



Australian Government
Department of Education

Policy Impact Analysis

Early Childhood Education and Care Worker
Retention Payment





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The document must be attributed as the (Policy Impact Analysis: ECEC Workers Wage Increase).

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Key terms

ACCC	The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory authority. The ACCC enforces the <i>Competition and Consumer Act 2010</i> and other legislation promoting competition and fair trading and regulate national infrastructure, for the benefit of all Australians.
AWR	The Annual Wage Review (AWR) is conducted by an expert panel of the Fair Work Commission which sets minimum wages for employees in the national workplace relations system each year. The objectives of the review are set out in the <i>Fair Work Act 2009</i> .
Cheaper Child Care	The <i>Family Assistance Legislation Amendment (Cheaper Child Care) Act 2002</i> was implemented in 2023, giving effect to the Australian Government’s plan to make early childhood education and care more affordable for families.
CCS	The Child Care Subsidy (CCS) was introduced in July 2018. Replacing the previous Child Care Benefit and Child Care Rebate Government subsidy payments, it helps cover the cost of early childhood education and care for Australian families, with the subsidy amount varying dependant on family income.
ECT	An Early Childhood Teacher.
FDC	Family Day Care (FDC) is a type of early childhood education and care usually provided in the home of an educator.
Gender pay equity	Gender pay equity involves ensuring equal remuneration for work of equal or comparable value and eliminating gender-based undervaluation of work. Under the <i>Fair Work Act 2009</i> , the Fair Work Commission must consider the promotion of gender equality when performing functions and exercising powers.
Gender undervaluation	Work value practices that are impacted by gender and which contribute to a failure to recognise work value in assigned wages.
HRC	The hourly rate caps (HRC) place an upper limit on the amount of CCS the Australian Government will provide for sessions of care delivered by each type of approved early childhood education and care service.
IHC	In Home Care (IHC) is a flexible form of early childhood education and care where an educator provides care in the child’s home. It is restricted to families who can’t access other forms of support.
LDC	Long Day Care (LDC), also known as Centre-Based Day Care (CBDC), is a service that is typically provided in centres approved by regulators to provide quality early childhood education and care.
OSHC	Outside School Hours Care (OSHC) provides care before and after school hours and during school holidays for children who normally attend school.
PC	The Productivity Commission (PC) is the Australian Government’s independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians.
Provider	The provider is the entity, or organisation, that holds approval to deliver early childhood education and service services. Providers can deliver a range of CCS-eligible services, and in many instances only operate a single service.

Service	The service usually delivers early childhood education and care direct to families. The service can be delivered through a range of service types, including long day care and outside school hours care. Family day care and in home care providers also operate services to facilitate approval and the provision of care.
Supported Bargaining	The <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> amended the <i>Fair Work Act 2009</i> to reinvigorate the previous low-paid bargaining stream, to be renamed the supported bargaining stream. The amendments aim to reduce barriers for employees and their employers who require support to bargain to access multi-enterprise bargaining, with enhanced support available throughout the process from the Fair Work Commission.
Waiver	Approved providers can apply for a service waiver in situations where they are unable to meet legislated requirements in relation to physical environment or staffing arrangements, either on a permanent or temporary basis.



Background

From 7 December 2022, the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* amended the *Fair Work Act 2009* to embed the principles of job security and gender equality in the Fair Work Commission's (FWC) decision-making processes.¹ As a result, the FWC is now required to ensure gender equality is given appropriate weight, alongside other objectives, when varying modern awards and when reviewing and setting minimum rates of pay.² The inclusion of gender equality in the minimum wages objective ensures equal remuneration, eliminating gender-based undervaluation and addressing gender pay gaps in wage related matters, including the Annual Wage Review (AWR).³

The *Secure Jobs, Better Pay* reforms also provided greater access to bargaining for lower-paid sectors through the introduction of the supported bargaining stream. On 6 June 2023, the first supported bargaining application was made to the FWC by the United Workers Union, the Australian Education Union, and the Independent Education Union of Australia, with the consent of approximately 64 Long Day Care (LDC) employers. The application represents around 540 of approximately 14,000 services operating in the Early Childhood Education and Care (ECEC) sector, with coverage for approximately 14,000 workers. The application was submitted against a backdrop of severe and persistent workforce shortages which continue to constrain the supply of ECEC, diminish quality of care, negatively impact gender equality outcomes, and reduce broader workforce participation and productivity. The FWC authorised the supported bargaining application on 27 September 2023. Outcomes of the process are expected to set a new standard for pay and conditions in LDC across Australia. The Commonwealth Government has been asked to take part in the negotiations.

Following the stage 3 outcome of the Work value case – Aged care industry,⁴ expectations for a 25 per cent wage increase for ECEC workers have strengthened, however, the ECEC sector alone is reluctant to bear the costs of implementing wage increases without Commonwealth investment. With affordability, safety and quality of ECEC a priority for the Australian Government, the pay and conditions of its female-dominated, historically low-paid workforce are critical to the sustainability of the sector. A meaningful wage increase for ECEC workers is likely to have significant impact on affordability and accessibility of ECEC for families. Without Government intervention, the costs of implementing necessary wage increases – including those produced through use of workplace relations processes – are likely to be passed on to families through higher fees. Government intervention is needed to ensure quality care continues to be provided, and ECEC remains affordable and accessible for Australian families.

¹ Australian Government, Treasury, 'Working Future: The Australian Government's White Paper on Jobs and Opportunities', (Canberra, Commonwealth of Australia, 2023), 193.

² Department of Employment and Workplace Relations, [Secure Jobs Better Pay: Job security and gender equality](https://www.dewr.gov.au), <www.dewr.gov.au>.

³ Department of Employment and Workplace Relations, [Secure Jobs Better Pay: Job security and gender equality](https://www.dewr.gov.au), <www.dewr.gov.au>

⁴ [2024] FWCFB 150

The problem

Workforce

There is growing evidence that quality ECEC provides children with significant developmental benefits in their early years and can promote children's readiness to begin school.⁵ The availability of affordable and high-quality ECEC also contributes to an increase in the participation of women in the workforce.⁶ The Australian Government is committed to charting the course for universal access to ECEC in Australia that is high-quality, equitable, affordable, and accessible in a fiscally responsible and sustainable manner.⁷ Whilst complex, expanding access to ECEC is critical to the Australian Government's labour market policy objectives – with a focus on maintaining quality care environments that nurtures children – and requires a skilled and sustainable workforce that is valued and respected.⁸

The ECEC sector is currently comprised of approximately 240,000 workers,⁹ with women making up approximately 93 per cent of the broader workforce, and migrants comprising approximately 28 per cent of ECEC staff.¹⁰ Over the past several years, workforce shortages in the ECEC sector and the associated impacts have attracted significant media attention¹¹ with the Australian Competition and Consumer Commission (ACCC) finding that 'labour force shortages are affecting all childcare markets, in terms of both the supply of childcare services and the costs to supply these services'.¹² Internet Vacancy Index data from Jobs and Skills Australia indicates that staff vacancies for ECEC educators have increased by 13.6 per cent between December 2022 and December 2023.¹³ Using data from 2015 to 2020, an article in the Australian Education Researcher found that staff turnover of early childhood teachers (ECTs) and educators has ranged between 20 to 37 per cent per year, with the lower figure more representative of metropolitan based services, and the higher representative of rural and remote services¹⁴, compared to an overall Australian workforce turnover rate of 9.5 per cent¹⁵.

⁵ Warren D, Daraganova G & O'Connor M 2018. Preschool and children's readiness for school. In LSAC Annual Statistical Report 2017 Melbourne: Australian Institute of Family Studies.

⁶ OECD, *Starting Strong 2017: Key OECD Indicators on Early Childhood Education and Care*, OECD Publishing (2017) Paris <www.oecd-ilibrary.org>.

⁷ Australian Government, Treasury, 'Working Future: The Australian Government's White Paper on Jobs and Opportunities', (Canberra, Commonwealth of Australia, 2023), p. 211.

⁸ Ibid 210.

⁹ November 2023, Detailed Labour Force Survey (Table EQ08), ABS, Data trended by Jobs and Skills Australia. Figures represent total persons employed under the ANZSCO unit level codes 4211 Child Carers, 2411 Early Childhood (Pre-Primary) Teachers and 1341 Child Care Centre Managers

¹⁰ Productivity Commission, *A path to universal early education and care: Draft Report*, November 2023 <www.pc.gov.au>, 21.

¹¹ See, eg, Euan Black, 'Childcare centres turning away parents because of staff shortages', *Australian Financial Review* (online), 25 August 2023 <<https://www.afr.com/work-and-careers/workplace/childcare-centres-turning-away-parents-due-to-worker-shortage-20230824-p5dz69>>.

¹² Australian Competition and Consumer Commission, *Childcare inquiry – Final report*, December 2023, 1 <www.accc.gov.au>.

¹³ Jobs and Skills Australia, Labour Market Insights, Internet Vacancy Index, December 2023.

¹⁴ Marianne Fenech et al, 'Attracting, Retaining and Sustaining Early Childhood Teachers: An Ecological Conceptualisation of Workforce Issues and Future Research Directions' (2022) 49 (1) *The Australian Educational Researcher*

¹⁵ Australian Bureau of Statistics (February 2023) Job Mobility, ABS Website, accessed 14 February 2024.

The research attributed high turnover and workforce shortages to several reasons including lack of liveable wages and the demands of the role. Low wages, low professional status, and lack of pay parity with school teachers are among the barriers impacting attraction and retention.¹⁶

These workforce issues are constraining the sector and hinder the ability of Government to realise the universal ECEC reform agenda. The sector continues to report that workforce shortages are reducing the quality, safety, sustainability, and availability of care.¹⁷

Additionally, high staff turnover has significant consequences for the wellbeing of children in care,¹⁸ impacts the educational benefits of early childhood education, and prevents families from engaging in their desired amount of work, study or training. Recent data demonstrates that over 130,000 people, the majority of which are women, were available to work but unable to because of issues they faced accessing care.¹⁹

Pay and conditions

ECEC sector stakeholders widely agree that the pay and conditions of the female-dominated, historically low-paid workforce are critical to sustaining and growing the sector. The Stage 3 outcome of the Work value case – Aged care industry²⁰ increased minimum award wages for the Aged Care workforce by up to 28.5 per cent. Wages in ECEC remain among the lowest of the caring professions, and often comparable to rates of pay for unqualified workers (refer Table 1), and is a leading reason why staff are leaving the sector or considering leaving the sector in the near future.²¹ The Productivity Commission (PC) ECEC Inquiry Draft Report highlighted that higher wages and better conditions are likely to lower attrition rates and attract more staff to the sector,²² aligning with the Organisation for Economic Co-operation and Development (OECD) advice that lifting early childhood educator pay to align with the schools sector is the only thing that will attract new educators to the sector and ensure those currently working in the sector do not ‘qualify out’.²³

¹⁶ Marianne Fenech et al, ‘Attracting, Retaining and Sustaining Early Childhood Teachers: An Ecological Conceptualisation of Workforce Issues and Future Research Directions’ (2022) 49 (1) *The Australian Educational Researcher*.

¹⁷ United Workers Union, *Exhausted, Undervalued and Leaving: The Crisis in Early Education*, August 2021, <www.unitedworkers.org.au>.

¹⁸ Whitebook, M., Phillips, D., & Howes, C, *Worthy work, STILL unliveable wages: The early childhood workforce 25 years after the National Child Care Staffing Study*, (2014) Center for the Study of Child Care Employment, University of California, Berkeley, 6.

¹⁹ Productivity Commission, *A path to universal early education and care: Draft Report*, November 2023 <www.pc.gov.au>.

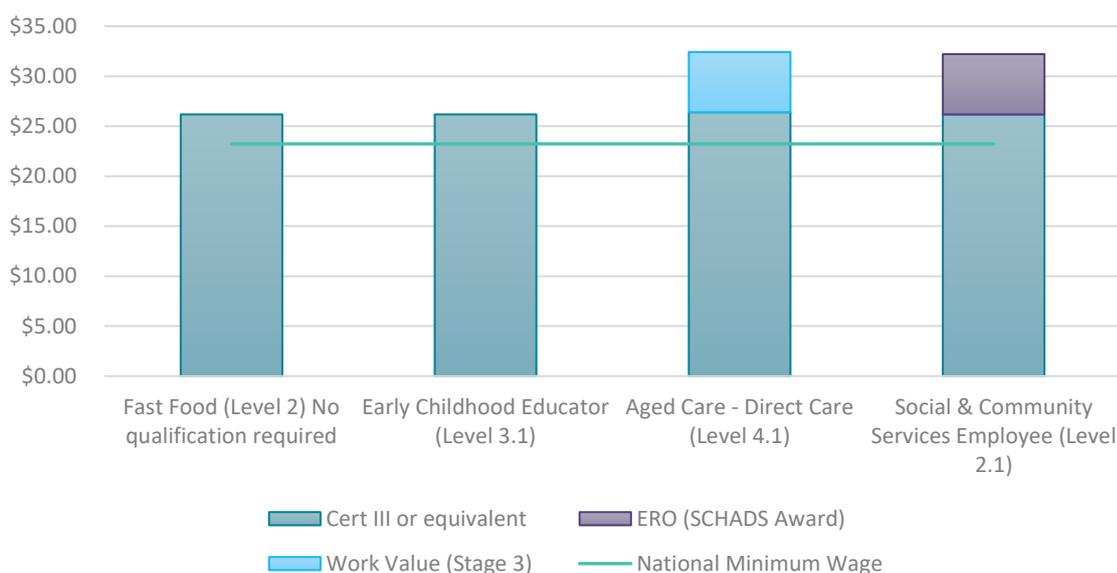
²⁰ [2024] FWCFB 150.

²¹ Ibid.

²² Productivity Commission, *A path to universal early education and care: Draft Report*, November 2023.

²³ Organisation for Economic Co-operation and Development, *Good Practice for Good Jobs in Early Childhood and Care*, OECD Publishing, Paris, <www.oecd.org>.

Table 1: Award rate comparison - Cert III (or equivalent)



History of gender-based wage fixing

The Work value case – Aged care industry stage 3 decision²⁴ provides an in-depth history of how gender assumptions have underpinned the national workplace relations system since the Harvester Decision.²⁵ This decision set the ‘living’ or ‘family’ wage in Australia in 1907, which would supposedly allow an unskilled male labourer to support a wife, and three children, to feed, house and clothe them. It was on this basis that a wage was fixed to cover the ‘normal needs of the average employee, regarded as a human being living in civilised society’,²⁶ and became the basis of the national minimum wage system in Australia.

The Fruit Pickers decision in 1912²⁷ established the equal pay for equal work principle, where work performed by men and women should award the same margin for skill for the same work. However, the underlying rationale was more to protect men’s employment from being undercut by women, than on the basis of gender equality. Male fruit pickers wages were set in accordance with the earlier Harvester Decision. However, for fruit packers, who were predominately female, wages were set at 75 per cent of the pickers rate due to four assumptions based on gender that were made. These are:

1. Basic wage for any particular category or group of workers was dependent upon the predominant gender of the category or group.
2. Where the category or group was predominately male, basic wage was set according to the Harvester decision, which would also apply to women in that category or group to ensure there was no undercutting of men by women based on wages.
3. Where the gender was predominately female, the basic wage was set based on the presumption that the worker had no dependents irrespective of their circumstances.²⁸

²⁴ [2024] FWCFB 150.

²⁵ [1907] CthArbRp12, 2 CAR 1.

²⁶ [1907] CthArbRp12, 2 CAR 1 at 3.

²⁷ *Rural Workers’ Union and United Labourers’ Union v Mildura Branch of the Australian Dried Fruits Association and Others* [1912] CthArbRp, 6 CAR 61.

²⁸ Fair Work Commission, *Stage 2 report: Gender pay equity research*, 4 April 2024, 17 <www.fwc.gov.au>.

4. The work performed itself and the skills involved were regarded as being gendered with certain types of work suited to men and others suited to women.

Over the coming decades, the Harvester decision basic wage concept and the gender assumptions established in the Fruit Pickers decision were further entrenched into Australia's workplace relations system when setting female rates of pay,²⁹ generally as a result of interstate industrial disputes from ambit claims made by male dominated unions.³⁰ While the 1919 Archer Decision³¹ set the female basic wage at around 54 per cent of the male basic wage, subsequent decisions that established gender-based margins resulted in female workers performing 'women's work' in a masculine industry being paid well above predominately female industries.³² The basic wage concept was replaced by the total wage in the National Wage Cases 1967³³ and the differences in pay rates represented by the difference between the former male and female basic wages was re-examined in the Equal Pay Case 1969.³⁴ While these cases resulted in equal remuneration outcomes in work performed by both males and females,³⁵ it did not seek to address or remedy gender differentials in different awards or in awards where work was predominately performed by females.³⁶ The 1972 Equal Pay Case³⁷ recognised that in the case of classifications or awards where the work performed was exclusively by females, a work value comparison within and across awards with other female or male classifications would be required, however there is limited evidence that this was ever implemented.

Subsequent wage cases limited wage increases on work value grounds by restricting data points and effectively not allowing for work value reassessments in female-dominated occupations and industries,³⁸ with the National Wage Case August 1989³⁹ then undertaking the minimum rate adjustment process whereby setting across award alignments with the C10 rate of the Metals Framework.

A comprehensive overview of the history of wage fixing is included in the Work value case – Aged Care industry stage 3 decision,⁴⁰ and chronological summary is available in the Fair Work Commission's Stage 2 report on gender pay equity research.⁴¹

ACT Child Care decision 2005⁴²

In January 2005, the Australian Industrial Relations Commission (AIRC) undertook a comprehensive review of the work of early childhood education and care workers covered by awards applicable in the ACT and Victoria. The Commission's consideration of work value was made pursuant to the then-applicable Work Value Changes Principle, which was confined to the identification of changes occurring from a datum point of 1990.⁴³ In assessing work value, the Full Bench considered whether

²⁹ *The Federated Clothing Trades of the Commonwealth of Australia v J A Archer and Others* [1919] CthArbRp 99, 13 CAR 647; *Amalgamated Society of Engineers and the Adelaide Steam-ship Company Limited* (1921) CthArbRp, 15 CAR 297.

³⁰ [2024] FWCFB 150 at [36].

³¹ *The Federated Clothing Trades of the Commonwealth of Australia v J A Archer and Others* [1919] CthArbRp 99.

³² *Amalgamated Society of Engineers and The Adelaide Steam-ship Company Limited* (1921) CthArbRp 57, 15 CAR 297; *Clothing and Allied Trades Union of Australia re Clothing Trades Award 1964* [1967] CthArbRp 406, 118 CAR 286.

³³ [1967] CthArbRp 504, 118 CAR 655.

³⁴ [1969] CthArbRp 278, 127 CAR 1142.

³⁵ [2024] FWCFB 150 at [60].

³⁶ [2024] FWCFB 150 at [66] to [67].

³⁷ [1972] CthArbRp 1420, 147 CAR 172.

³⁸ [1975] CthArbRp 1544, 171 CAR at 79; [1983] CthArbRp 400, 291 CAR 3, 4 IR

³⁹ [1989] AIRC 525, 30 IR 81, Print H9100

⁴⁰ [2024] FWCFB 150 at [25] to [95].

⁴¹ Fair Work Commission, [Stage 2 report: Gender pay equity research](#), 4 April 2024, 13 – 33 <www.fwc.gov.au>.

⁴² Re Australian Liquor, Hospitality and Miscellaneous Workers Union [2005] AIRC 28, PR954938.

⁴³ Fair Work Commission, [Stage 2 report: Gender pay equity research](#), 4 April 2024, 29 <www.fwc.gov.au>.

there had been a significant net addition to the nature of the work since this datum point in order to justify changes in classifications or rates, and determined that, there had been significant changes to the content and structure of childcare.⁴⁴

Under the work value changes principle, the proper fixation of rates was determined based on alignments with classifications requiring equivalent qualifications in the Metal Industry Award. In fixing child care worker rates of pay in alignment with this framework, the Full Bench found that the nature of the work performed by child care workers and the conditions under which that work is performed suggests that they should be paid more, not less, than their Metal Industry Award counterparts,⁴⁵ and that child care work is demanding, stressful and intrinsically⁴⁶ important to the public interest.

The Expert Panel in the Work value case – Aged care industry decision observed that the C10 Metals Framework Alignment Approach operated to inhibit the proper valuation of women’s work, and ‘did not permit an *ab initio* assessment of the work value of early childhood education and care workers.’⁴⁷ The Expert Panel further observed that, in their view, the ACT child care decision made it clear that the if unconstrained by the Metals Framework Alignment Approach, the Commission would have assessed the key classifications in the early childhood education and care awards as having higher work value than the identified equivalents in the Metal Industry Award.⁴⁸

Award modernisation

As summarised in the Work value case – Aged care industry stage 3 decision, the regime of wage-fixing principles came to an end in 2006 when the *Workplace Relations Amendment (Work Choices) Act 2005* commenced. The current modern award system was established by the award modernisation process conducted by the AIRC, pursuant to Part 10A of the *Workplace Relations Act 1996* (Cth), as amended by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (Cth).⁴⁹

The Aged Care Expert Panel surmised that the award modernisation process was not constrained by the previous wage-fixing principles. In theory, it could have involved a full *ab initio* work value assessment of any female-dominated occupation or industry that was to be the subject of a modern award. However, in practice, this was not possible because the statutorily mandated process required the consolidation and streamlining of thousands of former federal and State awards into what ultimately became 122 modern awards by the end of 2009.⁵⁰

As such, when the modern Children’s Services Award was developed, classifications and rates were largely taken from the awards considered in the 2005 ACT Child Care decision. Consequently, relativity with the C10 and C5 rates established through this decision was maintained in the modern award.⁵¹

⁴⁴ Ibid at [120], 74.

⁴⁵ [2005] AIRCFB 28 PR954938 at [183].

⁴⁶ Ibid at [372]

⁴⁷ [2024] FWCFB 150 at [90]

⁴⁸ Ibid at [92]

⁴⁹ Ibid at [95]

⁵⁰ Ibid.

⁵¹ Fair Work Commission, [Stage 2 report: Gender pay equity research](#), 4 April 2024, at [132] <www.fwc.gov.au>

Federal award coverage of non-tertiary teachers however is relatively recent.⁵² Most teachers, including early childhood or preschool teachers have traditionally been regulated by state and territory systems, with various federal and state awards in operation for different educational services prior to modernisation.⁵³ In late stages of the modernisation process the AIRC eventually decided that Early Childhood Educators were best served by coverage under the *Educational Services (Teachers) Award*.

Following the introduction of the Teachers Award in 2010, two applications for an Equal Remuneration Orders (ERO) were made in 2013 and an application for a variation to the award was made in 2018. These applications were dealt with by a Full Bench of the FWC resulting in the Full Bench dismissing the ERO applications in 2018 after several years of proceedings citing deficiencies in the evidence presented⁵⁴. In 2021, however, whilst the Full Bench dismissed the Independent Education Union's application for an ERO, the Full Bench held that it was satisfied that an adjustment of the minimum rates of ECTs was justified by work value reasons.

Use of staffing waivers

National Quality Framework (NQF) ECEC waiver data provides another indicator into the challenges facing the ECEC workforce. Ongoing use of staffing waivers can indicate many services may be unable to find suitably qualified staff to meet minimum requirements under the NQF. However, it should be noted that the vast majority of staffing waivers are in relation to ECEC services not having access to an ECT, with very few in relation to services not meeting educator to child ratios. Data published in April 2024 by the Australian Children's Education and Care Quality Authority (ACECQA) indicates that 9.1 per cent of services nation-wide have an ongoing staffing waiver. Importantly, Victorian services record the lowest amount of staffing waivers (only 2.1 per cent of services).⁵⁵ The Victorian Government credits its ability to expand the ECEC workforce, and the resulting lower proportion of staffing waivers compared to other jurisdictions, to the efforts undertaken under its Best Start, Best Life Workforce Strategy and previous workforce strategies implemented in collaboration with Victorian service providers, sector bodies, tertiary partners, unions, local government and other stakeholders.⁵⁶

Jurisdiction-specific rules and regulations may contribute to differences in staffing waiver numbers across states and territories. For example, the availability of ECTs could be impacted by more rigorous teacher registration requirements in some jurisdictions like Western Australia or South Australia where they have higher qualification requirements for OSHC. Additionally, staffing waivers in Queensland have increased since December 2021 following the expiry of several temporary workforce provisions that allowed services to satisfy staffing requirements through means other than a waiver.

⁵² [2021] FWCFB 2051 at [540].

⁵³ Fair Work Commission, *Stage 2 report: Gender pay equity research*, 4 April 2024, at [165] <www.fwc.gov.au>.

⁵⁴ Fair Work Commission, *Equal Remuneration and Work Value Case*, Commonwealth of Australia 2022, <www.fwc.gov.au>

⁵⁵ ACECQA, *NQF Snapshot Q1 2024*, April 2024, [NQF Snapshot Q4 2023 \(acecqa.gov.au\) – NQF Online Snapshot Q1 2024 DRAFT \(acecqa.gov.au\)](https://www.acecqa.gov.au/nqf-snapshot-q1-2024)

⁵⁶ State of Victoria (Department of Education), *Best Start, Best Life Workforce Strategy*, 2023 <www.vic.gov.au>

W1: Proportion of services with a waiver by jurisdiction and waiver category

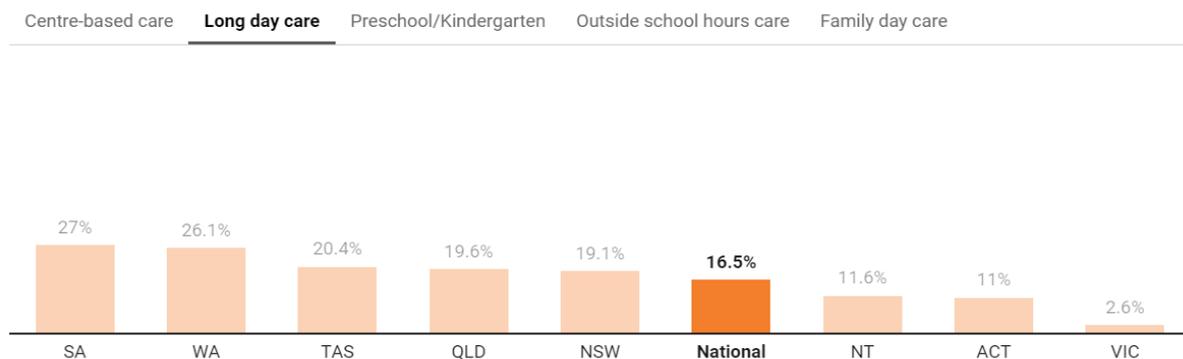


Source: ACECQA, NQF Snapshot Waivers (staffing). Data as at 1 April 2024

Use of waivers by service type

Waiver data also shows the most acute usage on a national scale is within the LDC sector, with 16.5 per cent of services having a staffing waiver in place. Whilst the use of staffing waivers in other service types demonstrates that staffing issues may be acute in some jurisdictions, while not recording any use in others, such as in FDC where the national proportion of services with a staffing waiver is at 0.7 per cent, whilst 6 jurisdictions record no use of staffing waivers the Northern Territory has a 50 per cent proportion of use, and Tasmania recorded 16.7 per cent.

W9: Proportion of services with a staffing waiver by jurisdiction and service sub-type*



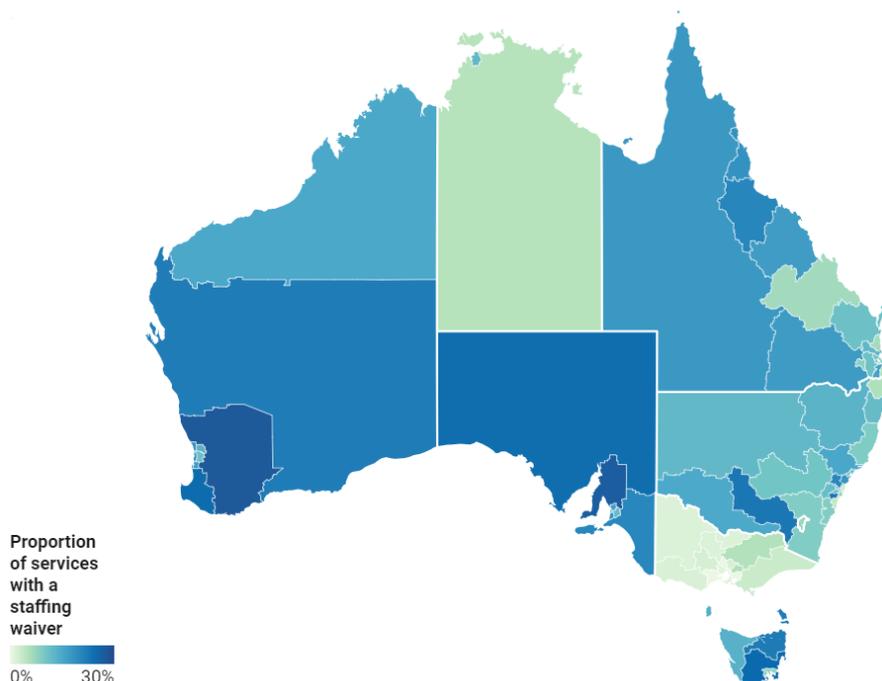
Source: ACECQA, NQF Snapshot Waivers. Data as at 1 April 2024

Use of waivers by remoteness

When examining the use of staffing waivers by remoteness, services in more disadvantaged areas are more likely to experience staffing shortages. This could provide some further perspective regarding the high use of waivers across some states and territories, due to their vast areas of remoteness. Data shows 16.9 per cent of services in very remote areas holding a staffing waiver, 12.8 per cent in regional areas, and 10.5 per cent in remote areas.⁵⁷ Services in major cities and inner regional areas by comparison have 12.3 per cent and 11 per cent with staffing waivers in place.

⁵⁷ ACECQA, NQF Snapshot Q1 2024, April 2024, [NQF Snapshot Q4 2023 \(acecqa.gov.au\)](https://www.acecqa.gov.au/nqf-snapshot-q4-2023) – [NQF Online Snapshot Q1 2024 DRAFT \(acecqa.gov.au\)](https://www.acecqa.gov.au/nqf-snapshot-q1-2024)

W5: Proportion of services with a staffing waiver by SA4 region



Source: ACECQA, NQF Snapshot Waivers. Data as at 1 April 2024

Impact of the use of waivers

As noted, the vast majority of staffing waivers are in relation to ECEC services not having access to an ECT, with very few in relation to services not meeting educator to child ratios. Nevertheless, use of staffing waivers could potentially be one of a number of markers to measure quality of care, alongside National Quality Standard ratings, complaints history, investment in professional development and inclusion capability and practices.⁵⁸

Whilst the use of waivers alone does not indicate specific issues in relation to child safety or educational or developmental opportunities, a recent United Workers Union (UWU) survey of the sector reported that almost two thirds of respondents from across Australia agreed that children's safety or wellbeing had been impacted by staff shortages over the past twelve months.⁵⁹ Respondents to the survey reported "a lack of adequate supervision, a higher number of incidents resulting in injuries between children [and] more errors made by staff due to exhaustion and workload" resulting from workforce issues.

The use of staffing waivers, particularly in regional and remote areas, is symptomatic of significant issues with workforce availability.⁶⁰ The use of staffing waivers is directly associated with the closing of service rooms and capping of enrolments (with services operating below their licensed capacity), directly impacting the availability of care, the viability and profitability of services and restricting the economic participation of working families more broadly.

⁵⁸ Goodstart Early Learning, 'Productivity Commission Inquiry into Early Childhood Education and Care – Goodstart Submission', May 2023, 28.

⁵⁹ The Sector, "[UWU snap poll of 500 educators says half are ready to walk without action wages](#)", 26 February 2024, <[thesector.com.au](#)>

⁶⁰ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 138 <[www.accc.gov.au](#)>.

It is also important to note that the use of waivers has a financial and administrative impact on ECEC providers. ECEC providers must apply to ACECQA in order to be granted a waiver, at a cost of \$124 per application (for a CBDC service).⁶¹

National Workforce Strategy

In recognition of the significant challenges facing the sector, Australian governments and sector stakeholders have collaborated to develop the National Children's Education and Care Workforce Strategy (2022-2031), known as 'Shaping Our Future', to support the recruitment, retention, sustainability, and quality of the sector workforce. The strategy is structured around six interrelated focus areas with 'Professional recognition' concentrating initiatives on workforce professional standing, including pay and conditions.

In accordance with the actions outlined under the strategy, Macquarie University was commissioned to undertake research to explore and identify the structural barriers to, and strategies for, improving pay and conditions in the sector.

Objective: Improve workforce attraction and retention

The Australian Government's White Paper on Jobs and Opportunities (September 2023) recognises that an accessible and affordable ECEC system is a key enabler of workforce participation, especially for women who experience more pronounced barriers to workforce participation and are overrepresented in part-time and casual employment. Compared to men in the workforce, women are twice as likely to be working part-time or casually from age 35. Supporting families to access ECEC is integral to Australia's economic prosperity as a powerful lever for increasing workforce participation.⁶²

High-quality ECEC requires that services are delivered by a qualified workforce, are culturally inclusive and responsive, and meet standards in providing learning and development outcomes for children to ensure that they are engaged as lifelong learners. A sustainable ECEC workforce who are valued and respected will be central to maintaining quality ECEC.

Addressing workforce shortages through improved pay and conditions is the first step in delivering a broad ECEC reform agenda, including universal access to quality ECEC. The PC ECEC Inquiry Draft Report acknowledges that the ECEC workforce is fundamental to any changes in availability of services and reaffirms that the sector is facing substantial challenges in recruiting and retaining staff to respond to current demand. The report references the expected pressures to the workforce that will be added following the expected expansion of preschool, as well as further increases in availability to enable universal access.⁶³ The PC also notes that without additional Government subsidy, higher wages would increase costs for providers and families, creating considerable pressure on Government to fund any increase to limit the impact on fees and out-of-pocket expenses.⁶⁴

⁶¹ ACECQA, *Indexed fees*, July 2023, [Indexed fees | ACECQA](#).

⁶² Australian Government, Treasury, 'Working Future: The Australian Government's White Paper on Jobs and Opportunities', (Canberra, Commonwealth of Australia, 2023), 211.

⁶³ Productivity Commission, *A path to universal early education and care: Draft Report*, November 2023, 34 <www.pc.gov.au>.

⁶⁴ *Ibid*, 35.

Affordability

Barring Government intervention, wage increases for the ECEC workforce may be passed on to families via higher fees once the supported bargaining process is finalised. Linking funding to supported bargaining provides the Commonwealth with an opportunity to negotiate conditions, including constraints on fee growth to support affordability for families.

The ACCC found affordability is driving parents and guardians' decisions around how much ECEC to use.⁶⁵ About 60 per cent of respondents to the ACCC's parents and guardians survey said fees are somewhat financially burdensome and a further 14 per cent said they struggle to pay fees.⁶⁶ This has flow-on impacts on parents and guardians' employment. Based on the Australian Bureau of Statistics' (ABS) 2023 survey on barriers and incentives to employment, the PC found affordability is the most reported ECEC-related barrier to parents returning to work.⁶⁷

The ACCC Childcare Price Inquiry found ECEC fees rose faster than inflation between 2018 and 2022, with average daily fees in LDC increasing by 20.8 per cent on average (nominally).⁶⁸ The ACCC found these increases likely help to maintain consistent margins⁶⁹, since the costs of providing ECEC have increased by 27 per cent over the same period.⁷⁰ Labour is the main driver of cost for LDC, accounting for 69 per cent of total costs on average⁷¹ (or \$8.03 per hour⁷²). In the absence of Government funding, it is likely that wage increases will further drive up fees. This will result in higher Government expenditure through the Child Care Subsidy (CCS) and increased out-of-pocket costs to families, negating the Government's efforts to make ECEC more affordable for families.

The Government has considered adjusting the CCS policy settings to address the issue of rising fees in meeting increased wage costs. In the context of addressing affordability, a change to CCS settings is not preferred. Firstly, adjustments to the CCS settings would be untargeted. The grant funding model allows the Government to direct funding to the specific needs and parameters of services, influenced by the service type, size and profit status. Changing the CCS does not allow for the funding specificity needed to meet the policy intent and mitigate the risk of windfall gains feeding sector profits. Efforts to add this level of specificity would not be possible in the timeframes available, and if attempted, could lead to unintended consequences that exacerbate the complexity and function of the CCS system. Secondly, a broader CCS adjustment could incite an additional fee increase. Historically, as shown via ACCC analysis, major investments to make ECEC subsidies more generous are followed by successive, and steep, increases in fee levels that erode the benefits intended by the Government.⁷³

⁶⁵ Australian Competition and Consumer Commission, [Childcare inquiry September interim report](#), September 2023, 14 <www.accc.gov.au>

⁶⁶ Australian Competition and Consumer Commission, [Childcare inquiry September interim report](#), September 2023, 58 <www.accc.gov.au>

⁶⁷ Productivity Commission, [A path to universal early education and care: Draft Report](#), November 2023, 292 <www.pc.gov.au>

⁶⁸ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 209 <www.accc.gov.au>

⁶⁹ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 111 <www.accc.gov.au>

⁷⁰ Australian Competition and Consumer Commission, [Childcare inquiry September interim report](#), September 2023, 50 <www.accc.gov.au>

⁷¹ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 5 <www.accc.gov.au>

⁷² Australian Competition and Consumer Commission, [Childcare inquiry September interim report](#), September 2023, 44 <www.accc.gov.au>

⁷³ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 36 <www.accc.gov.au>

A form of fee constraint would be required to address this, but developing whole-of-market pricing controls in the timeframes available raises substantial risks in the form of negative unintended consequences. For example, a sector-wide fee constraint could lead to reductions in service quality and supply growth.

Finally, a change to the CCS policy settings is more likely to benefit those on higher incomes more than it will those on lower incomes. One of the key findings of the ACCC's first interim report revealed increasing fees disproportionately affects disadvantaged households. Families in the lowest income decile spend on average 9 per cent of their disposable income on ECEC, compared to families in the highest income bracket, who spend on average 5 per cent.⁷⁴ This is despite low-income families receiving a greater Government contribution through the CCS and paying less out-of-pocket expenses in absolute terms. This is partly due to the CCS activity test, which provides subsidised hours based on the parents or guardians' level of engagement in work, study, or job search activities. Parents or guardians who do not meet these criteria are often not eligible to receive CCS payments and, hence, may incur higher out of pocket costs.

Objective: Ensure child care is accessible and affordable

Pay and conditions for the ECEC sector directly impact the availability and affordability of quality ECEC. Persistent workforce challenges will impact the ambition for universal access to ECEC and gender equality. Additionally, when wages rise, and should the Government choose not to intervene, this would lead to higher out-of-pocket costs for families, making ECEC unaffordable for vulnerable families who need it most. Data from the ABS indicates child care costs increased by 3.2 per cent in the quarter to December 2023.⁷⁵ Year-on-year to December 2023, ABS data shows child care costs decreased by 7.2 per cent, which is due to the Government's signature Cheaper Child Care measures introduced in July 2023.⁷⁶

Case for Government intervention

In charting the course to universal high-quality ECEC, it is critical to improve attraction and retention of the ECEC workforce, whilst ensuring services remain accessible and are affordable for Australian families. Together with a suite of Australian Government workforce and training initiatives,⁷⁷ provision of Commonwealth funding is essential to support an increase in liveable wages for a historically undervalued workforce, whilst also linked to conditions that maintain *Cheaper Child Care* for Australian families. The ACCC Inquiry emphasised that market forces alone may not achieve all objectives Government has for ECEC.⁷⁸ Specifically, market forces are unlikely to increase workforce participation for all demographics (particularly for women and essential workers) or to ensure equitable educational or developmental outcomes across all children and households.⁷⁹

⁷⁴ Productivity Commission, *A Path to Universal Early Childhood Education and Care: Draft Report*, November 2023.

⁷⁵ ABS Consumer Price Index, Australia (December 2023), Table 11. CPI: Group, Sub-group and Expenditure Class, Percentage change from previous quarter by Capital City, accessed 29 February 2024.

⁷⁶ ABS Consumer Price Index, Australia (December 2023), Table 10. CPI: Group, Sub-group and Expenditure Class, Percentage change from corresponding quarter of previous year by Capital City, accessed 29 February 2024.

⁷⁷ See, eg, *Shaping our Future: National Children's Education and Care Workforce Strategy (2022-2031)*; [Fee-Free TAFE Skills Agreement](https://www.dewr.gov.au) <www.dewr.gov.au>; [ECEC Professional development opportunities](https://www.education.gov.au) <www.education.gov.au>.

⁷⁸ Australian Competition and Consumer Commission, *Childcare inquiry – Final report*, December 2023, 1 <www.accc.gov.au>.

⁷⁹ Australian Competition and Consumer Commission, *Childcare inquiry September interim report*, September 2023, 17 <www.accc.gov.au>.

It now appears inevitable that over the coming years, wages for ECEC workers will be increasing beyond the usual AWR increase which increases the National Minimum Wage and modern award rates of pay. Meaningful wage increases for ECEC workers could occur as a result, or a combination of:

- Gender pay equity increases to modern award rates of pay following the *Secure Jobs, Better Pay* reforms which now require the FWC to consider the promotion of gender equity when setting modern award rates through the AWR. This includes the recently created Expert Panel to review gender undervaluation issues in 5 priority modern awards, including the *Children's Services Award 2010*.⁸⁰
- Outcomes of the ECEC supported bargaining process that provide ECEC workers with wage increases above relevant award rates of pay.
- FWC or union initiated work value case for ECEC workers.

As stated above, labour is the main driver of costs for supplying childcare, accounting for 69 per cent or more of total costs, with labour costs increasing significantly for large providers of centre based day care over the past 5 years.⁸¹ As the majority funder of the ECEC sector through the CCS, there is a strong legislative basis for government involvement in wage increases that are beyond, and distinct from, the yearly AWR wage increases.

As the ECEC sector continues calls for government funding in support of wage increases aligned with aged care, ECEC stakeholders are reporting anecdotally that workers are leaving the sector for higher paying roles in industries such as in aged care.⁸² On 3 June 2024, the FWC announced the establishment of a program for the resolution of gender undervaluation issues arising in respect of certain modern awards. Importantly, the FWC identified the *Children's Services Award 2010* as a priority area for this program. The proceedings will take place in the next 12 months and will be completed by the time of the next AWR in June 2025.

Following the findings at outcomes of Stage 3 of the Work Value Case – Aged Care Industry, together with the findings outlined in the Stage 2 report: Gender pay equity research,⁸³ ECEC stakeholders now expect that an ECEC work value case would take as little as 8 to 12 months to complete. Whether award wages for ECEC workers are meaningfully lifted as a result of the gender undervaluation program initiated by the FWC, or as a result of a work value case, the outcome would have wide scope, lifting wages sector wide and potentially in a short period of time (Work Value Cases are outlined at **Appendix C**). All ECEC sector stakeholders including providers, workers and families accessing these services require clarity from government on how the increased wage costs will be met.

Investment in support of a wage increase also provides Government with an opportunity to implement conditions such as affordability measures. Conversely, if wages are not increased through the AWR in the short-term, and supported bargaining is utilised as the mechanism to secure wage increases, parties have consistently indicated that government support is required to secure the final

⁸⁰ Fair Work Commission, Gender undervaluation – Expert Panel to review 5 priority awards, 7 June 2024 <[Gender undervaluation – Expert Panel to review 5 priority awards | Fair Work Commission \(fwc.gov.au\)](#)>.

⁸¹ Australian Competition and Consumer Commission, *Childcare inquiry – Final report*, December 2023, 5 <[www.accc.gov.au](#)>.

⁸² See, eg, Black, E. (2024) 'Childcare workers desert industry for higher wages in aged care', Australian Financial Review, 19 April. Available at: <[www.afr.com](#)>

⁸³ Fair Work Commission, *Stage 2 report: Gender pay equity research*, 4 April 2024, 17 <[www.fwc.gov.au](#)>.

agreement. Government support will ensure wage costs are not passed on to families and have any significant impact on sector wide attraction and retention, by incentivising increased uptake of the supported bargaining agreement (if formed).

If the Government does not provide financial support, it will likely hinder the supported bargaining process, with workforce attraction and retention issues persisting, or worsening, as ECEC workers continue to leave the sector. This result would limit families' ability to access care and significantly impact the Government's ability to achieve universal ECEC. Recent data from the Productivity Commission shows that workforce shortages are preventing up to 190,000 parents, the majority of whom are women, from accessing the amount of ECEC care they desire and hindering their ability to engage in work, with their modelling indicating that this could equate to 118,000 FTE jobs lost as an opportunity cost⁸⁴. Further, employers have indicated that the cost of wage increases, without the provision of Government funding, are and will continue to be passed on to families through higher out-of-pocket fees. This means that even if no supplementary funding is provided, Government would continue to fund increased wages through the CCS. Families will also have higher out of pocket costs resulting from direct fee increases, and many more providers increasing fees in excess of the HRC (if the HRC is not appropriately adjusted to account for significant wage increases).

Importantly, persistent workforce issues in the ECEC sector are claimed to affect the safety and wellbeing of children. As noted, a recent UWU survey of the sector reported that almost two thirds of respondents from across Australia agreed that children's safety or wellbeing had been impacted by staff shortages over the past twelve months⁸⁵.

Expected impact of government intervention

Whilst there has been extensive Australian research and analysis in recent years on price elasticity and demand for childcare and the hours worked by Australian parents, quantifying the economic impact of a wage increase on the availability of care is difficult without available modern or Australian economic modelling. Modelling by Blau in 2001 for the United States childcare market calculated a labour supply elasticity in the number of workers as 0.73 and the elasticity of 0.42 in the number of hours worked with respect to wages, for an elasticity of 1.15⁸⁶ (an increase in wages of X per cent will equate to an increase of hours of care available of 1.15 times X per cent).

The elasticity would likely be significantly different for the modern Australian market, but Blau's analysis can be taken as a foundational estimate. United States data in 2002 showed a 20 per cent difference in turnover rate of ECEC workers (45 per cent versus 25 per cent) in centres with a 20 per cent difference in pay⁸⁷ (although this does not account for other correlated factors—a centre that pays more may offer better leave or other conditions, for instance).

⁸⁴ Productivity Commission, *Supplementary Paper 4: ECEC and labour force participation*, Commonwealth of Australia 2024, 263-264.

⁸⁵ The Sector, "[UWU snap poll of 500 educators says half are ready to walk without action wages](https://thesector.com.au)", 26 February 2024, <thesector.com.au>.

⁸⁶ The Centre for Spatial Economics (prepared for the Child Care Human Resources Sector Council), "Literature Review of ECEC Labour Market," Ottawa 2009, citing Blau, D. "The Child Care Problem: An Economic Analysis", New York: Russell Sage Foundation 2001.

⁸⁷ Moon J and Burbank J, "The Early Childhood Education Career and Wage Ladder: a Model for Improving Quality in Early Learning and Care Programs", Economic Opportunity Institute Seattle 2004 citing 2002 data provided by Washington State Department of Social and Health Services, Division of Child Care and Early Learning.

Following the Work value case – Aged care industry Stage 3⁸⁸ outcomes, a 25 per cent wage increase, in line with the increase aged care workers received, is now considered a new benchmark for undervalued, highly feminised industries. To support the aged care wage increases, the Australian Government has invested \$11.3 billion into the Stage 2⁸⁹ interim 15 per cent pay rise and has committed to fully funding the increases awarded in Stage 3. Together with other measures to increase workforce and skills in the sector,⁹⁰ Department of Health and Aged Care (DoHAC) suggests that there are early indicators that the interim wage increase is having, or will have, an impact on staffing levels and the intensity of work. DoHAC modelling suggests that the workforce gap in aged care has reduced by an estimated 9,233 workers,⁹¹ demonstrating the government’s capacity to intervene positively to support the care sector improve workforce attraction and retention rates, and working conditions, and access liveable wages.

The affordability condition is expected to have a positive impact in easing the rates of fee growth in the ECEC sector, thereby preserving the benefits of the Cheaper Child Care changes (implemented in July 2023). Quantifying this impact accurately is not possible, given the lack of sufficient data to determine the behavioural response change from services to the wage subsidy and affordability condition, which in turn will impact the fees that families pay. However, recent reporting by the ABS demonstrates that since the positive decrease in out-of-pocket costs incurred by parents in September Quarter 2023 (an average decrease of 11 per cent according to the ACCC⁹²), child care fees have begun to rise again with a 3.2 per cent increase in December Quarter 2023 and a 3.9 per cent increase in March Quarter 2024⁹³. The affordability condition intervention is therefore expected to slow this rate of growth, to the advantage of families who will not incur higher costs than they might otherwise have experienced (based on historical trends that demonstrate that unchecked fee growth erodes the benefits of government policy changes).⁹⁴

The impact on providers is contingent entirely on the final design of the wage subsidy policy; the existing revenue, profits, and costs of providers; and the final fee growth constraint level. At a high-level, the Department does expect an affordability condition may pose some risk to providers’ financial viability and the levels of quality in their service delivery. These assumptions are informed by findings by the ACCC and OECD. Both advise that regulations must be carefully designed and implemented, to mitigate the negative risks⁹⁵. An exemption process, designed to support providers facing viability concerns, is being designed in tandem with an affordability condition to ensure the supply of ECEC is not diminished as a result of any fee regulation.

Objectives and measures

Outlined above, contributing Commonwealth funding towards a wage increase for ECEC workforce, complemented by a sensible fee constraint condition is required to achieve the following objectives:

⁸⁸ [2024] FWCFB 150.

⁸⁹ [2023] FWCFB 40.

⁹⁰ See, eg, Commonwealth of Australia, Submission in reply – Stage 3 to Fair Work Commission, *Work Value Case – Aged Care industry* (31 October 2023) 2 – 4.

⁹¹ Commonwealth of Australia, Submission in reply – Stage 3 to Fair Work Commission, *Work Value Case – Aged Care industry* (31 October 2023) 4.

⁹² Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 44 <www.accc.gov.au>.

⁹³ Australian Bureau of Statistics, [Consumer Price Index, Australia, March Quarter 2024](#), March 2024, www.abs.gov.au.

⁹⁴ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 36 <www.accc.gov.au>.

⁹⁵ *Ibid*, 212.

- improve ECEC workforce attraction and retention rates
- improve wages and conditions for ECEC workers, ensuring liveable wages that recognise skills and professionalism
- deliver broad ECEC reform, including universal access to quality ECEC
- ensure workforce is positioned to respond to increases in service demand
- enable greater workforce participation, especially for women
- improve access to ECEC services for families that want to use it
- limit fee increases and higher out-of-pocket expenses for families
- preserve the benefits of the government's *Cheaper Child Care* policy

The success of workforce outcomes achieved through the implemented workforce and affordability measures would be evident through both short and longer-term indicators. As observed following the Work value case – Aged care industry Interim increase, short-term indicators of success could include:

- positive trends in internet vacancy data and the time that vacancies are advertised for
- improvement in workforce modelling that suggests reduction in the estimate of workforce shortages and a positive trend in the number of ECEC workers
- monitoring of the student pipeline and the movement of students from ECEC courses into the ECEC sector workforce
- improvement to the length of time staff remain in the sector
- reduction in the number of staff indicating an intention to leave the sector.

Longer-term indicators of success could include:

- a career in the ECEC sector is recognised as a professional option of work choice through better pay and conditions
- improved regulatory frameworks to support the attraction and retention of educators and workforce in the ECEC sector
- ECEC workers receive adequate professional development opportunities
- higher ECEC educator qualification completion rates and lower barriers to upskilling.

Success in the implementation of an affordability condition would include:

- the rate of child care fee growth is proportionate to the allowable rate of growth
- out-of-pocket costs to families do not significantly increase more than the levels as at June Quarter 2023 (prior to implementation of the *Cheaper Child Care* policy)
- no reduction in service quality or service closures, as a direct result of the condition
- providers are not deterred from engaging in the policy
- growth in ECEC supply continues, and does not abate as a direct result of the condition.

Policy options

Three policy options were considered for Government funding to support a wage increase for workers in the ECEC sector.

- Option One – No additional Government funding in support of a wage increase (status quo).
- Option Two – Funding a time-limited workforce retention payment to participating ECEC employers.
- Option Three – Funding a time-limited workforce retention payment to ECEC employers under a workplace instrument.

A fee constraint condition has been considered and will apply to any additional funding provided under Option Two or Three.

Option One – Status Quo

Government does not contribute any additional funding in support of a wage increase for ECEC workers through supported bargaining or any other mechanism, and instead continues funding the sector through the current CCS arrangements. Significant risks have been identified should Government choose to maintain the status quo.

If Government funding is not provided, workforce shortages will continue to inhibit the sector, restricting access of care, and reducing workforce participation and productivity. Notably, even without the provision of direct wage funding, Government would still end up funding wage increases through the CCS as providers pass on costs through higher fees. In this scenario, families would be worse off as they pay the fee gap, with amplified negative impacts for families who attend services which already charge fees either close to, or above the HRC. All families would be worse-off under this option, and Government would miss a key opportunity to introduce necessary fee controls, drive growth in the sector, and promote consistency in wages.

Option Two – Funding a time-limited workforce retention payment to participating ECEC employers

This option provides Commonwealth funding, subject to conditions, towards a two-year universal ECEC Worker Retention Payment to ECEC workers of CCS approved services.

This option does not incentivise workplace bargaining or address the high level of award reliance across the sector. Additionally, in the absence of a workplace instrument, the only legal basis for the funding conditions and compliance action will be the grant agreement under which funding is delivered. This option presents a very high-risk of non-compliance and fraud. It is likely that additional evidentiary and reporting requirements will be required under this option, such as declarations that all funding has been passed on and regular financial reporting, contributing to ongoing administrative burden for providers. Significant Commonwealth resources will be required to ensure appropriate governance, accountability and compliance.

Family Day Care and In Home Care

FDC workers are generally engaged through independent contracting arrangements, with CCS funding for these workers generally flowing through a third-party provider. IHC workers may be engaged as

employees, however due to the size and unique characteristics of the sector, a bespoke approach towards supporting the sector may be more appropriate. Options to extend support to FDC and IHC providers will be explored, however this could potentially be under alternative arrangements. Different eligibility criteria and evidence requirements may need to be developed to qualify for funding, which will need to be settled through consultation with the sector.

Take-up rates

To limit fiscal and inflationary impacts, Government could phase in its contribution to funding a 15 per cent wage increases over a period of two years. If the funding is phased, it is expected that the take-up rate for this option would be 75 per cent of ECEC services on commencement, increasing to 85 per cent once funding reaches its second year. If funding is not phased the take-up rate is assumed to be 85 per cent on commencement and 90 per cent after 12 months in recognition of the greater incentive for providers to 'opt-in' to receive funding.

Take-up rates have been assumed based on factors including:

- An implementation date in late 2024 or early 2025 giving services approximately six months to prepare for the grant opportunity and meet the corresponding eligibility requirements.
- The expected effectiveness of the Department's communication strategy in support of increasing uptake.
- The percentage rate of funding being considered provides a higher incentive for early take up.

Option Three – Funding a time-limited workforce retention payment to ECEC employers under a workforce instrument

Government funds a two-year workforce retention payment to CCS approved ECEC services to whom a workplace instrument applies. The workplace instrument must entitle employees to receive wages that are at least the minimum amount specified in the grant agreement and must be directly enforceable by employees to whom the instrument applies.

The workplace instrument requirement will serve to provide Government with assurance that funding is being used to lift wages and meet its policy intent. This option also meets expectations from the OSHC sector in addressing anticipated staff loss from OSHC to LDC providers and concerns around the ongoing viability of OSHC. As with Option Two, it is anticipated that contribution of funding will have a positive impact on attraction and retention across LDC and OSHC. However, it is difficult to model the likely impact higher wages will have. Eligible workplace instruments, that provide the minimum required grant agreement terms, could include:

- An enterprise agreement, such as:
 - ECEC supported bargaining agreement (LDC providers only);
 - an existing in-force EA or one that has been varied to meet grant agreement requirements, including minimum rates of pay; or
 - a new EA that meets the grant agreement requirements, including minimum rates of pay.
- Individual flexibility arrangements

- The Award Rate (subject to it meeting the minimum wage rate threshold, which could be achieved through a Work Value Case, the Annual Wage Review or other gender-based FWC processes)
- Equal remuneration order
- Workplace determinations

Funding will absorb the anticipated gender-based work value increases

It is critical that the Payment's funding approach accounts for potentially significant increases to the award rate under these FWC proceedings, and that Government and providers are not paying wages well-above a rapidly increasing base award rate.

Accordingly, the above award wage requirement in the grant agreement will be immediately reduced once the gender-based work value outcome comes into effect, acknowledging that the new award rates may be significantly higher than they were previously.

- This will maintain a degree of consistency in wage rates and Government funding, shifting the approach from an entirely 'above award' model to absorbing the new higher base award rates.

For example, should the gender-based work value proceedings determine award increases of 10 per cent from 1 July 2025, Government would adjust the eligibility requirement from 15 per cent above award rates, to be only 5 per cent above award rates (15 per cent above previous award under the Payment, minus 10 per cent increase to award rate from the proceedings).

- Should the award be increased by 15 per cent or more through gender undervaluation proceedings, providers would no longer be required to pay above award wages to be eligible for funding and the award would become an eligible workplace instrument for the purpose of the grant.

Initially supporting wages above the award rate will provide immediate impact, promote engagement with the policy and facilitate the supported bargaining process. It manages the uncertainty arising from the gender undervaluation proceedings and will allow Government to fund based on the award rate, if required.

- The approach will contain costs for Government, employers and families, and provide control over fiscal outlays. It will provide flexibility to shift to an award-based funding approach if required and absorb the fee growth which could otherwise result from additional increases to the award under the gender-undervaluation proceedings.

Conversely, a commitment to fund on top of an unknown future award increase, which could be significant given the FWC's specific focus on gender undervaluation issues, risks Government losing control over total expenditure and uncertainty in the management of grant arrangements in the later stage of the program (potentially requiring termination or variations to grant agreements).

Family Day Care and In Home Care

FDC workers are generally engaged through independent contracting arrangements, with CCS funding for these workers generally flowing through a third-party provider. IHC workers may be engaged as employees, however due to the size and unique characteristics of the sector, a bespoke approach towards supporting the sector may be more appropriate. Options to extend support to FDC and IHC providers will be explored, however this could potentially be under alternative arrangements, particularly if such providers are unable to meet the workplace instrument requirement. Different eligibility criteria and evidence requirements may need to be developed to qualify for funding, which will need to be settled through consultation with the sector.

Take-up rates

To limit fiscal and inflationary impacts, the Government would contribute funding to support a 15 per cent wage increase, phased in over two years.

Option Three assumes a take-up rate of 70 per cent of ECEC services on commencement, increasing to 80 per cent in year two. If the funding is not phased the take-up rate is assumed to be 85 per cent on commencement, increasing to 90 per cent after 12 months.

Take-up rates have been assumed based on factors including:

- An implementation date of either late 2024 or early 2025 giving services approximately six months to prepare for the grant opportunity and meet the corresponding eligibility requirements.
- The ability of services to apply for backdated funding under Option Three should they sign up to the grant agreement by 30 June 2025 (in recognition of the additional workplace instrument requirement).
- The expected effectiveness of the Department's communication strategy in support of increasing uptake
- The take-up rates for this option are 5 per cent lower each year compared to option two in recognition of the additional workplace relations requirement. The percentage rate of funding being considered provides a higher incentive for early-take up.

Implementing workplace instruments

The process involved for employers and employees to implement workplace instruments is outlined in **Appendix A**.

Providers paying above award rates

Based on findings from the ACCC Inquiry,⁹⁶ it is common for individual staff members within a service to be paid at different rates relative to the Award, even in the absence of a workplace instrument, such as an EA. Without access to the specific information, it is assumed that most of these arrangements are conducted through common law contracts. As such, it is not possible to account for the current wage policy of each individual service or staff member within a service.

Under options Two and Three, all Commonwealth funding provided to employers would be required to be passed on to employees in the form of higher wages. Additionally, employers must not decrease their existing contribution towards wages for eligible employees or use Commonwealth funding to subsidise the cost of their current wage expenditure, even if they are already paying wages above relevant award rates of pay.

Following the ACCC Childcare Inquiry Final Report, the number of staff currently paid above award rates remains unclear for the purposes of determining how many services will be passing on funding to staff already paid above award. This is because the definition of wages utilised by the ACCC

⁹⁶ Australian Competition and Consumer Commission, [Childcare inquiry September interim report](#), September 2023, 118 <www.accc.gov.au>.

includes the minimum hourly rate of pay plus applicable allowances, loadings and superannuation.⁹⁷ However, data from the 2021 workforce census indicates that 57 per cent of contact LDC staff and 69 per cent of contact OSHC staff were paid at award rates, while approximately 34 per cent of LDC staff, and approximately 19 per cent of OSHC contact staff were paid over award rates.

While compliance risks are not as significant under Option Three, it is not possible for the FWC or the Fair Work Ombudsman (FWO) to account for the current wage policy of each individual service. Whilst employers paying above award would still be required to pass on all Commonwealth funding to employees as wages, the FWC and the FWO are limited in taking compliance and enforcement action based only on the minimum rates of pay in an applicable workplace instrument. As part of the risk mitigation strategy, the Department will require employers to submit additional reporting documentation demonstrating that funding has been passed on to employees in full.

Interaction with the Annual Wage Review (AWR)

In accordance with section 285 of the *Fair Work Act*, each financial year the FWC reviews and sets the National Minimum Wage and the minimum wages of modern awards. In recent years, the FWC has generally increased all modern award pay rates by a percentage amount. For example, in 2022 all modern awards rates of pay increased by 4.6 per cent, and then in 2023 they increased by 5.75 per cent and in 2024 by 3.75 per cent.

Following the introduction of the *Secure Jobs, Better Pay* reforms, both the modern awards objective⁹⁸ and the minimum wages objective⁹⁹ were updated in 2023. Given this, the FWC is now required to focus on pay equity and the care and the community sector when performing the AWR. As a result, the Annual Wage Review 2022-23 Decision¹⁰⁰ considered the new gender equity provisions. In addition, the FWC has undertaken research that identified occupations and industries in which there is gender pay inequity and undervaluation of work and qualifications. Relevant research, such as that conducted by the University of New South Wales¹⁰¹ (prepared for the FWC) on the Gender-based Occupational Segregation identified both the *Children's Services Award 2010* and the *Educational Services (Teachers) Award* as modern awards used to set pay in large, highly-feminised occupations, will underpin the consideration and determination of the identified issues. Further, the FWC in their AWR determination announcement on 3 June 2024 confirmed the establishment of a program to examine and address gender undervaluation in a number of modern awards, including the *Children's Services Award 2010*. The FWC intends that the proceedings will commence shortly and be completed by the time of the 2024-25 AWR in June 2025.

Affordability condition

Apart from the status quo approach, all options allow Government to make funding a wage increase conditional on a fee growth control mechanism. A fee growth control mechanism constrains fee growth rates to ensure ECEC remains affordable. The proposed fee growth limit will be consistent

⁹⁷ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 153 <www.accc.gov.au>.

⁹⁸ *Fair Work Act 2009*, s134.

⁹⁹ *Fair Work Act 2009*, s284.

¹⁰⁰ [2023] FWCFB 3500.

¹⁰¹ Natasha Cortis et al, [Gender-based Occupational Segregation: A National Data Profile](#) (6 November 2023) <fwc.gov.au>.

with other regulatory measures the Government may impose in response to the ACCC and PC Inquiries.

Design of the affordability condition

This proposal is to implement the affordability condition through a uniform fee growth constraint. Under a uniform fee growth constraint, services cannot increase their fees over a select period, by more than a set percentage. The fee growth percentage cap will be based on an index measure. The same fee growth percentage cap would apply to all providers regardless of how high or low their fees currently are. The allowed growth index is independent from past fee growth.

For the first year of the policy, fee levels would be baselined from the date of announcement of the funding policy. This is to protect against services trying to ‘game’ the system by pre-emptively increasing fees ahead of formally agreeing to the funding agreement. For example, if the Government’s policy was announced on 8 July, the constraint would apply from this date and the service’s reported fees for the respective CCS fortnight would be used as the baseline from which to measure fee growth. While this safeguard has the advantage of preventing providers from increasing their fees immediately before the growth constraint comes into effect, it would advantage services who had increased fees recently and disadvantage those who had not, for example those that had planned to increase their fees following the Government’s announcement on the wage funding amount.

Wage Cost Index 3 (WCI3) is currently tagged as the index that will inform the fee growth percentage cap in the first year of this policy. However, a final decision on which index will inform the fee growth percentage cap will be determined in the context of the final design of the Worker Retention Payment (accounting for implementation timeframes, the final quantum of funding etc.)

The preferred index would be a new ECEC Price Index developed by the Australian Bureau of Statistics (ABS) that reflects the actual costs of ECEC delivery. This is in line with a suggestion by the ACCC for an ECEC cost index to be used to index the HRC.¹⁰² Funding to develop a new ECEC Price Index was included in the 2024-25 Budget, and work has begun to develop this. It is expected a proof of concept will be available in the second half of 2024.

The policy intent of the affordability condition

The purpose of a uniform fee growth constraint is to limit annual fee growth, and better align the indexation of fees with rising costs. A fee growth constraint acknowledges cost drivers are different across ECEC providers. As opposed to a fee cap, a fee growth constraint is intended to enable cost rises for the sake of maintaining quality levels and supply without increasing profits. A fee growth constraint also means that no service is likely required to reduce its fees to be eligible for Government funding for a wage increase.

A fee growth constraint tied to funding has several advantages. Most importantly, it will limit the growth in out-of-pocket costs for families and disincentivise providers from taking Government funding and still raising their fees. It accommodates genuine variability in costs that lead to higher fees. This is most relevant in areas where the cost of delivery is higher, such as in under-served regional and remote areas. Applying a uniform index to all providers is administratively

¹⁰² Australian Competition and Consumer Commission, [Childcare inquiry September interim report](#), September 2023, 30 <www.accc.gov.au>.

straightforward and easy to communicate to providers and families. It is a comparatively soft price regulatory intervention and distorts the market less than if a cap on fees themselves was introduced.

The Government will have the flexibility to select an index that best reflects the cost of delivering child care services, noting the preferred approach is to task the ABS with the development of a Child Care Price Index that mirrors the actual costs of providing child care services.

According to Departmental administrative data, average annual fee growth in LDC to September quarter 2023 was 8.9 per cent, the 5-year annual average to September 2023 was about 5.6 per cent, and the 10-year annual average was about 5 per cent. For comparison, WCI3 (which weights 60 per cent wages and 40 per cent CPI) is forecast to be 4.4 per cent in June 2024 and then 3.5 per cent in June 2025 and so it is likely that any applied index would put significant downward pressure on average fees.

With respect to disadvantages, the exact impact of restricting future fee growth on out-of-pocket costs to families is indirect and uncertain. If future fee growth is contained, this puts downward pressure on fees in the future, which then can lead to lower fees than would have been without the growth limit. However, to what extent this eventuates is difficult to predict. Further, providers are likely to cross-subsidise the impact by increasing fees up to the allowed growth index for all services (whereas previously some services may have increased by more and others by less than the index).

Inadvertently, a flat-rate limit on fee growth benefits services that already charge higher fees, and it disadvantages services that currently charge lower fees. Further, a uniform growth limit treats all providers similarly and cannot target “problematic” segments of the market, for example providers with high fees and high fee growth. Another risk is that fees are likely to grow substantially once the growth constraint expires. However, future reforms would aim to address the risk of significant future fee growth upon the expiry of the growth constraint. Reforms may include, for example, supply-side funding based on an efficient cost of service coupled with stronger fee regulation to restrict excessive future fee growth.

Exemption mechanism to the affordability condition

An affordability condition mechanism would need to include an exemption process for cases of unexpected and unavoidable increases to the cost of provision. Services would only be eligible for an exemption if they are able to demonstrate they have no capacity to absorb the cost increases without reducing quality or risking viability. To achieve the objective of affordability for families, the threshold for exemptions would be relatively high.

Services would need to apply to Government to be able to increase fees by more than the growth constraint. To receive an exemption, services would need to demonstrate where the increased costs have come from and that they have no capacity to absorb these costs without reducing quality or service offering or risking viability.

Compliance with the affordability condition

Providers with services found to have breached the affordability conditions could have their grant agreement terminated. Compliance with the fee growth constraint would be consistently monitored throughout the life of the grant agreement. The Department would issue a notice to anyone who appears to have increased fees by more than the allowable limit. Providers would have the opportunity to respond and, for example, correct data entry errors.

Cost-benefit analysis

Status Quo

Key impacts

This option would:

- likely impact the supported bargaining process which may not proceed or will fail to deliver a meaningful outcome
- risk parties accessing protected industrial action leading to short-term disruptions in care access for families
- fail to address the workforce issues and staffing shortages across the sector which will continue long-term
- risk enduring low pay for the heavily female-dominated workforce, impacting gender equality
- have cost implications through the CCS for the Australian Government and families if supported bargaining parties agree to a wage increase and pass on costs to families

Impacted parties

Those directly impacted by this option include:

- Parties to the supported bargaining authorisation
- ECEC workforce
- Families using ECEC services
 - Children – primarily children experiencing vulnerability or disadvantage

Should no funding be provided in support of a wage increase this is likely to have a disproportionate effect on women. This is the case for the:

- ECEC workforce – as it is heavily female-dominated it is likely that low-pay and conditions will continue to endure
- Broader female labour force – recent data shows that lack of access to ECEC is restricting families from reaching their preferred level of workforce participation.¹⁰³ As women are overwhelmingly responsible for care,¹⁰⁴ lack of access to care disproportionately impacts them.

Overall impact

Under this option, there would be no funding provided in support of a wage increase for ECEC workers, with the risk of enduring low-pay in this female-dominated industry increasing, along with

¹⁰³ Participation, Job Search and Mobility Survey, Australian Bureau of Statistics, 2023.

¹⁰⁴ Department of Prime Minister and Cabinet (2023), [National Strategy to Achieve Gender Equality – Discussion Paper](#), Department of Prime Minister and Cabinet, Australian Government (pmc.gov.au)

long-term workforce attraction and retention issues likely to impact universal access to high-quality ECEC.

Workforce

Benefits

There are no apparent benefits to the ECEC workforce under this option.

Costs

There are costs for the ECEC workforce if no funding is provided in support of a wage increase. This may result in stalling the supported bargaining process, which will be a missed opportunity for a meaningful wage uplift sector-wide. As the application of any wage increase through supported bargaining will be limited to the parties to the supported bargaining agreement, representing less than 6 per cent of the ECEC workforce. As a result, this will represent no flow-through impact on the economic security of the workforce across the sector.

Ongoing engagement with the sector and the feedback provided indicates that enduring low-pay and conditions will see more educators and teachers leaving the sector in pursuit of work that is higher-paid and where they can utilise transferrable skills.

Families

Benefits

Increasing wage costs are one of many determinative factors of the childcare fees paid by families, as such, limiting wage increases may have some net benefit for families. However, the resultant burgeoning workforce crisis is likely to have no apparent benefits for families under this option.

Costs

If the Government does not provide additional funding for a wage increase for the ECEC workforce, wages are still anticipated to increase through other uncontrolled measures, and fees will continue to rise. Fee increases disproportionately impact vulnerable children (including children from low-income households, at risk of abuse and neglect, or from a culturally and/or linguistically diverse background) who already face additional challenges accessing care.¹⁰⁵

The CCS is expected to cover approximately 60 to 70 per cent of fee increases, whilst families will cover the remaining 30 to 40 per cent in out-of-pocket expenses. Families may potentially be paying more than they were prior to the introduction of Cheaper Child Care, amplified for families using services that already charge fees close to, at, or above the HRC. That is, approximately 400,000 families would incur significantly higher fees, with an additional 200,000 families expected to join this cohort as a result of a wage increase.

The impact on families, should there be an unfunded wage increase through uncontrolled measures, would vary depending on amount of the increase. Should a 15 per cent wage increase be agreed through supported bargaining process, out of pocket costs would increase for all families by an average of approximately \$600 per year (14 per cent increase). For a 25 per cent wage increase out of pocket costs would increase by approximately or \$1100 per year (26 per cent increase).

¹⁰⁵ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 153 <www.accc.gov.au>.

Providers

Benefits

There are no apparent benefits to ECEC providers under this option.

Costs

As the workforce shortage is likely to continue under this option, providers will continue to encounter difficulties in filling vacancies, impacting their ability to staff services to ratio, and continuing the practice of capping places below service capacity. Families cannot get CCS when a service is closed due to staffing issues, as such services are unlikely able to charge fees for affected day.

Government

Benefits

The Government would benefit from potential fiscal savings from not funding a wage increase.

Should wages increase through uncontrolled measures Government would still fund a portion of the increase through CCS. As this would not require a new appropriation, there are no costly or lengthy system builds or implementation approaches required.

Further, this option does not influence final findings of the PC Inquiry, expected to be provided to the Government by 30 June 2024, and mitigates concerns around the setting of potential funding precedents.

Costs

Failure for the ECEC sector to achieve a meaningful wage increase will cause the critical workforce shortages to persist, or worsen service accessibility issues for families. The ability to implement high-quality, universal ECEC will be stalled or significantly impacted. It is likely the sector will perceive a failure of Government in supporting important reform for the ECEC workforce and impact its ability to introduce future sector reforms following the outcomes from the PC Inquiry.

This is not a cost neutral option. Government would still provide significant funding for any wage increase through uncontrolled measures, as costs flow through to the CCS. It is expected that the CCS will cover approximately 60-70 per cent of any fee increase associated with a wage increase. A 15 per cent wage increase funded indirectly through CCS would cost Government approximately \$3.1 billion over four years.

As funding would not be provided under a grant arrangement, Government would be unable to implement any fee control mechanism under this option.

Regulatory costs

The regulatory burden of Option One (Status Quo) is neutral. The existing funding mechanism of the CCS would continue in its current form.

Table 1: Regulatory burden estimate table for Option 1 – Average annual regulatory costs

	Individuals (families)	Business	Community organisations	Total change in cost
Status Quo	\$0	\$0	\$0	\$0

Option Two – Funding a time-limited workforce retention payment to participating ECEC employers

There were significant risks identified with this option. As such, it was not brought forward for further consideration. The identified risks included:

- Non-compliance and fraud as there are currently no ways for the Department to ensure that funding is being passed on as higher wages.
- Inability to ensure funding is passed on to workers through the usual workplace relations mechanisms, such as the FWO and the FWC. Given this, there is a risk that the Department's role will mirror the functions of these agencies.
- Workers, and their representatives, generally do not have any rights under a grant agreement, or the ability to enforce obligations under a grant agreement.
- The limited enforcement options available to the Commonwealth under a grant agreement.
- Considerable administrative burden on the Department and significant additional Commonwealth resources required to ensure appropriate governance, accountability and compliance.

Option Three – Funding a time-limited workforce retention payment to ECEC employers under a workforce instrument

Key impacts

This option would:

- likely have a positive impact on ECEC workforce attraction and retention, particularly for LDC and OSHC sectors
- incentivise enterprise bargaining in a traditionally low-paid, award reliant and female-dominated sector
- deliver improved benefits at the workplace level, including higher wages, productivity, culture and engagement
- ensure appropriate safeguards to protect against misuse of funding
- provides workers with a mechanism to seek recourse through the FWC and the FWO to enforce their entitlements
- provide the workforce with 'equivalency' of minimum pay rates
- give the workforce transparency and certainty around their minimum safety net of wages and conditions
- have potentially lower fiscal costs to Government due to the workplace instrument condition
- increase union and employer organisation's engagement with the sector.

Impacted parties

Those directly impacted by this option would include:

- The ECEC workforce, particularly in LDC and OSHC sectors. With separate eligibility criteria or a separate policy option to be developed for the FDC and IHC workforce.
- CCS approved providers of ECEC services.
- Registered organisations, including unions representing ECEC employees and employer organisations who may have a role with assisting stakeholders in fulfilling workplace instrument requirements and access the funding through grant agreements.
- Families benefiting from greater service accessibility, or potentially increased out-of-pocket costs, however unlikely.

As with Option Two, this option would predominantly impact women who make up the vast majority of the ECEC workforce, and as such, they would be the main beneficiary of government funding for a wage increase. Should funding have the expected impact on ECEC workforce attraction and retention resulting in improved ECEC accessibility for families, it is expected that female workforce participation improves as a result. This is due to women being overwhelmingly responsible for care,¹⁰⁶ and generally reducing workforce participation, or not participating at all, when care is difficult to access.¹⁰⁷

Overall Impact

Workforce

Benefits

Increase in both pay and conditions, with potential for future wage increases built into the workplace instrument for the term of operation.

Should funding be phased from a low percentage during the first year, improvements to attraction and retention may potentially remain unrealised until funding increases to 15 per cent.

The workplace instrument requirement will potentially increase sector workplace bargaining engagement for this traditionally award reliant sector, driving professionalism in the heavily female dominated workforce. There is also a high likelihood that this option will see an uplift in conditions across the sector.

Whilst the industry is calling for a minimum 25 per cent wage increase, together with the suite of ECEC workforce initiatives currently underway and in place,¹⁰⁸ a 15 per cent wage increase is expected to positively impact the sector. The increase will likely bring in new entrants and part-time workers picking up additional hours.

Costs

There is not expected to be any administrative or regulatory cost to workers under this option.

¹⁰⁶ Department of Prime Minister and Cabinet, above n, 26.

¹⁰⁷ *Australian Bureau of Statistics*, above n 25.

¹⁰⁸ This includes initiatives under the National Workforce Strategy (2022-2031).

Families

Benefits

A wage increase that improves ECEC workforce attraction and retention would benefit families who have not been able to access care in the past because of the workforce shortage.

Costs

There is not expected to be any administrative or regulatory costs to families under this option.

Whilst it is expected that the wage increase provided to workers will align with the funding provided, there is a risk that out-of-pocket costs may increase for families if wage increases are higher than the government funding. As any additional wage increase (beyond the funding amount) is determined at the workplace level, it is difficult to model the scope of this issue.

The affordability condition would mitigate the risk of high increases to out-of-pocket costs for families, as the fee growth constraint will limit the increases that services are allowed to implement, however several factors for this condition are yet to be settled. As such, while the condition is expected to maintain affordability for families, its actual impact remains unclear.

Whilst there is still a number of variables that need to be settled, an example of the potential cost increase to families is outlined below.

Example – Impact on Families – 15 per cent initial wage uplift ECEC workers. Government funding phases from 7.5 per cent in year one to 15 per cent in year two and three.

- *The average annual increase in out-of-pocket costs for Australian families is approximately \$357 (averaged across all income thresholds)*
- *In accordance with ACCC findings,¹⁰⁹ any increase in out-of-pocket expenses distortionary impacts low-income families. In this example, out-of-pocket costs for families:*
 - *earning less than \$80,000 per year increase by 7 per cent*
 - *earning between \$183,000 and \$262,000 increase by 5.9 per cent*
 - *earning over \$530,000 per year increase by 3.45 per cent*

Providers

Benefits

It is expected that providers would benefit from the impacts that a wage increase has on enhanced attraction, retention, culture and productivity of the ECEC workforce.

A 2023 Report by Dandolo Partners for the Australian Childcare Alliance¹¹⁰ found that a direct wage subsidy significantly mitigates risks to service viability.

Costs

There is expected to be a regulatory impact for providers in signing up to the grant agreement and complying with all relevant conditions, including the affordability condition. Providers would need to

¹⁰⁹ Australian Competition and Consumer Commission, *Childcare inquiry – Final report*, December 2023, 50 <www.accc.gov.au>.

¹¹⁰ Dandolo Partners, *The cost and impact of different funding approaches to increase ECEC sector wages: Report for the Australian Childcare Alliance*, June 2023 <childcarealliance.org.au>.

complete an application form in order to receive funding under the grant agreement. The Department will develop a process allowing providers to apply and will require information, such as provider and individual service Customer Reference Numbers. The application process is not expected to be onerous.

As ongoing funding will be calculated using data derived from the Childcare Subsidy System, which providers already utilise to report child care attendance and enrolment information for CCS purposes, there is not expected to be additional significant ongoing administrative burden.

There are additional regulatory impacts for providers as they engage in a relevant workplace instrument process to become eligible for funding. There will be differing regulatory implications across the sector as providers and workers select the most suitable instrument for their circumstances. Many smaller providers have used the relevant award to determine pay and conditions and have limited understanding of how other workplace instruments are implemented and operate. However, the requirement to have a compliant workplace instrument is expected to significantly reduce ongoing compliance reporting for providers.

Should providers seek assistance from employer associations to put in place the required workplace instruments, it is expected that there would be costs associated with utilising these services of approximately \$3,000 to \$5,000 to the provider, dependant on the type of instruments.

Labour mobility

It is possible that some workers may move to work for providers that offer higher wages as a result of providers' participation in the Worker Retention Payment program. However, data from the 2021 ECEC Workforce Census indicates that notwithstanding the impact of the Worker Retention Payment, the risk of labour mobility is inherent with a range of pay rates already existing within ECEC. For example, 57 per cent of contact LDC staff and 69 per cent of contact OSHC staff being paid at award rates, while approximately 34 per cent of LDC staff, and approximately 19 per cent of OSHC contact being paid above award rates.¹¹¹

Additionally, given the take-up rate is expected to be relatively high at 75 per cent for the first year, and 85 per cent for the second (if funding is phased), staff movement to higher paying providers is not expected to be exacerbated beyond current levels and is not likely to cause significant disruptions to LDC and OSHC services. The Government will also investigate alternative approaches for managing FDC and IHC providers which will minimise negative impacts of staff movement from these sectors.

Government

Benefits

Providing funding in support of a wage increase will meet the expectations of stakeholders across the ECEC sector, and support the female-dominated ECEC sector and the Government's gender equality agenda. It supports and considers the workforce, wage, and provider cost findings of the ACCC Childcare Inquiry and allows time for Government to consider recommendations to broader sector reforms that arise from the PC Inquiry final report.

¹¹¹ Department of Education, Skills and Employment, [2021 Early Childhood Education and Care National Workforce Census report - Department of Education, Australian Government](https://www.education.gov.au/early-childhood/resources/2021-early-childhood-education-and-care-national-workforce-census-report), August 2022, 50 <h <https://www.education.gov.au/early-childhood/resources/2021-early-childhood-education-and-care-national-workforce-census-report>>.

An increase in ECEC accessibility for families due to increased ECEC workforce attraction and retention will also contribute to increasing broader workforce participation, particularly the participation of women who are more likely to reduce hours or leave the workforce when they cannot secure child care.

This option incentivises workplace bargaining and would be a positive step forward for the workforce since the Government's reforms introduced through the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.

The Victorian Government has had success with a similar policy where additional funding is provided to preschool and kindergarten employers who are either under a prescribed multi-enterprise agreement, or a separate EA offering equivalent wages.¹¹² Experience with the Victorian approach suggests that it has served to promote enterprise bargaining in the Victorian preschool sector, ensuring Government funding is spent on paying reasonable wages which has the highest impact on the quality of care provided.

Costs

It will be critical to provide a well-developed communications plan to support the sector's engagement with enterprise bargaining (or other workplace instruments) and understand the purpose of the Worker Retention Payment. This will support providers who face difficulties in navigating the workplace relations system, or who see enterprise bargaining as administratively burdensome. Registered organisations and unions have expressed willingness to support the sector through the EA development process.

Option Three has indicative costs of \$3 to 4 billion over two years based on a phased approach which commences at 10 per cent for the first year and at 15 per cent for the second year.

There are Departmental costs associated with the additional Commonwealth resources required to ensure appropriate governance, accountability and compliance with the grant agreement. There are also ICT costs associated for the Department and Services Australia to support the delivery of payments to participating providers.

Regulatory costs

The regulatory costs associated with Option Three are provided in Tables 3 and 4 below, based on the Regulatory Burden Measurement Framework.

Table 3 outlines the regulatory costs associated with the adoption of a FWC approved EA for providers within the 2024-25 financial year. These costs may be different for LDC providers, dependant on whether they have an existing EA that needs to be varied, do not have an existing EA and either choose to join the supported bargaining agreement or bargain within the workplace for their own. The OSHC sector does not have the option to join the supported bargaining process.

Note: regulatory costs have not been included for the implementation of Individual Flexibility Arrangements (IFA) under relevant modern awards or for workplace determinations.

IFAs have not been included largely due to the individual nature of these arrangements at the workplace level. Together with the varying size of businesses and number of workers, it is not possible

¹¹² Victorian DoE (Victorian Department of Education) 2023, Kindergarten funding guide, <https://www.education.vic.gov.au/>.

to estimate these costs. Based on factors such as business size, instrument complexity and engagement with FWC processes, it is likely that for some business types, implementing an IFA for each worker would have lower regulatory costs than implementing an EA.

Workplace determinations have not been separately included as the process generally occurs in the context of enterprise bargaining and is expected to be an exceptional occurrence. It is also difficult to predict whether a workplace determination will meet the requirements for Option Three, given their terms are determined by an independent third party.

Table 4 outlines the regulatory costs associated with the expected outlays of providers in applying for the funding under a grant agreement from 1 December 2024, through to the end of the funding period in the 2026-27 Financial Year.

Table 3: Regulatory burden estimate table for Option Three – Average annual regulatory costs (Adopting an Enterprise Agreement – macro impacts)

Change in costs (\$million)	Individuals (families)	Business	Community organisations	Total change in cost
LDC Sector	\$0	\$21.2	\$2.9	\$24.1
OSHC Sector	\$0	\$12.1	\$2.7	\$14.8

Table 4: Regulatory burden estimate table for Option Three – Average annual regulatory costs (Application and compliance with a grant agreement)

Change in costs (\$million)	Individuals (families)	Business	Community organisations	Total change in cost
ECEC Sector	\$0	\$6.8	\$1.1	\$7.9

Explanatory notes relating to Table 3 and Table 4 are as follows:

- The regulatory burden estimates are annualised over a period of **three years** to reflect program duration. Costs only include direct costs to ECEC services.
- Community organisations includes the 12 per cent of LDC, 18 per cent of OSHC services and 16 per cent of FDC services that are community managed.
- **Table 3** reflects the costs to the LDC sector adopting a new EA which is assumed to be approximately 30 per cent of the sector, with assumed uptake of the supported bargaining agreement to be approximately 70 per cent. The estimates relating to the OSHC sector assume 100 per cent as there is no ability to join the supported bargaining agreement. It is acknowledged that some services will have an existing EA in place that may not meet the conditions of Option Three.
- There is acknowledgement that some providers will have an existing EA in place, however the number of existing agreements that will not readily meet the requirements of Option Three is unclear. Whilst there is understanding of the percentage of workers in the sector covered by an EA, there is no reliable source that outlines the number of services that will be in this position.
 - Costs of varying an existing agreement or terminating their existing agreement to join the supported bargaining agreement are not expected to increase the estimates in Table 3.

Affordability condition

Without a limit on fee growth, any additional wage increase incurred by providers, including incidentals like oncosts, will likely be passed on to families as higher fees, eroding some of the benefit of the Cheaper Child Care measure. Fee increases would be inconsistent and affect families in an unequal manner. This would also increase CCS costs for Government on top of the costed wage contribution.

To reduce these negative impacts, it is suggested to implement a fee growth constraint based around an index. It is recommended to use a uniform cost index for all providers as it is administratively straightforward (compared to a varied index). Constraining fee growth helps maintain ECEC affordability for families, while permitting some fee growth allows services to account for cost increases, remain financially viable, and allows for market growth. Government will establish a reference point from which any fee growth is calculated.

Any restrictions on future fee growth would need to be considered in the context of any broader price controls Government may impose in response to the recommendations from ACCC and the PC Inquiries.

Providers

Benefits

There may be a small increase in occupancy, revenue and profits for some providers resulting from out-of-pocket fees that will have grown less than without the constraint. Affordability drives parents and guardians' decisions around how much ECEC to use¹¹³ and some parents report they are unable to return to work because of issues with affording ECEC.¹¹⁴ Lower out-of-pocket gap fees may increase occupancy for some LDC services, and occupancy is a key driver of revenue and therefore profits and viability.¹¹⁵

Costs

Substantive compliance costs

The proposed affordability condition may have substantive compliance costs for providers due to forgone revenue. Providers will not be able to increase fees by more than the allowed index. Providers who would have raised fees by more than the allowed index may have a reduction in (hypothetical) revenue earned. Foregone revenue can be calculated as the difference between the product of the hypothetical, desired raised fees and the number of hours charged, and the product of the actual, allowed fees and the number of hours charged.

Departmental administrative data indicates the vast majority of providers would be affected by a fee growth limitation. Based on Departmental data of fee growth over the last five years, it is estimated that approximately 70 per cent of services will be impacted by foregone revenue each year.

¹¹³ Australian Competition and Consumer Commission, [Childcare inquiry September interim report](#), September 2023, 14 <www.accc.gov.au>.

¹¹⁴ Productivity Commission, *A path to universal early education and care: Draft Report*, November 2023, 292 <www.pc.gov.au>.

¹¹⁵ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 5 <www.accc.gov.au>.

Further, the child care cost index will reflect the average growth in operating costs, meaning cost increases for 50 per cent of providers will be higher than the index. Assuming all other input cost categories remain the same, occupancy rates are unchanged and no cost efficiencies are found, the affordability condition will reduce operating margins for these services. This may lead, over time, to a financial viability risk. Should revenue not be sufficient to cover operating costs, and should this situation persist, some providers may not be able to continue to operate under the fee growth limit and may be forced to exit the market. To minimise this risk, the Department propose an exemption process which allows providers to demonstrate that the fee constraint would risk their financial viability (regardless of whether costs are foreseen or unforeseen).

Administrative and delay costs

Due to the fee growth constraint, providers will face additional administrative compliance costs and some delay costs.¹¹⁶ Administrative costs arise because providers will have to spend time and effort to understand the fee growth restriction, how it works in practice and how they can adhere to the constraint.

There may also be administrative and legal costs and efforts needed for the preparation and participation in the exemption mechanism. Some providers may face unavoidable and unexpected costs that they perceive warrant an application for exemption from the fee growth limit. Providers would need to demonstrate the circumstances and nature of their situation and why exceptional fee growth is needed, and this effort constitutes auxiliary regulatory costs. It is difficult to predict the number of applications that will be submitted to Government, however as stated above, it is expected that approximately 70 per cent of services would be impacted by the fee growth constraint but only a proportion would consider and apply for exemption. Should there be material delays in approving exemption applications, providers may incur delay costs in the form of lost revenue before fees are able to be increased.

In sum, this document assumes the administrative compliance and delay cost are negligible in comparison to the substantial compliance costs (foregone revenue) as discussed above.

Families

Benefits

Families will benefit from a fee growth limit. In line with the assertions above for providers, families will be better off under a fee growth limit because services are not allowed to raise ECEC fees above a certain index. In particular, the substantial regulatory benefit arises from the difference between hypothetical, growth-unrestricted fees and actual, growth-restricted fees. The exact impact depends on the circumstances of the provider, the location, and household characteristics.

Lower fees (over time) translate into lower out-of-pocket costs for families and reduced CCS payments for Government. Assuming an average CCS rate of between 60 and 70 per cent, fees that increase by \$1 less because of the growth limit imply a 30 to 40 cent saving in out-of-pocket expenses for families (and 60 to 70 cent reduced CCS payments). The total benefit for families from a fee growth limit is then the product of the lower out-of-pocket expenses and the number of hours families use child care services.

¹¹⁶ Office of Impact Analysis, *Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies*, January 2024.

Costs

The proposed funding is time-limited to two years with the assumption there will be significant reforms across the ECEC sector following the PC Inquiry. The affordability condition will also expire after two years, however the EA resulting from the supported bargaining and other workplace instrument options in place for the purposes of the grant payment will likely stay and be ongoing. Without further subsidies or other changes to the system, providers will likely pass on the full costs for the higher wages to families at this time and may increase fees more than they otherwise would have to compensate for lost revenue.

Any administrative and delayed costs associated with compliance with the fee constraint are negligible for families.

Approximate regulatory burden estimate

Table 5: Annual regulatory costs of implementing or complying with the affordability condition

	Individuals (families)	Business	Community organisations	Total change in cost
Affordability condition	\$0	\$0	\$0	\$0

Other considerations

First Nations workforce

A wage increase for the ECEC workforce would benefit current First Nations people in the ECEC workforce and increase their economic security. However, based on the findings of the ACCC Childcare Price Inquiry, a wage increase for the sector is not likely to have significant impact on the attraction and retention of First Nations people into the ECEC workforce. The Inquiry found that finding First Nations staff is particularly challenging for providers and even where providers do find staff, retention can be difficult.¹¹⁷ A large provider told the ACCC, through a First Nations roundtable, that the turnover of First Nations staff is significantly higher than their average staff turnover. These challenges are heightened in regional and remote areas that lack the availability of local staff training.¹¹⁸

While online training pathways may be available, participants indicated that this often does not meet the needs of First Nations educators and others in remote areas, and that many First Nations people do not have the literacy levels in English required to engage with the learning.¹¹⁹ In addition to increases in pay and conditions, improving the retention and attraction of First Nations people to the ECEC sector, likely requires further progress in Closing the Gap educational targets and outcomes in the first instance.

¹¹⁷ Australian Competition and Consumer Commission, *Childcare inquiry – Final report*, December 2023, 157 <www.accc.gov.au>.

¹¹⁸ *Ibid*, 157.

¹¹⁹ Australian Competition and Consumer Commission, *Childcare inquiry – Final report*, December 2023, 7 <www.accc.gov.au>.

First Nations families

The ACCC Inquiry found that some First Nations households face additional challenges when accessing formal care. Whilst workforce measures that assist with accessibility of care are a positive step for these families, further structural barriers will not be resolved under any of the options explored in this policy, such as challenges relating to finding services that cater to cultural needs, as well as accessing the CCS system.¹²⁰

The ACCC Inquiry also found that some First Nations households struggle to afford formal child care, even when they have access to financial support.¹²¹ As this policy seeks to address workforce wages and any affordability impacts that occur as a result, the challenges faced by First Nations families in accessing affordable care are better suited for Government's consideration of the current sector funding model as a result of recommendations made in both the ACCC and PC Childcare Inquiries in the near future.

Workforce supply in remote areas

The ACCC Inquiry found that staffing is a significant barrier to providing care in regional and remote areas, with labour costs significantly higher in Very Remote areas relative to Major Cities and regional areas.¹²² Currently, providers are paying above award wages and providing a range of financial incentives to attract and retain staff in remote areas, however issues such as lack of housing in some areas and having to compete with higher paying industries for staff (such as in mining regions) create additional staffing pressures.¹²³

Workforce pressures are resulting in 'under-served' or 'unserved markets' in many parts of Australia, with the ACCC noting that 'there are fewer childcare places available per child, on average, as areas become more remote'.¹²⁴

International ECEC wage subsidies

ECEC workforce attraction and retention issues extend far beyond Australian borders, with other countries in the Organisation for Economic Co-operation and Development (OECD) reporting similar challenges. Whilst there are examples of international wage subsidies, some in place for a number of years, jurisdictions have not made quantitative data available on their impact to attraction and retention of ECEC workers.

Analysis of wage subsidy models utilised in other jurisdictions, and their applicability to the Australian context, would need to consider viable operation within Australia's complex workplace relations system, and comparative differences in on-costs and pension funding schemes across jurisdictions.

United States

As of September 2023, the ECEC sector in the United States of America was grappling with a significant shortfall of approximately 40,000 workers compared to the pre-pandemic workforce.

¹²⁰ Ibid, 154.

¹²¹ Ibid, 155.

¹²² Australian Competition and Consumer Commission, [Childcare inquiry September interim report](#), September 2023, 12 <www.accc.gov.au>.

¹²³ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 159 <www.accc.gov.au>.

¹²⁴ Ibid, 26.

While an initial decline occurred during the pandemic, ECEC workers have reported not returning to their positions due to persistently low pay and a perceived undervaluation of their contributions.¹²⁵

In response, initiatives such as the Early Childhood Educator Pay Equity Fund by the Government of the District of Columbia have been implemented. The Early Childhood Educator Pay Equity Fund aims at achieving pay parity between early childhood educators and their K-12 counterparts. Under this funding, eligible educators received up to four payments of US\$3,500 each (depending on their staff type and employment status). As of June 2023, over 270 child development facilities had opted into the program, and as of March 2024, over 4,000 workers have already received a pay increase. Given the infancy of the program, there is no quantitative data available, however services are reporting that the fund has helped to recruit and retain ECTs.¹²⁶

Canada

The Government of Canada has made an investment of over CA\$27 billion over 5 years as part of its Budget 2021 to build a Canada-wide early learning and child care system with all provinces and territories, other than Quebec, which does not adhere to the framework.¹²⁷

An example of the funding being utilised to fund wage increases is in the Canadian province of Saskatchewan. The Early Childhood Workforce Agreement, signed in 2017 provides the overarching principles that guide federal investment into regulated early learning and child care for the province. Saskatchewan will receive over CA\$85.7 million between 2021-22 and 2024-25. This included a one-time investment of CA\$17.1 million through workforce development funding in 2021-22. This workforce development investment supported child care centres to address compensation of Early Childhood Educators (ECEs), enhanced qualification levels in the sector and developed professional learning opportunities. In 2021-22, Saskatchewan spent CA\$11.5 million and carried over CA\$5.6 million into 2022-23.¹²⁸ Part of this funding was used towards a wage enhancement grant to fund wage increases of up to CA\$1 per hour, CA\$2 per hour, and CA\$3 per hour dependant on the level of certification held by the worker,¹²⁹ From 1 September 2022, the Wage Enhancement Grant was increased up to an additional CA\$2 per hour, leading to a total of CA\$5 per hour wage increases from 2021-22 to 2022-23.¹³⁰

The 2021-22 program annual report stated that wage enhancements supported the retention of certified educators and encouraged them to become fully certified which contributes to high quality programs, whilst increasing wages also helps attract new workers to the sector.¹³¹ However, neither the 2021-22 or 2022-23 annual reports, or the December 2022 Implementation Committee Progress Report¹³² provide for evaluation metrics that specifically demonstrate the effectiveness of the grant

¹²⁵ Centre for American Progress, <https://www.americanprogress.org/article/the-child-care-sector-is-still-struggling-to-hire-workers/>, October 2023

¹²⁶ Office of the State Superintendent of Education, [Early Childhood Educator Pay Equity Fund | osse \(dc.gov\)](https://www.osse.dc.gov/early-childhood-educator-pay-equity-fund)

¹²⁷ Government of Canada, Early Learning and Child Care Agreements, <<https://www.canada.ca/en/early-learning-child-care-agreement/agreements-provinces-territories.html>>

¹²⁸ Government of Saskatchewan, [Canada-Saskatchewan Early Childhood Workforce Agreement: 2022-2023 Annual Report](https://www.saskatchewan.ca/early-learning-and-child-care-agreement/2022-2023-annual-report) <www.saskatchewan.ca>.

¹²⁹ Government of Saskatchewan, [Canada-Saskatchewan Early Childhood Workforce Agreement: 2021-2022 Annual Report](https://www.saskatchewan.ca/early-learning-and-child-care-agreement/2021-2022-annual-report) <www.saskatchewan.ca>.

¹³⁰ Government of Saskatchewan, [Canada-Saskatchewan Early Childhood Workforce Agreement: 2022-2023 Annual Report](https://www.saskatchewan.ca/early-learning-and-child-care-agreement/2022-2023-annual-report) <www.saskatchewan.ca>.

¹³¹ Government of Saskatchewan, [Canada-Saskatchewan Early Childhood Workforce Agreement: 2021-2022 Annual Report](https://www.saskatchewan.ca/early-learning-and-child-care-agreement/2021-2022-annual-report) <www.saskatchewan.ca>.

¹³² Government of Saskatchewan, [Implementation Committee Progress Report on the Canada-Saskatchewan Canada-Wide Early Learning and Child Care Agreement](https://www.saskatchewan.ca/early-learning-and-child-care-agreement/implementation-committee-progress-report) <www.saskatchewan.ca>

on workforce attraction and retention. Statistics Canada notes that there is little publicly available information on the supply and demand of childcare at present.¹³³ However, an indicator utilised for measuring program success includes the *percentage of current certified child care staff supported*, which for the 2021-22 year was 78.4 per cent of certified staff, with a funding underspend of approximately CA\$2.5 million, with the amount carried over into the 2022-23 financial year and funding support targets of 78 per cent exceeded with over 90 per cent of certified workers receiving a wage enhancement grant.¹³⁴ There does not appear to be any publicly available information on the reason for the take-up rates in the first and second years, or on the ease or complexity of the grant application process.

The province of New Brunswick has also utilised funding to implement their Wage Support Program for Early Childhood Educators (WSP-ECE), stating that the intention of the program is to support operators of early learning and childcare facilities with the recruitment and retention of trained educators.¹³⁵ The program eligibility scope is wide, allowing all operators of licenced early learning facilities, within the province, to register for the WSP-ECE and enrol their qualifying educators, based on their level of training, qualifications and relevant work experience.¹³⁶ The scheme provides for a minimum hourly rate of pay that educators must receive based on their level of skill and experience. Operators must make a minimum hourly contribution which is then supported by a wage funding contribution,¹³⁷ and additional administrative funding of 14 per cent of the total WSP-ECE funding amount to account for an operator’s administrative responsibilities (on-costs).¹³⁸ An example of the minimum hourly rates afforded to workers through the program with a breakdown of the operator and government funding contribution is outlined in the following table:

New Brunswick ECE Wage Grid with funding amounts

	Step 1		Step 2		Step 3		
	Designated 0-5	School Age	Designated 0-5	School Age	Designated 0-5	School Age	
Level 1	\$10.04	\$7.49	\$11.29	\$8.74	\$12.60	\$10.05	Wage Support Funding (Includes \$2.55 Minimum Wage Offset)
	\$12.75	\$15.30	\$12.75	\$15.30	\$12.75	\$15.30	Operator Minimum Contribution
	\$22.79	\$22.79	\$24.04	\$24.04	\$25.35	\$25.35	Minimum Hourly Wage Rate

Source: Government of New Brunswick, WSP-ECE Handbook Insert for: ECE Wage Grid Guidelines. As at April 2024

Noting the infancy of the WSP-ECE, which implemented the wage increases of between 13 and 24 per cent from April 2022, there are early indicators of success in improving retention and recruitment

¹³³ Statistics Canada, *Child care in Canada: A Snapshot* <www.statcan.gc.ca>

¹³⁴ Government of Saskatchewan, *Canada-Saskatchewan Early Childhood Workforce Agreement: 2022-2023 Annual Report* <www.saskatchewan.ca>

¹³⁵ Government of New Brunswick, *Wage Support Program for Early Childhood Educators (WSP-ECE)* <www.gnb.ca>

¹³⁶ Ibid.

¹³⁷ Government of New Brunswick, *WSP-ECE Handbook Insert for: ECE Wage Grid Guidelines* <www.gnb.ca>

¹³⁸ Government of New Brunswick, *Wage Support Program for Early Childhood Educators (WSP-ECE): Program Handbook*, <www.gnb.ca>

outcomes for the sector. The 2022-23 Annual Report,¹³⁹ outlines that New Brunswick is still facing recruitment challenges, with high turnover rates resulting in a focus on replacing staff instead of expanding the workforce. However, the province has seen the turnover rate decrease by 33 per cent since 31 March 2022. In November 2021, the turnover rate was near 50 per cent. New Brunswick continues to work in this area through the development of a retention strategy in collaboration with the sector.¹⁴⁰

International ECEC affordability measures

The ACCC consulted with officials from overseas governments to help inform the findings and recommendations of their Childcare Price Inquiry. The Department attended these meetings, gleaned information and lessons from other nations regarding policy and regulatory measures to improve ECEC affordability.

Fee regulation, broadly, can be categorised under two broad streams: indirect pricing controls and direct pricing controls. Indirect pricing controls are more prominent and viable within demand-side policy initiatives, predominantly found in market-based systems such as Australia. International examples include New Zealand, The Netherlands and Ireland. Direct pricing controls are favoured by systems delivering predominantly supply-side-focused policy measures. International examples include the Nordic Countries of Iceland, Sweden, Denmark and Norway, as well as parts of Canada.¹⁴¹

In the ACCC's consultations with countries delivering ECEC in predominantly market-based systems, a trend is growing towards greater regulation of childcare fees, supported by supply-side funding initiatives. This is supported by OECD data on the average fees of ECEC across OECD nations. Referring to OECD data, the ACCC found that between 2018-2022 the adjusted OECD average in fee growth was minus 9.9 per cent. Comparatively, Australia's adjusted fee growth was an increase of 9.3 per cent. This all occurred during a period when the average increase in CPI was 17.8 per cent¹⁴².

Many stakeholders, who responded to the ACCC's September interim report, noted that overseas examples of regulatory measures in comparable market-based systems (specifically pricing controls) are still in their infancy and not yet proven to have been effective in meeting those countries objectives. Specifically, multiple stakeholders noted the concern that regulatory measures would not keep pace with rising costs.¹⁴³ The OECD has noted that regardless of the objectives or targets of pricing controls, regulatory measures need to be designed carefully. Set too low or too bluntly, and there is a heightened risk that regulation could lower quality or lead to market exit of providers. Set too high, and the risk of windfall gains and an unsustainable, inefficient use of public funds threatens the integrity and viability of public schemes.

International Example: Ireland

In 2022, the Government of Ireland announced an increase in childcare subsidies and pledged to cut childcare costs by 50 per cent.¹⁴⁴ A component of this investment is the Core Funding Scheme, where

¹³⁹ Government of New Brunswick, [Canada-New Brunswick Canada-wide Early Learning and Child Care Agreement: Annual Report for Fiscal Year 2022-2023](https://www.gnb.ca) <www.gnb.ca>.

¹⁴⁰ Ibid.

¹⁴¹ Australian Competition and Consumer Commission, [Childcare inquiry September interim report](https://www.accc.gov.au), September 2023 <www.accc.gov.au>.

¹⁴² Australian Competition and Consumer Commission, [Childcare inquiry – Final report](https://www.accc.gov.au), December 2023, 209, <www.accc.gov.au>.

¹⁴³ Ibid, 214

¹⁴⁴ Government of Ireland, ["Minister O'Gorman secures €1 billion investment in early learning and childcare"](https://www.gov.ie/en) <www.gov.ie/en>

services are provided with grant payments to cover operating costs and enhance the quality of care, primarily through the retention and development of ECEC staff. These payments are made under a funding agreement with conditions, including financial reporting.

One of the primary conditions is a fee freeze, whereby services in receipt of Core Funding cannot increase their service fees by more than what the services were charging as at September 2021. The intention is to stabilise fee levels and ensure the affordability benefits of recent increases to Ireland's demand-side subsidy scheme (known as the National Childcare Scheme (NCS)) were fully felt by parents.¹⁴⁵ It was estimated by the Government of Ireland that when the NCS changes were introduced in January 2023, families would see an average reduction in fees of 25 per cent.¹⁴⁶ Over 90 per cent of providers signed up the Core Funding Scheme in its first year and 94 per cent have signed up in the second.¹⁴⁷

Despite the reductions in fees and the rates of participation in the Core Funding Scheme, media reports in Ireland highlight ongoing concerns from peak ECEC bodies in Ireland, that the Government's funding schemes and fee regulations make it especially onerous on services to remain viable¹⁴⁸¹⁴⁹. Also, the scheme fails to adequately address the issues in workforce retention and has not stopped the rate of service closures across the country, which continue to place strain on access for families.¹⁵⁰¹⁵¹ The levels of funding have also been criticised for being too low, and the blunt form of implementation has resulted in widespread variations of regulated fees, with fees not being automatically indexed to inflation, as noted by the ACCC.¹⁵²

Consultation

The pre-design phase

During this phase, the Department took a comprehensive approach in determining an appropriate consultation plan. Acknowledging that stakeholders within the ECEC sector had received supported bargaining authorisation, the Department anticipated that the Government, as a majority funder of ECEC through the CCS, would have the unique opportunity to seek information, feedback and insights to policy design through this process, when directed by the FWC to attend supported bargaining conferences.

The Department considered the submissions made by parties as part of the supported bargaining application process during this stage to gain further insight into stakeholder expectations of Government, agreed facts relevant to the sector, workforce and the outcomes being sought. This process provided the Department with sufficient basis to commence policy design. The Department

¹⁴⁵ Government of Ireland, '[First 5 Funding Model – Core Funding](http://www.first5fundingmodel.gov.ie/)' <www.first5fundingmodel.gov.ie/>

¹⁴⁶ Government of Ireland, '[Minister O'Gorman secures €1 billion investment in early learning and childcare](http://www.gov.ie/en)' <www.gov.ie/en>

¹⁴⁷ Government of Ireland, '[Over 90% of Early Learning and Care and School-Age Childcare providers introduce fee freeze for parents](http://www.gov.ie/en)' <www.gov.ie/en>

¹⁴⁸ The Irish Times, '[Childcare providers may withdraw from funding scheme over reporting rules – The Irish Times](http://www.irishtimes.com)'

¹⁴⁹ The Journal, '[O'Gorman doubles down on need for fee freeze as childcare providers protest at Leinster House](http://thejournal.ie)' (thejournal.ie)

¹⁵⁰ The Irish Examiner, '[Parents trying to find creche places for children who have yet to be born](http://www.irishexaminer.com)' (irishexaminer.com)

¹⁵¹ The Irish Times, '[Why so many creches have been closing and what can be done about it – The Irish Times](http://www.irishtimes.com)'

¹⁵² Australian Competition and Consumer Commission, '[Childcare inquiry September interim report](http://www.accc.gov.au)', September 2023, 196 <www.accc.gov.au>

anticipated that these conferences would provide a sufficient level of information to assist with research and policy development.

The Department further acknowledged the significant suite of data collection, consultation and research being undertaken during this period through the ACCC Childcare Price Inquiry, the PC Inquiry into ECEC and the National Workforce Strategy Research into pay and conditions undertaken by Macquarie University. These processes involved sector stakeholders and any other interested parties making multiple submissions, responding to extensive surveying and/or attending in-person or virtual roundtable discussions relating to issues across the sector. The Department was also provided with further research or survey results commissioned by registered organisations to consider during this period.

With the array of information provided to the Department from the ACCC and PC Inquiry processes, an informed decision was made to refrain from further consultation with the sector to limit consultation fatigue. Note that the PC Inquiry will release its final report by 30 June 2024.

The design phase

During the design phase from August 2023 onwards, the Department has continuously consulted with other Commonwealth departments and agencies on the fiscal and regulatory impacts, risks and benefits of this proposal, including the Australian Government Department of Employment and Workplace Relations, the Department of Finance and the Treasury. The Department has incorporated their feedback on the policy options, sub options and the wage increase calculation methodology into the policy design.

The Department has extensively consulted and considered the findings available in the ACCC Childcare Inquiry report as they became available. Data from these reports has been considered in determining an appropriate preliminary wage increase calculation methodology and policy design. This includes analysis and consideration of the information and data made available including:

- the ECEC workforce,
- current pay and conditions of the ECEC workforce, and
- the cost and profit data for both for-profit and not-for-profit providers in the sector.

The Department has considered the recommendations and findings of the PC's draft report and the ACCC's final report, including those regarding sector profitability and viability, and workforce, in developing this proposal. This included considering whether the proposal will drive positive workforce outcomes and potential risks.

The ACCC Inquiry (with 94 submissions in response to its September 2023 interim report, and 7 roundtables with educators, providers, First Nation and Culturally and linguistically diverse communities, parents and guardians and In Home Care sector, and parents and guardian surveys) has now concluded, however, the Department continues to meet regularly with the PC on their inquiry. The ACCC has provided some insights regarding what specific forms of market intervention, such as direct and indirect price controls, might look like in practice.¹⁵³

¹⁵³ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 211 <www.accc.gov.au>.

Consultation with targeted stakeholders, including the ACCC, ABS and PC, has helped to inform policy design and mechanisms of a fee growth condition and exemption process attached to Government funding for a wage increase, including its impact on ECEC sector viability and market dynamics. This proposal has taken into consideration any findings and recommendations related to the ongoing PC Inquiry, which is due to be handed to the Government by 30 June 2024.

In addition, following direction from the FWC, the Department has attended supported bargaining conferences on 10 November 2023, 19 December 2023 and 23 February 2024 where the bargaining parties were given the opportunity to provide the Commonwealth with information that would assist in reaching a decision for the Government to fund a wage increase. This included evidence and information which informs the Commonwealth's position on the parameters for any contribution, the parties' position on potential conditions, and a summary of the key matters the parties have been contemplating for inclusion in any agreement.

The analysis of submissions (through ACCC and PC inquiries), supported bargaining conferences, and research presented to the Department highlighted the consensus among stakeholders – employees, employers and peak bodies – on the necessity of improving the pay and conditions to support recruitment and retention of the ECEC workforce. ECEC educators and providers also uniformly identified staffing as the most significant constraint to increasing supply in the ECEC sector. There was a strong agreement on the need for greater support for education, training and professional development.

Importantly, there have been no significant disagreements identified regarding ECEC workplace pay and conditions. However, there were differing views on the specifics of how these improvements should be implemented, such as any conditions applied to Government funding. For example, large ECEC providers, both for-profit and not-for-profit, welcome price controls on services, however, some highlighted the need to ensure that constraints have no unintended consequences that impact the quality of services provided or financial viability of providers.

Further, while majority of the submission to the ACCC and PC support conditions aimed at raising the quality and inclusion of ECEC, large for-profit providers have objected to a condition which would require a minimum quality standard to be achieved to receive funding. This objection is not based on a challenge to achieve but rather on the fact that improving quality largely depends on the experience and commitment of the team providing education and care. It is argued that their ability to attract, develop and retain such a team would be severely compromised if they were precluded from receiving any supplementary funding needed for these improvements.

The Department considered consultation findings and feedback and recommended policy Options Two and Three, taking into consideration funding mechanisms to ensure the process is not overly complicated with limited administrative burdens on providers, but is still sufficient to demonstrate funding compliance and integrity. Considering the need for fee growth constraint to support affordability, the policy design highlighted fee control measures so that the providers and services cannot pass on wage increase funded by the Government to parents and guardians under the affordability condition.

The Department is developing a further consultation and communication plan to ensure the sector understand and have the opportunity to engage with the Government's grant funding process for the Worker Retention Payment. The Department will continue to engage with peak bodies, unions and key stakeholders to ensure that communication efforts are consistent and complementary.

Option selection

The Department considered the impact of allowing the status quo to continue in relation to Government funding arrangements for the ECEC sector. Under this option, increases in wages and conditions may eventuate through the supported bargaining process and the FWC-initiated proceedings to examine and address gender undervaluation in several modern awards, including the Children's Services Award. The cost of any wage increase provided in the sector will continue to be passed on to families, increasing out-of-pocket costs and impacting affordability, with low income households disproportionately impacted as they spend relatively more disposable income on child care expenses compared with other households.¹⁵⁴ As the ACCC Childcare Inquiry found, labour is the largest component of the cost to supply child care services.¹⁵⁵ Whilst it is not the only factor that providers consider, any minimum wage increase will impact on the pricing decisions of providers.¹⁵⁶

While maintaining the status quo has no direct cost associated, it is still not regarded as a cost neutral option, as the costs associated with workforce wage increases, whether as a result of enterprise bargaining or increases to the minimum award rate of pay, will still continue to be funded through the CCS as costs are passed on to families through the fees paid. This option will also run at the expense of likely exacerbating, or having no impact, on workforce shortages and the associated accessibility challenges they currently pose to families around Australia. As such, this option does not meet the policy objectives outlined above.

When considering the remaining policy options, the Department considered these by balancing the potential impacts, risks and sensitivities of the following points:

- workplace relations outcomes and safety net of entitlements for workers
- recourse mechanisms available to workers
- availability of non-compliance and fraud mechanisms associated with implementation
- ease of access and regulatory burden associated with funding.

It is pertinent to note that the funding option selected by Government will be communicated to stakeholders including FWC, parties to the supported bargaining process, and ECEC peak bodies and communities. There is potential that the feedback and further insights provided by the sector stakeholders will further influence future policy design in the long-term.

Recommended approach

The Department recommends Government implement Option Three. In our view and supported by the Department of Employment and Workplace Relations, this option best achieves the policy objectives in support of increasing ECEC workforce attraction and retention, while maintaining affordability for families. This option will set the basis for ongoing engagement in workplace bargaining and workplace relations system across the sector, achieving a much required pay and

¹⁵⁴ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 50 <www.accc.gov.au>.

¹⁵⁵ Australian Competition and Consumer Commission, [Childcare inquiry September interim report](#), September 2023, 42 <www.accc.gov.au>

¹⁵⁶ Australian Competition and Consumer Commission, [Childcare inquiry – Final report](#), December 2023, 50 <www.accc.gov.au>.

conditions uplift for the long-term. This option provides a stronger workforce footing for achieving the Government's objective of universal ECEC.

This option meets the policy objective to increase wages for ECEC educators and teachers to improve workforce attraction and retention and minimising risks of non-compliance and fraud, whilst maintaining enforcement options for workers. Option Three strikes the appropriate balance between the costs and benefits of providing funding in support of a wage increase for this sector. While there is a higher regulatory burden on providers under this option, due to the workplace instrument requirement, it substantially reduces the risks associated with potential non-compliance and fraud whilst providing the important ability for workers to seek recourse in relation to pay and conditions matters.

This option supports the Government's gender equality agenda through its broader application of lifting pay and conditions for the low-paid, heavily female-dominated ECEC workforce, providing an opportunity for the Government's workplace relations reforms and supported bargaining to achieve the intended positive outcomes that low-paid sectors previously struggled to access.

The financial impact of the policy on families is expected to be relatively small or have no impact. It is expected that wage increases will be aligned with funding. However, based on the Department's modelling, if the wage increase for workers is 15 per cent, yet the funding percentage is half of this amount, the average impact to families through increased out-of-pocket costs will be approximately \$357 per year. However, there is potential for this to be mitigated by the application of the fee constraint condition.

Requiring providers to have a current workplace instrument, which meets the minimum pay and condition requirements, will give assurance that providers are passing on Commonwealth funding to staff in the form of a wage increase. Should this not be the case, workplace instruments give employees the ability to seek recourse through the FWC and FWO. Whilst there is some concern regarding the potential administrative and legal burden and costs associated with implementing workplace instruments, the similar policy in place in Victoria has proven successful and has served to promote workplace bargaining and better conditions for workers in the Victorian Preschool sector.

Implementation and review

Implementation

Implementing funding in support of a wage increase will require clear communication and implementation arrangements for ECEC providers, the workforce, unions, employer associations and other stakeholders. The Department has canvassed several implementation options for delivering funding to support a wage increase for the ECEC sector with the grants-based mechanism as the preferred approach. Departmental staff will manage implementation processes.

A grants-based mechanism, developed in accordance with the *Commonwealth Grants Rules and Guidelines 2017*, is broadly consistent with which was used by the Department throughout 2020 and 2021 to deliver COVID-19 emergency payments to support the ECEC sector. This mechanism will utilise currently available administrative data to calculate payments.

The processes for delivering grant payments are well-established and will allow the Commonwealth to impose and enforce conditions on funding and determine eligibility by confirming the applicant meets the conditions set out within the grant agreement.

As the wage payments are being delivered via a grants-based mechanism, an affordability condition to limit fee growth would be included in the grant agreement, and providers would be obligated to comply. Compliance with a fee growth grant condition would be monitored regularly, given the proposed restriction is to annual growth. Grant agreements would provide that notices be issued to any providers with services found to have exceeded the fee growth percentage cap, giving opportunity to correct for any data entry errors.

The grant delivery mechanism will include multiple verification steps, including provider approval checks ensuring that payments are only made to services approved under the Family Assistance Law. Functionality built into the CCS system will be utilised to deliver payments, as it supports monthly payments, requiring minimal additional system modifications. Services Australia will support the Department to implement this process by validating the payment file prepared by the Department and issuing the grant payment to services. As payments will be made two months in arrears, the Department will be able to confirm the service was open and provided care during the payment period.

In the 2024-25 Budget, the Government has committed to providing funding towards a wage increase for the ECEC workforce. The Budget included \$30 million over two years for IT and payment services to enable the Department to deliver on this commitment. Following the Budget announcement, the Department has established a Project Board to oversee the implementation of the policy. The Project Board’s key role is to monitor and support implementation progress and delivery of the grant to ensure the outcomes and benefits of the grant program are realised. A supporting working group has also been established to provide policy advice and program delivery support.

To support implementation, a project management plan and a risk assessment plan have been prepared to guide the Department’s implementation efforts, with milestones, deliverables, risks and mitigation strategies outlined in these plans, as well as a comprehensive communication strategy to ensure stakeholders are appropriately engaged. In addition, the Department has commenced work on a compliance strategy and plan to ensure the intention of the policy and grant delivery will meet their intended purposes to benefit ECEC workers, educators and teachers. The plans, as outlined above, are informed by feedback from stakeholders and previous experience in introducing other grant-based payments (such as COVID-19 emergency payments).

Key elements of the implementation approach includes:

Area of implementation	Activities and deliverables
Governance arrangement	<ul style="list-style-type: none"> • Established a Project Board with a Senior Responsible Officer (at First Assistant Secretary level) and a Project Manager (at Assistant Secretary level) • Regular fortnightly meetings, with out of session meetings as required • Regular monthly reporting to the Department through the Department’s project management system

Legislative framework	<ul style="list-style-type: none"> • Amendments are to be made to the Minister’s Rules (2017) to ensure legal requirements are met to provide funding to the sector
Information technology	<ul style="list-style-type: none"> • Work involving the development of selected IT platforms for grant application process, payment delivery and grants management, including Services Australia’s IT infrastructure, has begun and is planned to deliver on indicative grant start date.
Communications	<ul style="list-style-type: none"> • Detailed communication approach and engagement with key stakeholders, providers and services, and clear channels of communication as well as the provision of sectoral training materials to ensure key information for the sector is clear and user-friendly
Guidelines and agreement	<ul style="list-style-type: none"> • Development of terms and conditions of funding, eligibility, application processes, start date and payment back-dating arrangements (as appropriate dependant on determined start date) and fee growth limitation mechanisms to be clearly outlined for providers and services to be fully aware of before acceptance of the grant payments
Compliance	<ul style="list-style-type: none"> • Development of a compliance strategy and plan specific to the grant program to ensure funding governance, accountability and compliance
Stakeholder engagement	<ul style="list-style-type: none"> • Consultation with key stakeholders will continue as the program is being implemented to gain insights and feedback
Regular reporting	<ul style="list-style-type: none"> • The Department is to undertake assurance assessment once a year (at the end of fund year 1 and 2). • Regular monthly reporting through the Department’s project management portal • Regular health checks and deep dives into risk areas every year
Risk management arrangements	<ul style="list-style-type: none"> • The Department has developed a detailed risk plan identifying risks, causes and treatments. This plan will be reviewed regularly, with appropriate treatments and reporting to be undertaken as needed.

Payment calculation methodology

The Department will use administrative data from the CCS to develop a calculation methodology for delivering payments.

The methodology will aim to calculate an average cost of award wages per hour of care charged, however not a precise figure related to the individual circumstances of each service or employee. This approach will ensure timely implementation of funding, minimise complexity and cost of

implementation and mitigate the risk of perverse incentives such as subsidising less efficient rostering or higher fees.

The formula may be varied to ensure effective targeting to parts of the sector while retaining a common structure – reflecting the varying labour and operating costs for different service types such as LDC and OSHC.

Risks to implementation

Compliance

The Department is fully aware of the risks associated with non-compliance and fraud in the ECEC sector. Given this, the Department has sought appropriate resources to undertake work relating to compliance, ensuring funding accountability will be met by participating providers and services and that the funding is fully passed on to their employees.

There is a risk that ECEC providers and services will receive the funding from the Government but do not pass on the full funding to their employees in the form of higher wages. This may result in Government funding being utilised in fraudulent activity and does not meet the policy intention of the funding – which is to support low-paid, highly-feminised workers in the ECEC sector.

To mitigate this risk, the funding guidelines will stipulate that failure to comply with the terms and conditions of the grant agreement could result in the termination of the agreement and/or require repayment of funds to the Commonwealth. Further, the delivery mechanism will include multiple verification steps, including service approval checks ensuring that payments are only made to services approved under the Family Assistance Law.

The Department will work with Services Australia to utilise the CCS System to deliver monthly payments, requiring minimal additional system modifications. As part of the risk management controls, payments will be made two months in arrears, the Department will be able to confirm the service was open and provided care during the payment period.

Resourcing

The Department will leverage Services Australia's established IT system, which will be utilised to deliver payments, however, it will require a largely manual process and significant additional resources, especially in the short-term.

Due diligence checks on grant applications and possible workplace instrument assessments will form part of the grants processing requirements. However, if the Department is unable to recruit suitable and qualified grants assessors and IT professionals to undertake the work in time, the grant program will experience significant delays in grant agreement finalisation and in payment delivery. This may cause considerable reputational damage to the Government and the Department. This is particularly relevant in the case where variations are made to the payment each service receives, adoption of a phased funding approach, and use of differing funding formulas for each care type. Additionally, given funding will likely rapidly extend to a large number of providers, there may be a need to assess workplace instruments for equivalency. To mitigate this risk, the Department has commenced the process to recruit suitable and qualified professionals to undertake these duties.

Funding methodology

To be able to meet implementation timeframes, administrative data will be used to calculate payments. As the formula is based on averages, rather than providing a precise amount based on individual services' circumstances, there is the possibility that some services may ultimately be under or over-compensated.

A more accurate payment methodology, based on actual wage costs, would require significant investment in new systems, and will considerably delay implementation timeframes. As noted above, an approach based on averages mitigates the risk of perverse incentives, such as subsidising less efficient rostering or increasing fees to maximise subsidy payments.

Timeframes

Employee representative groups have indicated a desire for a wage increase to take effect imminently. This will condense timeframes for implementation and does not provide the Commonwealth with adequate time to establish payment systems and processes. To manage the expectation of the sector and to minimise criticism of a start date that is not what the sector expected, the Department will communicate clearly the start date of the program and to advise interested applicants of essential eligibility for the funding and funding processes. Under Option Three, providers and services will be required to present workplace instruments as part of grants assessment. Proposed commencement date in late 2024 or early 2025 will allow for sufficient time to support providers and services, and educators to prepare for required workplace instruments.

To minimise the risk for the Department, the 2024-25 Budget has committed to providing resources to commence wage increase implementation work on IT and payment services. Following the Budget announcement, the Department has commenced relevant work to ensure implementation is under way to meet the timeframes with a program start date in late 2024 or early 2025.

Long-term funding approaches

Should Government look to extend funding beyond the initial scope, there may be an opportunity to develop a more automated payment delivery system. Such a system could allow providers to regularly supply information on staff working hours and accompanying qualification level or award rate, allowing for a much more precise calculation of payments than what is currently available to be delivered automatically by the CCS System.

Changes to the CCS System to support the wage increase would take an estimated 12-18 months and would likely require changes to primary legislation and policy with a large upfront investment to develop. The timeframe means the IT build could incorporate other capabilities, for example, collecting information that could be used to drive improvements to quality and child-safety, and integrating findings under the PC and the ACCC inquiries. Such capabilities would need to be developed as separate policy options.

Review

The overall success metrics include the accessibility, affordability, and quality of ECEC. This proposal seeks to support a motivated and skilled workforce essential to the provision of ECEC services. Educators, ECTs and centre managers drive the quality, reputation and viability of providers through the education, care and connections they provide. Government support will mitigate the impact that current educator shortages have on the supply and cost of ECEC.

The Department will continue to closely monitor the ECEC market using a mix of indicators, including existing monitoring and evaluation mechanisms, such as regular monitoring of the workforce and fees in services. As noted above, success will be measured against a number of targets including workforce retention, workforce supply, reducing workforce shortages and increasing affordability of care.

Other considerations include:

- conducting sensitivity analysis on fee increases and thresholds,
- economic modelling of fee increases for families and providers,
- using Departmental administrative data to analyse cost trends,
- testing impacts of different indexation rates (e.g., CPI, WPI, earnings etc.), and
- investigating other conditions that could be imposed to support affordability for families.

How success will be measured

Achieving high quality, universal ECEC through workforce and affordability measures includes recognising the value of the work done by ECTs and educators in ECEC, providing better pay and conditions, and improving the approach to qualification pathways that would enable new entrants to join the workforce. While this is the immediate priority, the results of policy reform in this area will only be evident in the medium term.

Targets include improvements to workforce retention and supply, and a reduction in workforce shortages, as well as ensuring affordability of childcare. Quantitative data for assessing the outcomes can be captured through a mixture of existing reporting mechanisms and through the evaluation of policy implementation. Success factors have been carefully selected to incorporate a variety of outcomes for which the data will provide both an insight into the relative success of the policy implementation, and the information required to further shape and inform future wage funding policy or a broader ECEC reform agenda, following recommendations of the final Productivity Commission Inquiry report due at the end of June 2024.

In relation to the workforce related targets, considering the time-limited length of the wage funding available under this policy, early workforce outcomes from the Aged Care Work Value Case, early indicators from international wage funding programs, and the requirement for further workforce initiatives besides wage funding, it is expected that initial outcomes, within the first 12 months from implementation, will be modest improvements to the targets.

Increasing the wages of ECEC workers without significantly contributing to the cost burden on families is vital to shoring up ECEC supply, while simultaneously maintaining the Government's commitment to making ECEC more affordable for Australian families. The success of the affordability condition will be measured by the level of fee growth over the life of the funding. A successful outcome will be a rise in fees commensurate with, or below the fee growth percentage cap for each respective year of the policy. The Government will be able to monitor Australian-wide fee growth regularly (on a quarterly basis) and should be able to see the early effects of the policy within the first 12 months of implementation.

The table below outlines targets, outcomes and metrics to measure the impact of the policy on the ECEC workforce and families.

Targets	Outcomes and Metrics
ECEC workforce retention: There is a reduction in the rate of ECEC educators who leave the ECEC workforce	<u>Workforce retention outcomes, including:</u> <ul style="list-style-type: none"> • Time to leaving occupation (by reason: retirement, new occupation) • Time in profession (by time: within first five years, after first five years) • Staff intention to leave occupation (by reason, including pay) • Length of time staff have been employed in a particular service
ECEC workforce supply: There is an increase in the rate of new or returning educators entering the ECEC workforce	<u>Workforce supply outcomes, including:</u> <ul style="list-style-type: none"> • Number of workers returning to profession (previously employed and returning following time in other profession) • Qualified workers choosing/entering this profession <u>Higher Education (HE) outcomes, including:</u> <ul style="list-style-type: none"> • Participation rate in HE courses that lead to sector employment • Attainment rate in HE courses that lead to sector employment • Number of qualified graduates
Reducing workforce shortages: There is a reduction in the gap between demand and supply of ECEC educators	<u>Workforce demand outcomes, including:</u> <ul style="list-style-type: none"> • Number of vacant positions in sector (absolute, and compared to national rates as per the ABS Job Vacancy Survey) • Length of time taken to fill vacancies in sector <u>Service provider, including:</u> <ul style="list-style-type: none"> • Management of staffing gaps, including: agency and relief staff usage; limits or caps of children attending the service due to staffing shortages • Number of unfilled educator positions at service <u>Accessibility outcomes for families, including:</u> <ul style="list-style-type: none"> • Limits or caps of children attending the service • Available places within services
Maintaining the affordability of child care: Families can afford child care services	<u>Affordability outcomes, including:</u> <ul style="list-style-type: none"> • Child care fees do not increase by more than the allowed growth rate. • Fee growth rates for providers partaking in the grants program are, on average, below the growth rates of providers who are not part of grants program.

In the event that the set targets are not met, particularly with a time-limited funding program, broader structural changes will need to be proposed and further considered by the Government. It is worth noting that on 3 June 2024, the FWC announced the establishment of a program to investigate identified priority awards, including for ECEC workers, to resolve long-term gender undervaluation issues.

This FWC review for gender undervaluation (which is to be completed by 2024-25 AWR outcome, expected in June 2025), combined with a suite of workforce programs (such as for workforce Professional Development initiatives), will provide the ECEC workforce further regulatory mechanisms and sectoral incentives to support better pay and conditions. Addressing wage issues through a structural change will likely support the retention existing quality workforce and attract new entrants

to the sector. Noting that the PC Inquiry process will publish its final report by 30 June 2024, it is possible further reforms for the attraction and retention of ECEC workforce will form part of PC's recommendations, highlighting workforce is the key enabler of ECEC. Further, the metrics collected during the implementation of the grants program will be extremely valuable in better informing future policy and planning efforts and drive future targeted solution going forward.

Appendix A: Workplace instrument types and implementation processes

The processes associated for workplaces to implement each type of workplace instrument are outlined below.

Section 12 of the *Fair Work Act 2009* (Fair Work Act) provides the definition of “workplace instrument”. A workplace instrument means an instrument that is made under, or recognised by, a workplace law; and concerns the relationships between employers and employees. In this context, a workplace law means the Fair Work Act.¹⁵⁷

The term ‘workplace instrument’ does not apply to the contract of employment itself.¹⁵⁸ A workplace instrument usually refers to an enterprise agreement or an award.

Workplace instrument type	Suitability	How the instrument is made	Background
Single enterprise agreement	<ol style="list-style-type: none"> 1. New enterprise agreements designed to meet the required terms of Option 3 are highly suitable workplace instruments. 2. Existing enterprise agreements are unlikely to meet the required terms of Option 3. <ol style="list-style-type: none"> a. An employer can vary an existing single enterprise agreement. This is a simple way to make it compliant with Option 2’s requirements. 	See Appendix B	
Supported bargaining agreement	<ol style="list-style-type: none"> 1. Employers covered by the current supported bargaining agreement will meet the required terms of Option 3 if that agreement ultimately contains those terms. The current supported bargaining agreement is highly suitable. <ol style="list-style-type: none"> a. The supported bargaining agreement can be varied to add new employers. This mechanism is the simplest way for employers to have a compliant workplace instrument. 2. Employers could make a new supported bargaining agreement for a different scope of employers. This 	See Appendix B	

¹⁵⁷ It also includes the *Fair Work (Registered Organisations) Act 2009*, the *Independent Contractors Act 2006*, or any other law of the Commonwealth, a State or Territory that regulates the relationships between employers and employees (including by dealing with occupational health and safety matter).

¹⁵⁸ *Barnett v Territory Insurance Office* (2011) 211 IR 439; cited in *Atkinson v Vmoto Limited* [2012] FWA 9043 (unreported, Spencer C, 26 October 2012) [57]; *Bayford v Maxxia Pty Ltd* (2011) 207 IR 50 [155].

Workplace instrument type	Suitability	How the instrument is made	Background
	would need ultimately to meet the required terms of Option 3 to be suitable.		
Workplace determination	<p>In certain circumstances the FWC may arbitrate the terms and conditions of employment through a workplace determination. This occurs in the context of enterprise bargaining.</p> <p>Workplace determinations are unusual and the legislative criteria provides a high bar when seeking to access arbitration.</p> <p>Terms that are agreed between the parties must be included in a workplace determination. Terms in dispute are determined by the FWC. It is difficult to predict whether a workplace determination will meet the requirements for Option 3 given their terms are determined by an independent third party.</p>	If satisfied that there are no reasonable prospects of the parties reaching agreement or a termination of industrial action instrument has been made, the FWC must make a workplace determination.	
Modern Award	<p>A Modern Award could be varied to meet the required grant conditions. This process is lengthy and complex. The terms of any variation are at the discretion of the FWC.</p> <p>Without a variation, it is unlikely that the terms of modern awards will meet the conditions for Option 3.</p>	<p>The FWC is responsible for making and varying Modern Awards.</p> <p>A person or organisation covered by an award may apply to vary it. An organisation with the authority to represent a covered person or organisation may also apply.</p>	<p>Modern Awards are the underpinning workplace instrument for almost all National System employees. Modern Awards form a safety net of pay and conditions for most industries and occupations.</p> <p>In the ECEC sector, the relevant Modern Awards are the <i>Childrens Services Award 2010</i> and <i>Educational Services (Teachers) Award 2020</i>.</p> <p>Once an enterprise agreement covers an employee, the employee's Modern Award ceases to apply to them.</p>
Individual flexibility arrangement (Modern Award)	<p>An IFA could be used to overcome the limitations of Modern Awards by providing for the specific terms and conditions required to satisfy Option 3.</p> <p>The likelihood of an award with an IFA satisfying the conditions of Option 3 is entirely fact dependent, based on the terms contained within it.</p> <p>Further legal advice will be sought to ensure grant conditions are applied correctly.</p>	<p>The process to make an IFA is determined by the relevant flexibility term. Generally, an IFA is made by written agreement between an employer and employee. It varies the effect of an award on an individual basis to meet the genuine needs of the employer and employee.</p> <p>An IFA must be in writing and signed by the employer and employee. It must identify the terms of the award which the IFA will vary, and also set out how the arrangement may be terminated by either the employee or the employer.</p>	<p>All Modern Awards are required to contain a flexibility term enabling an employee and their employer to agree on an individual flexibility arrangement (IFA) varying the effect of the award in relation to the employee.</p> <p>Given the IFA occurs at an individual level, it would be dependent on each and every employee agreeing to the terms of the IFA.</p> <p>A party to an IFA is able to terminate an IFA generally with no more than 28 days' notice (this</p>

Workplace instrument type	Suitability	How the instrument is made	Background
			notice period can vary depending on the flexibility term).
Individual flexibility arrangement (enterprise agreement)	<p>An employer with an enterprise agreement might use an IFA to avoid varying their current agreement, making a new one, or joining the supported bargaining agreement.</p> <p>The likelihood of an enterprise agreement with an IFA satisfying the conditions of Option 3 is entirely fact dependent, based on the terms contained within it.</p>	This approach is broadly the same as with IFAs in Modern Awards, but are sometimes subject to the terms of a specific agreement.	Enterprise agreements are required to contain a flexibility term enabling an employee and their employer to agree on an IFA varying the effect of the agreement in relation to the employee.
Common law contract	Common law contracts are not workplace instruments, and therefore would be ineligible under Option 3.		



Appendix B: Enterprise agreement implementation

Joining the supported bargaining agreement

Services within the LDC sector which do not have a current enterprise agreement in place, or their agreement has passed the nominal expiry date, and who wish to join the supported bargaining agreement may be able to do so through a variation to the agreement. A variation may be made:

- jointly by the employers and their employees, or
- by a union, if a majority of the employees to be covered want to be covered.

When varying by agreement between employers and their employees, the employer holds a vote for the affected employees to indicate agreement, with a majority needing to genuinely agree to the variation. The employer has 14 days to apply to the FWC to approve the variation. The FWC must approve the application unless there are serious public interest grounds for rejection.¹⁵⁹

Alternatively, a union covered by a supported bargaining agreement can apply to vary the agreement to cover additional employers and their employees. A majority of the additional employees must want to be covered by that agreement. The FWC must determine if it is appropriate for the employees to be covered by the agreement, taking into consideration several factors including the views of the employer.¹⁶⁰

Unions to the supported bargaining process have indicated that they will likely seek the variation and broaden coverage across the sector in the event that EA coverage is a condition of funding.

Terminating an agreement to join a supported bargaining agreement – Agreement has not passed its nominal expiry date.

The FWC must not make a supported bargaining authorisation specifying an employee who is covered by a single-enterprise agreement that has not passed its nominal expiry date. As such, in this situation employers may request employees approve a proposed termination of an agreement by asking them to vote on it and must give the employees a reasonable opportunity to decide whether they want to approve the proposed termination.

If the employer and their employees agree to terminate the agreement, someone covered by the agreement must apply to the FWC for approval. If approved, termination operates from the day specified in FWC's decision to approve the termination. FWC must approve the application to terminate if:

- a. the FWC is satisfied that each employer covered by the agreement complied with subsection 220(2) (which deals with giving employees a reasonable opportunity to decide etc.) in relation to the agreement; and
- b. the FWC is satisfied that the termination was agreed to in accordance with whichever of subsection 221(1) or (2) applies (those subsections deal with agreement to the termination of different kinds of enterprise agreements by employee vote); and
- c. the FWC is satisfied that there are no other reasonable grounds for believing that the employees have not agreed to the termination; and
- d. the FWC considers that it is appropriate to approve the termination taking into account the views of the employee organisation or employee organisations (if any) covered by the agreement.

¹⁵⁹ Fair Work Commission, [Adding employers and their employees to a supported bargaining agreement](http://www.fwc.gov.au) <www.fwc.gov.au>

¹⁶⁰ Fair Work Commission, [Adding employers and their employees to a supported bargaining agreement](http://www.fwc.gov.au) <www.fwc.gov.au>

The employers and their employees would then need to follow the process for joining an existing supported bargaining agreement as outlined above.

A consideration for this process is that once the previous single-enterprise agreement has been terminated, pay and conditions are set by the relevant award until the employer and employees have been added to the supported bargaining agreement. This risk may be able to be mitigated by lodging concurrent applications to the FWC and asking FWC to consider them and to issue their decisions at the same time.

Varying an existing agreement

Should a service need to vary an existing agreement to meet grant agreement conditions the employer can make a joint variation of the EA with their covered employees. An employer may request the affected employees to approve the proposed variation by voting for it.

For existing single-enterprise agreements the variation is made when a majority of the affected employees who cast a valid vote approving the variation. If a variation of an EA has been made, a person covered by the agreement must apply to the Commission for approval of the variation within 14 days. Section 211 of the *Fair Work Act* outlines when the FWC must approve the variation. The process for existing multi-enterprise agreements is the same. The variation will only be made when the majority of the affected employees - of all employer - who cast a valid vote approving the variation.¹⁶¹

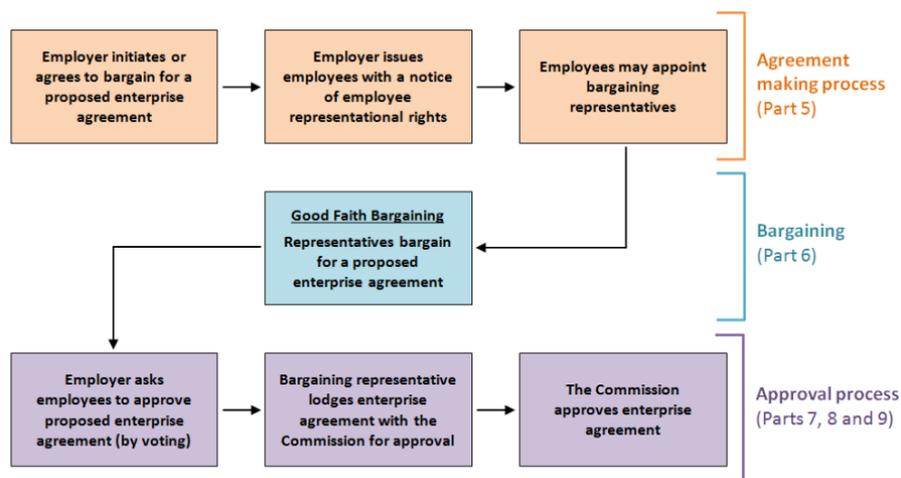
To meet the requirements of Option Three, it is most likely that EAs would need to be varied to include minimum wage rates and conditions as outlined in the grant agreement.

LDC and OSHC services within current in force agreements are likely to utilise this option to be eligible for funding. It is also an accessible option for services that have existing EAs covering both LDC and OSHC workers.

Making a new enterprise agreement

Making a new enterprise agreement requires a series of steps throughout the three stages of agreement making, bargaining and then approval. The table below represents the process in general terms that employers must take.

¹⁶¹ Fair Work Commission, [Benchbook: Enterprise Agreements](#), August 2023, 220 <www.fwc.gov.au>



Source: Fair Work Commission, *Enterprise Agreements Benchbook*

The process for making an EA is set out in the *Fair Work Act* and meeting the requirements of the Act is critical. The point at which parties start the process, whether by agreement or order of the FWC, is the 'notification time'. Following this, there are certain requirements including employers giving notice to employees of their representational rights prior to the good faith bargaining period commencing. The length of bargaining will vary depending on the individual circumstances of the workplace, however a minimum of 21 clear days must pass between the issue of the last notice of employee representational rights and the employer requesting that employees approve the agreement.¹⁶² Following the bargaining period the employer may put the proposed agreement to vote. An EA is made if the employees who will be covered by the agreement approve it with a majority vote. Failed votes would return to the bargaining process. Following a successful majority vote, the agreement is lodged with the FWC for approval.

Although this option is initially the most resource intensive for a provider, it is likely to be less administratively burdensome once an EA has been formed, as the assurance provided by an in-force enterprise agreement negates the proposed additional evidentiary and reporting requirements required under Option Two. This option is likely the most suitable for OSHC services that do not have a current in force enterprise agreement, or LDC services that also operate OSHC services who would prefer to keep their workforce covered by one workplace instrument. Importantly, under Option Two, providers would need to comply with more rigorous reporting requirements, including for example annual declarations and preparation of six-monthly financial reports to provide Government with assurance that all funding has been passed on as increased wages. This would require significant ongoing administrative resources.

Employer organisations would be able to assist services with the agreement making process for a fee. Noting that a separate Department of Education policy proposal will consider funding arrangements to assist services with meeting these costs.

¹⁶² Fair Work Commission, [Benchbook: Enterprise Agreements](#), August 2023, 81 <www.fwc.gov.au>

Appendix C: *Fair Work Act* - work value and equal remuneration processes

The Fair Work legislative framework provides several workplace relations streams that can result in increased wages and/or conditions for workers in a particular sector. These include:

- Enterprise bargaining
- Work Value Case
- Equal Remuneration Orders (ERO)

These processes are facilitated differently to each other and facilitate different outcomes for the workers and employers for which a particular workplace instrument covers. Enterprise bargaining is the process of making an Enterprise Agreement (EA), generally between the employer (or employers), their employees and their bargaining representatives (often unions). Enterprise bargaining facilitates the creation of an EA which is an agreement that contains terms and conditions of employment, including wages, for a period of up to four years. Enterprise bargaining has no impact on award wages and generally works to lift wages and conditions for the workers who are covered by the agreement. The length of time bargaining can take will vary and negotiations generally continue until an agreement is reached, however it is generally considered an efficient process for lifting wages and conditions.

In a work value case, the FWC can make a determination to vary the minimum wages under the modern award, if it is satisfied that the variation is justified by work value reasons. Work value reasons include the nature of the work, the level of skill or responsibility involved in doing the work, or the conditions under which the work is done. The FWC must also consider whether historically the work has been undervalued because of assumptions based on gender. Work value cases are initiated when the applicant believes the classification descriptors and remuneration paid to employees under a specific award no longer reflects the work being performed. Parties that can apply to vary a modern award include employers, employees or unions. Alternatively, the FWC itself can initiate a variation to a modern award. Following an application by a party (or FWC initiation), the FWC may receive evidence by written submissions or through hearings with interested parties and expert witnesses. Work value cases can take several years to complete as they can require significant evidence from those with experience in relevant industries, supported by appropriate experts. As the potential outcome is a lift to the minimum award rate the potential scope is significantly wider than enterprise bargaining.

An equal remuneration order (ERO) is an order that ensures there will be equal remuneration for men and women workers for work of equal or comparable value. The FWC can issue an ERO by application or on their own initiative and must make a determination if they find there has not been equal remuneration. New provisions under the *Secure Jobs, Better Pay* Bill clarify there does not need to be a male comparator group, and the FWC may consider whether work has been historically undervalued on the basis of gender. An application can be made by an employee who would be affected by the order, a union, or the Sex Discrimination Commissioner. An Expert Panel of the FWC will be formed and may consider comparisons within and between occupations and industries to establish whether historically the work has been undervalued on the basis of gender, and any fair work instrument or State industrial instrument. While an ERO does not lift the minimum award rate, it could provide a sector-wide wage increase, noting the process takes significant time to finalise.