

**STATEMENT**

No. B2023/538

Fair Work Commission

**Application by United Workers Union and others**

Applicants

**Application for a supported bargaining authorisation – Early childhood education and care sector**Statement of: **Laura Stevens**

Address: c/- CELA, Level 32, 200 George Street, Sydney NSW 2000

Occupation: Director, Policy and Strategy

Date: 28 July 2023

I, Laura Stevens, Director of Policy, and Strategy, say:

1. I am employed by Community Early Learning Australia Incorporated (**CELA**) as the Director of Policy and Strategy.
2. I make this statement based on my direct knowledge except where otherwise indicated. Where I set out matters based on information provided to me, I identify the source of that information which I believe to be true and correct. To the extent that I recite particulars of conversations to which I was party, I do so by setting out words to the effect of what was said in those conversations.
3. On 6 June 2023, the United Workers Union, Australian Education Union (Victorian Branch) and the Independent Education Union applied to the Fair Work Commission for the making of a supported bargaining authorisation (**SBA**) in the early education and care sector (**Application**). The application was amended on 26 July 2023 to include two additional respondent employers. The Unions have categorised the employers sought to be covered by the SBA into four groups.
4. The employers identified as group 2 and group 3 are employers who have appointed either CELA or Community Child Care Association (**CCC**) to act as their bargaining representatives (**Group 2/3 Employers**).
5. The Group 2/3 Employers are:
  - (a) Ashwood Children's Centre Inc;
  - (b) Coburg Children's Centre Inc;
  - (c) Derby Street Children's Centre;

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Filed on behalf of (name & role of party) Community Early Learning Australia Limited and Community Child Care Association Inc

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(include state and postcode)

- (d) Lady Gowrie Child Centre (Melbourne) Inc;
- (e) Hawthorn Early Years Inc;
- (f) Hillbank Community Children's Centre Inc;
- (g) Unley Community Child Care Centre Inc;
- (h) Yawarra Children's Services;
- (i) Amy Hurd Early Learning Centre;
- (j) Balaranald Early Learning Centre Inc;
- (k) Believe Playschool Pty Ltd;
- (l) Bermagui Preschool Co-Operative Society Ltd;
- (m) The Trustee for the Ross-Clarke Family Trust
- (n) Childcare Australia United Ltd;
- (o) Kirawee Child Care Centre Pty Ltd;
- (p) Little Mate Pty Ltd;
- (q) Edgeworth Child Care Centre Inc;
- (r) Glendale Early Education Centre Inc;
- (s) Koala Long Day Care – Sutherland Hospital Ltd; and
- (t) The Trustee for the S&N Clayton Family Trust.
- (u) Gowrie NSW
- (v) Big Fat Smile Group Ltd

6. A copy of the letters of appointment of CELA and CCC as bargaining representatives can be produced on request.

**Authority and capacity to make this statement on behalf of Group 2/3 Employers**

7. I have been engaged by both CELA and CCC to provide industrial advice and coordination for the purpose of making the proposed multi- employer agreement on behalf of their members. CELA and CCC have pooled resources, including by making myself available to the Group 2/3 Employers, to assist and facilitate the making of the SBA and ultimately, if granted, a multi-employer enterprise agreement.
8. I have been the person who has consulted directly with the Group 2/3 Employers as it concerns the Application and proposed multi-employer agreement more generally. I am the Group 2/3 Employers day-to-day contact and the individual coordinating the bargaining process on behalf of their bargaining representatives. This consultation and liaison has included regular discussions and meetings with the Group 2/3 Employers. That consultation is done collectively through bargaining committees which I lead which includes a representative of each of the Group 2/3 Employers as well as through individual consultations with individual employers which I conduct.

9. I am authorised to make this statement on behalf of the Group 2/3 Employers as the day-to-day contact working for their bargaining representatives. The statements I make in this statement are based on knowledge gained from both my previous industry experience and more importantly the direct knowledge that I have gained through my own observations, consultations and experiences working with the Group 2/3 Employers as the individual responsible for leading their bargaining and responding to the Application.

### **My Background**

10. I have been employed as Director, Policy and Strategy by CELA since 17 April 2023. I am engaged in this role as part of a shared service agreement with CCC and provide industrial, policy and advocacy advice to behalf of both organisations and as I identified above, I have been tasked by both organisations to lead bargaining negotiations and representations associated with this Application on behalf of their members
11. I have been engaged in roles related to the early childhood education and care sector since 2007. Much of this work occurred during my employment with United Workers Union from 2007 to 2021.
12. During my time with UWU, I was employed as an Industrial Officer and Campaigns Director. In this role I was responsible for the coordination and running of industrial campaigns on behalf of early childhood members including the making of enterprise agreements. I was also responsible for undertaking research and consultation on behalf of early childhood educators for the purpose of representing their views in formal policy processes and government policy forums. These included the development and implementation of the National Quality Framework, its subsequent reviews and the ACECQA National Childrens' Education and Care Workforce Strategy.
13. As industrial officer I was responsible for the making of enterprise agreements which applied in the early childhood education and care sector. These include all generations of the Professional Community Standard multi-employer agreements as well as at least two generations of the Victorian Early Childhood Teachers and Educators agreements.
14. I also represented United Workers Union early educator members in proceedings related to the Children's Services Award and Education Services (Teachers) Awards including the Award modernisation process and four-year review of both Awards.
15. I was also involved in the 2013 application for an Equal Remuneration Order for employees covered by the Children's Services Award and Educational Services (Teachers) Awards, through the preparation of research and evidence as well as coordination and advice.

### **Group 2/3 Employers response to the Application.**

16. The Group 2/3 Employers do not oppose the Application.
17. The Group 2/3 Employers support the making of an SBA which covers each of the Group 2/3 Employers.

### **CELA and CCCA.**

18. CELA is a peak national body for service providers in the early education and care sector. CELA supports over 1,800 members, who employ more than 27,000 persons, and its membership includes community based and not for profit providers, government providers, and small privately-owned for-profit providers.
19. CCC is the Victorian based peak body for service providers in the early education and care sector. CCC was established in 1971, to act as a representative peak body for community-based providers in the early education and care sector within Victoria. Whilst CCC represents, predominantly, Victorian based providers, it does have as members some service providers who are located outside of Victoria.
20. The easiest distinction to draw between who CELA and CCC represent is that CELA are representing the New South Wales and Australian Capital Territory based employers and CCC are representing the Victorian and South Australian based employers. Both organisations are collaborating where appropriate to represent the interests of the Group 2/3 Employers. Each of the employers represented by CELA and CCC are members of CELA and CCC.
21. Both CELA and CCC, because of their commonality of membership, and having regard to their shared mission and goals, have pooled resources to assist members who are the subject of the Application in making myself available as a resource to coordinate and lead bargaining. Although CELA and CCC have pooled resources to make me available as a resource for the Group 2/3 Employers to assist in bargaining, it needs to be made clear that, neither CELA or CCC would be able to assist as a bargaining representative other than through a multi-employer bargaining process. The resources required to bargain on behalf on individual members in a single enterprise setting would be too much for CELA or CCC and they would not be able to do so. Neither organisation is a traditional employer group. It is only through a multi-employer setting that CELA and CCC can assist given the resources that both organisations have available.

**Group 2/3 Employers require support to bargain.**

22. Most Group 2/3 Employers are small providers, and for many of the management of the Group 2/3 Employers they are often required to balance management duties with work out on the floor caring for children either due to staff shortages, budgetary constraints, or their general centre structure. On several occasions throughout the process of supporting these services to prepare for this application, meetings between myself and the representatives of the Group 2/3 Employers were cancelled because of staff shortages requiring the employer to replace a staff member on the floor.
23. 13 of the 21 employers represented by CELA and CCC are run by volunteer parent/family management committees. These committees are the employing entity and are made up of unpaid parent and family volunteers who are also working other paid jobs.
24. This experience is common across the majority of the long day care sector where over 79% of approved providers operate just one service.
25. The consequence of this is that, either because of cost pressures or simply from a time perspective, the capacity of the management of the individual service providers to participate in this process, let alone bargaining for a single enterprise agreement, is extremely limited because of their own

capacity restraints and limited financial and industrial resources. For example, Rebecca Styles, Director of Hillbank Community Children's Centre said to me, in response to my inquiries about Group 2/3 Employers capacity to bargain:

*Knowing and understanding the vital work that my Educators do day in day out and wanting to just give them more. As a not-for-profit service, we are limited on what we can give back to our staff without it then having a negative impact on our families. It is a constant balancing act.*

*Having to liaison with a committee who is made up of volunteers can also have an impact, as they can be reluctant to attend more outside of hours meetings. Working families find this very challenging, as they have their own work and lives to focus on outside of their volunteer role.*

26. Her comments reflect the overwhelming experience of most of the Group 2/3 employers represented by CELA and CCC in this process. That experience extends out to those Group 2/3 Employers who operate more than one centre. For example, Monique Heighes Executive Director, People and Culture at Gowrie NSW also said to me in response to my inquiries about Group 2/3 Employers capacity to bargain:

*Working across multiple sites with significant regional representation and given the ongoing workforce shortages it is a challenge to access our educators and teachers to raise awareness and engage them in a genuine way. The challenges for each service are unique particularly in regional areas and in a for-purpose organisation where we want to reinvest surplus into our people, the resources - financial and otherwise are not available to support this.*

27. Some of the Group 2/3 Employers (three) have been able to previously conclude enterprise agreements, for the majority of these, the agreements made have not been successfully renewed. In the case of Unley Community Centre, its agreement reached its nominal expiry date in 2015, highlighting the difficulty of negotiating single enterprise agreements given it has not been able to be replaced in over 8 years.
28. In the case of Big Fat Smile, they have only been able to realise an agreement in relation to their teachers, while their agreement for their early childhood educators has been expired for more than 8 years. Their capacity to make an agreement to cover all of their relevant staff is affected by the complex funding system which applies, including variations in state and federal government funding for teachers delivering preschool programs.
29. The significant historical challenges which the Group 2/3 Employers have had in single enterprise bargaining is a driving force in their decision to embrace this process and seek to be included in the SBA. The Group 2/3 Employers would like to be able to conclude enterprise agreements, but they need to have the processes and support available to them to do so taking into account their particular needs and extremely limited resources along with their unique funding model tied as it is to the Commonwealth as I explain below. It is hoped that this process will facilitate that in occurring.

**Group 2/3 Employers are long day care service providers.**

30. The provision of children's services occurs in a variety of settings including, but not limited to, long day care, occasional care, family day-care, in-home care, nurseries, preschools, occasional care, and outside school hours programs.
31. The Application seeks the making of an SBA covering employees (subject to the exceptions listed in the Application) performing work covered by either the *Childrens Services Award 2010 (Childrens Award)* or the *Educational Services (Teachers) Award 2020 (EST Award)* occurring in a long day care setting.
32. The term long day care centre is commonly understood within the industry, and by the Group 2/3 Employers, as being referable to the definition contained in the Childrens Award which is:
- a childcare establishment which usually provides services over a period of approximately eight hours or more each day for approximately 48 weeks or more during the year.*
33. Each of the Group 2/3 Employers:
- (a) have their centres open for a minimum of 48 weeks per year.
  - (b) are licenced to accept enrolments of children aged between 6 weeks to 6 years.
  - (c) are licensed to provide long day care services more than 8 hours per day over extended operating hours.
  - (d) employ persons who perform work covered by either the Childrens Award or the EST Award.
  - (e) are either community managed, not for profit service providers or small for-profit providers.
34. Generally, the Group 2/3 Employers employ persons at all levels of the classification structure set out in the Children's Award and the EST Award. Employees are first engaged based on their qualification and then on their role.
35. Qualifications recognised in the Awards include, Certificate III in Children's Services, Diploma of Children's Services, Advanced Diploma of Children's Services and three, four, or five year qualified teacher.
36. Roles covered by the Awards generally include, support worker, early childhood educator, room leader, educational leader, assistant director, director/ teacher qualified director and teacher. Employees progress through the classification structure based on their levels of experience.
37. In addition to these roles of the Group 2/3 Employers employ qualified cooks, who provide meal planning and meal preparation within the service. Qualified cooks can be employed under the Children's Award or the Hospitality Industry Award 2010, depending on qualifications and the scope of the work.
38. The Group 2/3 Employers may also employ additional administration and management and operational support workers, including administrative staff, accountants and bookkeepers. These roles are not covered by the scope of the proposed SBA.

**Group 2/3 Employers have common regulatory requirements and standards.**

39. The Group 2/3 Employers are licenced and provide long day care services pursuant to, and in compliance with, the *Education and Care Services National Law* (**National Law**) and the *Education and Care Services National Regulations* (**National Regulations**).
40. The National Law and National Regulations set out the National Quality Framework and the National Quality Standards which establish the minimum requirements to operate children's care services, including long day care services, related to, for example, quality ratings, staffing levels, and staffing qualifications.
41. For example, the National Regulations require that long day care services, including all of the Group 2/3 Employers, must maintain the following minimum staff to child ratios:
- (a) one educator to every four children from Birth to 24 months;
  - (b) one educator to every five children aged over 24 months to less than 36 months (excluding Victoria where it is one educator to every four children);
  - (c) one educator to every eleven children aged over 36 months up to and including preschool age (excluding New South Wales and Tasmania where it is one educator to every ten children).
42. The National Regulations also set out minimum qualification requirements of staff directly engaged in providing an education and care program to children in a long day care setting, including all of the Group 2/3 Employers:
- (a) at least 50% of all educators must hold or be actively working towards holding diploma level qualifications or higher.
  - (b) all other educators must hold or be actively working towards holding certificate III level qualifications.
  - (c) services are also required to have access to a qualified early childhood teacher for certain hours depending on the size of the service.
    - i. Services with less than 25 children must have access to an ECT for at least 20% of the time they are operating.
    - ii. Services with 25-59 children must employ or engage a full time or FTE ECT for 6 hours a day or 60% of the time when operating less than 50 hours per week.
    - iii. Services with 60-80 children must employ or engage a full time or FTE ECT for 6 hours a day or 60% of the time when operating less than 50 hours per week, as well as a second ECT or suitably qualified person for 3 hours per day or 30% of the time when operating less than 50 hours per week.
    - iv. Services with over 80 children must employ or engage a full time or FTE ECT for 6 hours a day or 60% of the time when operating less than 50 hours per week, as well as a second ECT or suitably qualified person for 6 hours per day or 60% of the time when operating less than 50 hours per week.

43. The National Regulations also set out the various conditions for operating a service, applicable to all the Group 2/3 Employers, including requirements to comply with the National Quality Standard which set out minimum standards of quality provision across areas including, educational program and practice, children's health and safety, physical environment, staffing arrangements, relationships with children, partnerships with families and communities and governance and leadership.
44. Services licensed under the National Law and Regulations are required to be assessed against these measures as well as publicly publish their assessed rating. This is common amongst all the Group 2/3 Employers.
45. The Group 2/3 Employers are approved providers for the purposes of the *Family Assistance Law*. The *Family Assistance Law* provides the legislative basis for the payment of Commonwealth childcare fee assistance including the Child Care Subsidy (CCS) which I will discuss below given the importance of the CSS to the viability and capacity to offer a long day care service for the Group 2/3 Employers.

**Group 2/3 Employers have commonality in relation to terms and conditions.**

46. I do not suggest that the Group 2/3 Employers all pay their employees the same. That is not the case. There are variances as you would naturally expect. However, the classification structure, and basis upon which the Group 2/3 Employers base the pay and conditions, remains common – that is it is either based on either the Childrens Award or the EST Award.
47. There is little, if any, variance as it concerns conditions amongst the Group 2/3 Employers as it concerns the employees the subject of the Application. When I say conditions, I am referring to entitlements such as personal leave, annual leave, long service leave, overtime, consultation, span of hours of work, redundancy, meal breaks. All are generally either referable to the relevant Award or the underpinning legislative entitlement.
48. The employees the subject of the Application, and who are employed by the Group 2/3 employers, have never been covered by an enterprise agreement except for three providers. Those providers are the Hillbank Community Children's Centre, Unley Community Childcare Centre and Big Fat Smile. The relevant enterprise agreements are:
  - (a) Hillbank Community Children's Centre Enterprise Agreement 2018; and
  - (b) Big Steps in Early Childhood Education and Care SA United Voice Unley Community Childcare Centre Enterprise Agreement 2013.
  - (c) Big Fat Smile and United Voice Big Steps Agreement 2013, and the Big Fat Smile Group Ltd Teachers (Early Childhood Services) Agreement 2019.
49. All of these enterprise agreements have passed their nominal expiry date. In the case of Unley it was passed approximately 8 years ago and there has been no replacement agreement since. In the case of Hillbank, it was passed approximately 2 years ago and there has been no agreement since. In the case of Big Fat Smile its educators agreement passed its nominal expiry date



approximately 8 years ago and its teacher agreement passed in March 2023 and there has been no agreement since.

50. I have reviewed those agreements in preparing this statement. My analysis of them is that the conditions and entitlements, including the classification structures applicable to employees, were based on and referable to the relevant Award or minimum legislative standard. There were some differences naturally including things such as trade union training leave, dispute resolution and union rights clauses more generally. In the case of the Big Fat Smile Group Ltd Teachers (Early Childhood Services) Agreement, there are some significant improvements to the conditions in the underpinning EST Award, however these are in addition to the existing Award and do not reflect significant alteration to the common structure between the Award and agreement. The terms and conditions were otherwise broadly consistent with either the Childrens Award or the EST Award.
51. I also note that, in the case of the Hillbank agreement, the rates of pay has now been surpassed by the Awards and based on my consultations and discussions with the operators of that service, I have confirmed that they now pay their employees in compliance with the Award.
52. Despite being based in different geographic areas, and having different operating costs, there is a common unifying and overwhelming element across the Group 2/3 Employers which largely dictates the approach that they can take to the setting of terms and conditions. That relates to funding.
53. The level of Commonwealth funding dominates decision making as it concerns terms and conditions for employees. Without certainty of Government funding the reality is that agreements, and any improvements to terms and conditions, cannot be concluded. The reality of the dominance of Commonwealth funding is common and dominant across all of the Group 2/3 Employers.

#### **Funding for the Group 2/3 Employers.**

54. The funding which is available to the Group 2/3 Employers to provide their service naturally dictates their capacity to be able to negotiate with employees for improvements to terms and conditions over the respective Awards.
55. The funding for the Group 2/3 Employers comes predominantly from two sources:
  - (a) the Commonwealth; and
  - (b) families of children who use the service.
56. The single biggest pool of funding is that which is provided by the Commonwealth. The Group 2/3 Employers are funded by the Commonwealth Government through what is known as the Child Care Subsidy (**CCS**). The CCS is a rebate of up to 95% payable on daily fees charged by a long day care service. The daily fees covered by the CCS rebates are subject to a cap and the level of CSS paid for the benefit of the family is determined by the work status and earning of the family. A family is responsible for meeting any gap costs.
57. Despite the CCS being payable by reference to the daily fees charged by a long day care service, there is a cap on the daily fee which is eligible for CSS. This cap is set by reference to what is known as the maximum hourly cap. The cap operates, in practical terms, as a disincentive to charge

higher fees. This is because, any amount charged over the cap, must be funded directly by the family of the child, and, for many of the Group 2/3 Employers, this affects the affordability of their services because families will have significantly higher out of pocket costs.

58. The CSS cap therefore operates to constrain the market significantly and compresses what can be realistically charged and recovered by the Group 2/3 Employers. This then has a direct impact upon the wages and conditions which the Group 2/3 Employers can negotiate with their employees because those wages directly impact parent fees which are then subsidised by Commonwealth funding made available through the CCS. The level to which the impact of any fee increases is felt by families and their capacity to continue to afford to access the service, is determined by the amount of CCS funding available to them. It is why it is so important that, in any bargaining for a multi-employer agreement, the Group 2/3 Employers are informed and cognisant of any position which the Commonwealth might take as to funding and the CSS.

**Group 2/3 Employers are each member of either CELA or CCC and bargaining should proceed efficiently.**

59. Each of the Group 2/3 Employers are members of either CELA or CCC.

60. Both CELA and CCC are generally supportive of multi-employer bargaining because both organisations recognise that there are substantial benefits associated with concluding collective agreements with employees, that concluding small single enterprise agreements has proven costly, difficult, and beyond the capacity of experience and expertise of most employers in the sector and in particular the Group 2/3 Employers, and that the multi-employer bargaining process represents the best chance to ensure that the Commonwealth, as the single biggest determinant of funding, is, to the extent the Commission might facilitate, part of the negotiation process.

61. The fact that the Group 2/3 Employers are willing participants in this process, and support the Application being granted, should, I hope, be sufficient to enable the Commission to conclude that the parties will be able to proceed efficiently in their bargaining. The fact that both CELA and CCC have made a dedicated resource available, embraced by the Group 2/3 Employers, should also, I hope, give comfort to the Commission.

**Conclusion**

62. The Group 2/3 Employers support the making of the SBA and ask that it be made covering them.

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Signature 

