primary caregivers, 20 days of paid family and domestic violence leave, generous paid personal/carers' leave of 15 days for each year of service (pro-rata), graduate teacher mentoring leave and a government-funded Wellbeing Support Program (EAP) for employees under this agreement.

Why does the Victorian government support the VECTEA?

The Victorian government supports the VECTEA by funding higher wages, comparable to the school sector, as it provides certainty of employment arrangements across 383 kindergarten services with additional agreements for 26 services electing to 'mirror' its terms and conditions. By providing better pay and conditions, the VECTEA helps kindergartens to attract and retain teachers.

Why the agreement works, including for small employers

Employers are supported by an enterprise agreement providing superior pay and conditions to attract and retain staff. In addition, the conditions in the agreement provide extended planning time to support quality programming, enabling kindergartens to maintain their superior quality ratings. An industry-wide agreement means employers, mainly voluntary parent committees, do not have to negotiate individually with their employees.

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What holds back the current process?

Presently, it is a cumbersome process to secure a single interest agreement, with Ministerial approval required, which extends the process by six months. ELAA, as the peak body for early childhood education, acts on behalf of kindergartens. This function is resource intensive, and consideration needs to be given to how peak bodies can be resourced to perform this vital function, as voluntary committees have neither human nor financial resources to do this, nor is it manageable to have hundreds of employers negotiating an agreement.

Next VECTEA negotiations

Negotiations for the next VECTEA will commence in January 2024 with Early Learning Association Australia, the Australian Education Union, and the United Workers Union (UWU) in Victoria. These bargaining discussions will be made within the context of the ongoing workforce shortages and a scale-up of early childhood education and care, making it imperative that the agreement provides exemplary wages and conditions to sustain and enhance kindergarten quality. The presence of employer and employee representatives is imperative to ensure an agreement can be practically implemented in the workplace – given the significant changes in the ECEC sector it is vital that employers remain a key part of the bargaining process.

Single-interest employer agreements – improvements in new bill

As a critical employer bargaining representative, ELAA supports the interests of community-managed kindergartens and their employees. Specifically, as our unique agreement provides more beneficial above-award conditions, we have utilised our established practice of single-interest employer agreements.

The *Fair Work Act 2009* (Cth) (**Act**) presently permits two or more employers to make a single-interest authorisation if they have '*clearly identifiable common interest*'s. ELAA performs the role of employer representative for the VECTEA. We currently require a Ministerial Declaration to pursue a single interest agreement. The Bill's removal of the requirement for a Ministerial Declaration pursuant to section 247 of the Act, significantly streamlines this process.

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Inequity in the current approach

The Victorian State Government subsidises wages for the VECTEA in the form of higher per capita and early childhood teacher supplement rates than what are paid to non-VECTEA employers. This means that staff in a service with the same qualification can earn tens of thousands of dollars more if they teach in a state government subsidised kindergarten room than if they teach in the adjacent Commonwealth funded toddler room. This isn't fair, but presently without the capacity to secure co-funding from the federal government, any wage rises for non-kindergarten staff mean that families are charged higher fees. Not-for-profit services pay staff above the award and spend around 80 per cent of funding on salaries. There isn't sufficient money in budgets to pay wages similar to the school sector unless the federal government co-funds.

Recommendations

Following our review of this Bill, we propose the following recommendations:

1. That you support the Bill and note the beneficial impact of multi-enterprise bargaining in early childhood education in Victoria; multi-enterprise bargaining in its current form has enabled exemplary outcomes for a historically low-paid early childhood education and care sector with co-funding by government as an essential element. ELAA welcomes this Bill, as it will significantly enhance the functionality and opportunities for multi-enterprise bargaining.
2. That you continue to urge the Minister to consider funding not-for-profit peak bodies to ensure small employers can voluntarily engage in bargaining. This Bill will allow a higher proportion of ECEC employers within the sector to have their interests represented in negotiation.
3. That you consider the benefits of the supported bargaining stream and the benefits in ensuring that the government as a key funder is included in bargaining negotiations.
4. That you note that the passage of the legislation alone will not lead to higher wages in ECEC. As the primary funder of ECEC, government co-funding is imperative to securing higher wages and better conditions to ensure families can have ongoing access to affordable, quality early childhood education and care. Given the growing workforce crisis, and brake on the economy caused by a lack of access to ECEC, it is imperative that the government invest in supporting wages and conditions commensurate with the school sector.