

IN THE FAIR WORK COMMISSION

AT SYDNEY

Matter: B2024/852

Community Early Learning Australia (CELA)

Respondents

CELA Outline of Submissions in Reply

1. CELA is the bargaining representative on behalf of the respondent employers.
2. We rely on the “Stevens Statement” and the IEU outline of Submissions, previously filed.
3. These further submissions are made in response to the submissions of the NSW Government of 19 November 2025.
4. Firstly, we note that the NSW government has not sought to contend any of the evidence provided by either CELA or the IEU in this matter.
5. I highlight that this evidence supports the following key facts:
 - i. That NSW community preschools are overwhelmingly reliant on state government funding.
 - ii. That, wages and labour costs represent around 80% of total operational costs for preschools.
 - iii. That there is a significant wages gap between NSW community preschools and identical jobs in the Long Day Care and NSW government run school sector.
 - iv. That the only additional source of funding available to NSW preschools is parent fees.
 - v. That there is significant variation on the funding provided to services and their subsequent capacity to pay above award wages.
6. The States submission includes two main positions:
7. Firstly, that a recommendation should not be made to the extent that it suggests the Start Strong Program is:
 - i. Intended to fully cover the operating costs of preschools; and

- ii. That's Start Strong is the only means by which wage increase can be achieved.
8. Secondly, that the Commission should not make the recommendations sought, as the making of a recommendation directed at a "non-party" to the negotiations of the agreement, and concerning the allocation of funds by the NSW government, is beyond the scope of the Commissions powers.
9. In response to the first part, CELA draws the Commission to the Start Strong Funding Guidelines [LS 5] of the Stevens Statement. While the State contends that the Start Strong funding is not designed to fully cover the operational costs of preschools, part 8 of its own funding guidelines clearly state the Start Strong fee relief program "provides community and mobile preschools with sustainable long-term funding to deliver up to 600 hours of low, or no cost preschool to eligible children."
10. This inclusion in the funding guidelines clearly supports that the intention of the program is to cover, or at the very least. substantially cover, the operating costs of preschools so as to maintain 'low, or no cost preschool', as otherwise higher family fees would be charged.
11. CELA does not contend that Start Strong funding is the only additional source of funding. However, evidence of service revenue provided in case studies and in analysis of ACNC data [LS 1] clearly shows the only other source of income for preschool services is via family fees.
12. Further, the ability of NSW community preschools to offset additional wages cost through lower staffing levels is constrained the fact that staffing levels are highly controlled by the requirements of national law and safety legislation.
13. Increasing family fees has a negative public impact both in terms of equity and in terms of access to preschool programs. Both of which are the opposite of clear policy objectives of the NSW state government, and are untenable to the values of community preschools.
14. Any reduction of staff, within available regulations will have a negative impact on staff and child safety, and wellbeing as well as quality. An outcome that is also clearly contrary to the public interest.
15. The second part of the State's submission seems to rely on the premise that the NSW government is a 'non party' to the negotiations of the agreement and as

such, the Commission does not have powers to make certain recommendations.

16. While the State is clearly not a party to the proposed agreement, CELA rejects the suggestion that the State is a 'non-party' to the negotiations.
17. Negotiation or bargaining, is a clear and necessary stage in the process of making an agreement. The Supported Bargaining sections of the Fair Work Act specifically recognise that the participation of third parties who are not covered by the proposed agreement is necessary in the negotiation or bargaining stage to allow for the making of an agreement.
18. Specifically, section 246(3) which provides powers to the FWC to direct "*a person who is not an employer specified in the authorisation to attend a conference at a specified time and place if the FWC is satisfied that the person exercises such a degree of control over the terms and conditions of the employees who will be covered by the agreement that the participation of the person in bargaining is necessary for the agreement to be made.*"
19. The State is not a 'non- party' to the negotiation. The NSW government is participating in the negotiations by order of the Commission and has been required to do so in acknowledgement of their level of control over the terms and conditions of employment as primary funder.
20. At paragraph 12 of their submission, the State further argues that the Commission's role is limited to recommendations relating to 'the parties' and as such should not include recommended actions that may cover the role of the State.
21. CELA rejects this assertion as the function of the recommendation in this case is not to support the resolution of a dispute, but instead as stated in s. 421 objects of supported bargaining – "assist the parties to make an agreement that suits their needs."
22. The addition of the power to require third parties with sufficient control of the terms and conditions of the agreement to participate, clearly indicates an acknowledgement that the actions of this third party is consequential to the ability of an agreement being made.
23. Therefore, it is entirely in the scope of the Commission's powers to make a recommendation that includes a course of action covering this third party that would, in the views of the Commission, significantly improve the chances of an

agreement being reached.

24. CELA further rejects the States submission at paragraph 15 that the making of a recommendation which concerns the allocation of funds within the NSW government is beyond the Commission's scope.
25. The recommendations reflect an indication of the Commission's view as to what circumstances would facilitate an agreement being made.
26. It is non-binding and does not constitute a direction to the NSW govt, as stated in their own submissions.
27. It is up to the NSW government to accept or reject the Commission's recommendation.
28. However, if the Commission was to accept the views of the State, we would suggest that the alternative sources of funding and their impacts should be included in the recommendation. Including, as suggested by the NSW government, that out of pocket fees should be increased, or alternatively that staffing numbers are reduced to offset the higher cost of wages and their likely impacts.