

Submission on the Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024

October 2024

Introduction

SNAICC welcomes the opportunity to make a submission to the Education and Employment Legislation Committee's Inquiry into the provisions of the Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024 (the Inquiry).

SNAICC is the national non-government peak body for Aboriginal and Torres Strait Islander children, working for the fulfillment of the rights of our children, to ensure their safety, development and wellbeing. Our members are Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs), Aboriginal and Torres Strait Islander led early childhood education and care (ECEC) services and jurisdictional Aboriginal and Torres Strait Islander peak bodies.

The Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024 directly impacts our communities, families and sector, and SNAICC is broadly supportive of the changes proposed, specifically the 15% wage increase for ECEC workers. SNAICC recognises this wage increase as an important step in both recognising the skills and value of early educations and in addressing workforce challenges in the ECEC sector. This action is a strong foundational step towards addressing pay equity issues across the sector.

However, broader reform is needed to address workforce challenges across the ECEC sector to create meaningful, ongoing change. SNAICC supports raising ECEC workforce wages by 25% in line with longstanding sector calls and the full implementation of the recommendations in the Productivity Commission's Inquiry Report 'A path to universal early childhood education and care'. In alignment with the National Agreement on Closing the Gap (the National Agreement), ECEC workforce reform must be undertaken in genuine partnership with Aboriginal and Torres Strait Islander peaks, experts and ACCOs.

SNAICC is supportive of the wage increase outlined in the Bill. It is critical that eligibility requirements and implementation approaches do not inadvertently exclude ACCO ECEC providers or create additional administrative or operational burdens for these services. Designing the approach in partnership with Aboriginal and Torres Strait Islander people will ensure that these challenges are well understood and responded to effectively.

SNAICC's submission highlights potential implementation challenges and recommends:

- The Australian Government work in partnership with SNAICC to ensure that ACCO ECEC services:
 - are not unintentionally excluded from accessing the wage increase, and
 - are provided with direct, tailored support and guidance needed to meet the grant conditions and access the grant payment to fund the wage increase.
- Implementing targeted exemptions to the grant requirement to limit fee increases to 4.4% for ACCO ECEC services.

- All ECEC reform be undertaken in partnership with Aboriginal and Torres Strait Islander peak bodies, organisations and communities in line with the Priority Reforms in the National Agreement on Closing the Gap.

The rights of Aboriginal and Torres Strait Islander people and children

Self-determination

SNAICC advocates for the full enactment of self-determination in all legislation, policies, and strategies. Self-determination describes the right of Aboriginal and Torres Strait Islander peoples to autonomy and self-governance.¹ The Productivity Commission, in their review of the National Agreement, stated “governments must share power, recognising that the right of Aboriginal and Torres Strait Islander people to have control over decisions that affect their lives is central to self-determination” and acknowledged that the right is set out in the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP), to which Australia is a signatory.²

In July 2020, the Australian Government, all state and territory governments, and the Coalition of Peaks signed the National Agreement on Closing the Gap. The National Agreement seeks to overcome the entrenched inequalities faced by Aboriginal and Torres Strait Islander people, pushing for equality in life outcomes for all Australians. The National Agreement is built around four Priority Reforms to change the way governments work with Aboriginal and Torres Strait Islander communities, organisations, and people across the country:

1. Formal Partnerships and Shared Decision Making
2. Building the Community Controlled Sector
3. Transforming Government Organisations
4. Shared Access to Data and Information at a Regional Level.³

The Priority Reforms must inform all government action including legislation, policy, and practice, whether these actions are targeted for Aboriginal and Torres Strait Islander peoples or impact them as part of the general population. The Bill must align with the National Agreement and Priority Reforms; an alignment which is lacking in the current draft. While reference is made to the attraction and retention of ECEC workers, there is an opportunity to implement alignment through reference to the Priority Reforms, particularly Priority Reform Two. This Priority Reform focuses on increased funding for Aboriginal and Torres Strait Islander community-controlled

¹ SNAICC 2022, ‘The Family Matters Report 2022: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care’. Retrieved from: <https://www.familymatters.org.au/wp-content/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf> pg. 90; Department of Social Services 2021, ‘Safe and Supported: the National Framework for Protecting Australia’s Children 2021-2031 (the National Framework)’. Retrieved from: https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf, pg. 51.

² Productivity Commission, ‘Review of the National Agreement on Closing the Gap, Study Report Volume 1’. Retrieved from: <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf> pg. 7.

³ Australian Government, ‘Closing the Gap Priority Reforms’. Retrieved from: <https://www.closingthegap.gov.au/national-agreement/priority-reforms>

services and a dedicated Aboriginal and Torres Strait Islander ECEC workforce to support the strong and sustainable delivery of high-quality services.⁴

Rights of Aboriginal and Torres Strait Islander children

SNAICC supports Clause 3(2) of the Bill which outlines the object to implement Australia's international obligations under the *United Nations Convention on the Rights of the Child* (UNCRC). We note the reference to Article 18 of the UNCRC in the Statement of Compatibility section of the Explanatory Memorandum, however additional considerations are required to strengthen this objective.⁵

Aboriginal and Torres Strait Islander children have a distinct set of rights, as children under the UNCRC and as Indigenous people under UNDRIP. This includes the right to education which is interpreted under the UNCRC as beginning at birth and closely linked to a child's right to maximum development.⁶ Under UNDRIP, children have the right to all levels and forms of education without discrimination.⁷

The United Nations Committee on the Rights of the Child (the UN Committee) has provided guidance on how the UNCRC must be implemented to protect the rights of Indigenous children. This guidance reaffirms that active protection of Indigenous children's rights requires dedicated attention and the application of special measures. In their General Comment, the UN Committee acknowledges Indigenous children have reduced access to education due to a variety of factors including insufficient facilities and teachers and direct or indirect costs of education.⁸ To address this, State parties should allocate targeted financial, material and human resources to improve the access to education for Indigenous children.⁹ In addition, the UN Committee states teachers should be recruited from within Indigenous communities and given adequate support and training.¹⁰ The Bill provides an opportunity to provide this support through increased wages for the majority of ECEC services,.

The Bill and Explanatory Memorandum in its current form makes no reference to the active protection of Aboriginal and Torres Strait Islander children's rights despite the implementation of the UNCRC being an object of the proposed Act. As the UN Committee stated, dedicated

⁴ Ibid.

⁵ Minister for Education, 'Wage Justice for the Early Childhood Education and Care Workers (Special Account) Bill 2024 Explanatory Memorandum'. Retrieved from: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems_b341c331-b407-4d6e-9835-44c244fe74b7%22 pg. 6-7.

⁶ United Nations Committee on the Rights of the Child 2005, 'General Comment No. 7 Implementing child rights in early childhood'. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F7%2FRev.1&Lang=en pg. 13.

⁷ United Nations Declaration on the Rights of Indigenous Peoples, Article 14.

⁸ United Nations Committee on the Rights of the Child 2009, 'General Comment No. 11 Indigenous children and their rights under the convention'. Retrieved from: https://www2.ohchr.org/english/bodies/crc/docs/gc.11_indigenous_new.pdf pg. 13.

⁹ Ibid. pg. 13-14.

¹⁰ Ibid. pg. 14.

attention and the application of special measures is required, and this should be reflected in the Bill and its implementation.

Impacts on ACCO ECEC services

ACCOs not only provide ECEC services, they are places for cultural and community connection and care. These services operate in every state and territory to provide culturally safe, wrap around supports for children and families. The culturally responsive and holistic focus makes ACCOs best placed to meet the needs of children and families. Responding to localised community needs, they provide the early support that sets children and families up for success.

ACCOs are an act of self-determination, built by their communities, for their communities, to represent and serve their communities. ACCO ECEC governance structures are grounded in Aboriginal and Torres Strait Islander ways of knowing, being and doing. ACCOs are fundamentally for community and not for profit. Because of the way ACCO ECEC services function, a one size fits all approach proposed under the Bill is unlikely to achieve the wage equity intended. Potential examples of implementation challenges for ACCO ECEC services and risk mitigation strategies are described below.

Requirement for a compliant workplace instrument

Currently under the grant requirements, receiving equal pay is contingent on executing a compliant workplace instrument. SNAICC understands that the intent of requiring a compliant workplace instrument is to ensure that ECEC services pass the wage increase onto workers, and to provide workers with appropriate protection and recourse if this does not occur. SNAICC also appreciates that the requirements for a compliant workplace instrument have been kept as minimal as possible, specifically that it must:

- include an obligation to pay workers at or above the minimum rates in the grant guidelines and in accordance with section 4.3 of the grant guidelines,
- apply for the full 2 years of the payment.

The requirement for a compliant workplace instrument prevents ECEC workers and services from determining whether a workplace instrument is wanted or beneficial to their individual circumstances. The small window of time between release of the grant guidelines (2 October 2024) and application also leaves ACCO ECEC workers and services with limited time to consider workplace instruments, negotiate desired terms and seek legal and union advice.¹¹ Ostensibly enforcing this requirement within the timeframes proposed reduces the ability for meaningful and informed decision making, particularly for those in regional and remote areas who do not have the same opportunities as those in urban areas to access information, support and advice regarding workplace instruments and their development, negotiation and execution.

¹¹ Australian Government Department of Education, 'Questions and answers about the ECEC wage increase'. Retrieved from: <https://www.education.gov.au/early-childhood/workforce/wages/questions-and-answers>

Many ACCOs operate on a smaller scale at the community level without the administrative support available to larger scale mainstream and for-profit ECEC providers. As such, ACCO ECEC services may be disproportionately disadvantaged by the complex, technical nature of workplace instruments. Language provides an additional barrier for ACCOs to meet the requirements in remote communities where English is often not the first language of service operators and staff. ACCO services will require tailored, dedicated support to understand, identify, negotiate and execute compliant workplace instruments in line with grant requirements.

SNAICC currently provides backbone support to many services in the ACCO ECEC sector. Due to these existing relationships with the sector, we are well placed to facilitate practical support to meet the eligibility requirements and connection to legal and union organisations for advice and guidance. However, we do not currently have adequate resourcing to meet this specific demand. A discrete funding allocation is required to ensure appropriate support can be provided to the ACCO ECEC sector to fulfil the eligibility requirements of the grant.

Requirement to limit fee increases

The Bill currently provides a requirement to limit any increase in fees for the provision of ECEC. The Department has set this fee cap at 4.4% between August 2024 and August 2025.¹² The application of this limitation will impact the sustainability of some ACCO ECEC services. Many services have indicated they had intended to increase fees to meet rises in expenses before the ECEC worker retention payment and conditions were announced. These services are now unable to raise their fees and also secure equitable pay for their staff through the grant.

Fees issued by ACCO ECEC service are generally drastically lower than those charged by mainstream services. This ensures the service is affordable and accessible to the community. In the event an ACCO ECEC service increased their fees by more than 4.4%, the cost to the family would still be considerably lower than mainstream service rates. The inability to raise fees beyond the cap leaves ACCO ECEC services at risk of limiting the support and care they are able to provide to their community. This example is exacerbated in regional and remote areas where the cost of living and service expenditure is higher.

SNAICC is supportive of the proposed approach from the Australian Government to allow for providers to request an alternative fee growth cap if the standard restriction on fee growth would seriously impact the financial viability of the service. Without this exemption, there is a risk to the viability of ACCO ECEC services. These services are vital to closing the gap in early education and care. While fee increases are often necessary in the current policy context, SNAICC advocates for free universal child care to be implemented through broader policy reform.

Finally, as with the need for a compliant workplace instrument outlined above, ACCO ECEC services will require support and guidance to apply for an alternative fee growth gap. SNAICC

¹² Wage Justice for Early Childhood Education and Care Workers (Special Account) Bill 2024, Clause 11(3)(b); Australian Government Department of Education, 'Questions and answers about the ECEC wage increase'. Retrieved from: <https://www.education.gov.au/early-childhood/workforce/wages/questions-and-answers>

should be funded to provide tailored support to the ACCO ECEC sector to understand and apply for variations in line with service need, to maximise access and take-up.

Expanding the payment to include ACCO preschool services

SNAICC understands that under the current Bill, only providers that deliver Centre Based Day Care (CBDC) or Outside School Hours Care (OSHC) that are approved for Child Care Subsidy (CCS) are eligible. This is reflected in the grant opportunity guidelines.

Current workforce challenges across CBDC and OSHC are shared by other services including preschools. In many communities, ACCO ECEC and preschool services are run by the same providers or out of the same location. In some services, particularly where workforce shortages exist, staff may work across CBDC and preschool services. Precluding access to all ACCO ECEC services, including ACCO preschools, will widen the gap in disadvantage and pay disparity between non-Indigenous, for-profit sectors and ACCO ECEC services. This negatively impacts ACCOs' ability to remain competitive in the employer market and stifles the possible positive impact on Aboriginal and Torres Strait Islander early childhood outcomes that this policy could achieve.

SNAICC asks that further consideration be given to expanding the payment to incorporate ACCO preschools to ensure all Aboriginal and Torres Strait Islander ECEC workers and organisations have the opportunity to achieve wage equity through the grant. SNAICC would welcome the opportunity to discuss this further.

Ongoing wage increases

The Explanatory Memorandum indicates the grants will be paid as an interim payment while the Fair Work Commission finalises its gender undervaluation review of priority awards and the Government considers the Australian Competition Consumer Commission (ACCC) and Productivity Commission reports.¹³ We note:

The Bill establishes a mechanism by which the Commonwealth will provide funding to ECEC providers to provide a remuneration increase for ECEC workers. This directly addresses the pay inequity faced by the ECEC workers and takes decisive action to support their retention and professional growth.

The Grant Opportunity Guidelines will also require providers to ensure a compliant workplace instrument is in place before funding is provided. This will provide a mechanism for workers to legally enforce their rights and entitlements.

¹³ Minister for Education, 'Wage Justice for the Early Childhood Education and Care Workers (Special Account) Bill 2024 Explanatory Memorandum'. Retrieved from:

https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7247_ems_b341c331-b407-4d6e-9835-44c244fe74b7%22 pg. 3.

Finally, funding to be provided under grants...will assist with the retention of existing workers and make the sector more attractive to prospective workers.¹⁴

SNAICC supports the Australian Government's direct approach to addressing the pay inequity across the ECEC sector. We also note the Productivity Commission's finding that pay, conditions, recruitment and retention challenges across the ECEC sector may be addressed through the Fair Work Commission review, among other processes.¹⁵ There is a risk the Fair Work Commission review and any accepted and implemented recommendations from the ACCC and Productivity Commission reports will not come into effect until after the grant period ends. SNAICC recommends that the Australian Government maintains its investment in wage parity until the Fair Work Review is completed and actioned. This will mitigate the risk of ECEC worker wages reverting to inequitable levels and deliver on the Bill's objectives of ECEC worker retention and attraction.

SNAICC would also like to take this opportunity to highlight and reiterate the wage and workforce issues raised in the SNAICC submissions to both the ACCC and Productivity Commission Inquiries:

- SNAICC - [Submission](#) to the ACCC September Interim Report
- SNAICC - [Submission 290](#) to the Productivity Commission Early Childhood Education and Care Inquiry
- Early Childhood Care and Development Policy Partnership – [Submission 329](#) to the Productivity Commission Early Childhood Education and Care Inquiry.

SNAICC is pleased to have the opportunity to contribute to the Inquiry and is available to be contacted and provide the Committee with additional information on the points raised in this submission, if required.

¹⁴ Minister for Education, 'Wage Justice for the Early Childhood Education and Care Workers (Special Account) Bill 2024 Explanatory Memorandum'. Retrieved from: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7247_ems_b341c331-b407-4d6e-9835-44c244fe74b7%22 pg. 7.

¹⁵ Productivity Commission, 'A path to universal early childhood education and care Inquiry Report Volume 1'. Retrieved from: <https://www.pc.gov.au/inquiries/completed/childhood/report/childhood-volume1-report.pdf> pg. 65.