Australian Industry Group

Gender Undervaluation
– *Children's Services Award 2010*

Submission

(AM2024/23)

11 October 2024

GENDER UNDERVALUATION – *CHILDREN'S SERVICES AWARD 2010*

1. INTRODUCTION

1. This submission of the Australian Industry Group (**Ai Group**) concerns the proceeding commenced on the Fair Work Commission's (**Commission**) own motion concerning the issue of gender-based undervaluation of work under the *Children's Services Award 2010* (**CS Award** or **Award**).

2. The submission is framed by reference to the questions posed by the Commission in its statement of 24 June 2024.[1] Ai Group's submission focuses in particular on the circumstances of employers in the Outside School Hours Care (**OSHC**) sector.

3. Ai Group's submission also refers to and relies upon an agreed statement of facts (**ASOF**) jointly prepared and filed by:

   (a) Ai Group,

   (b) Australian Childcare Alliance, Australian Business Industrial and Business NSW, and

   (c) United Workers Union.

[1] *Gender Undervaluation – Priority Awards* [2024] FWCFB 291 at [11].

2. THE LEGISLATIVE FRAMEWORK

4. This proceeding is being conducted pursuant to s.157 of the *Fair Work Act 2009* (Cth) (**Act**).

5. When assessing whether minimum wages may be increased (on the basis of gender-based undervaluation or otherwise):

   (a) The Commission must be satisfied that the relevant variations are justified by *'work value reasons'*,[2] as defined by s.157(2A) of the Act;

   (b) The Commission must be satisfied that making the variations outside the system of annual wage reviews is necessary to achieve the modern awards objective (**MAO**);[3] and

   (c) The minimum wages objective (**MWO**) also applies.[4]

Work Value Reasons

6. Sections 157(2A) and (2B) of the Act define '*work value reasons*' and the manner in which they are required to be considered by the Commission, as follows:

   157 FWC may vary etc. modern awards if necessary to achieve the modern awards objective

   …

   (2A) ***Work value reasons*** are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

   (a) the nature of the work;

   (b) the level of skill or responsibility involved in doing the work;

[2] Section 157(2)(a) of the Act.

[3] Section 157(2)(b) of the Act.

[4] Section 284(2)(b) of the Act.

(c) the conditions under which the work is done.

(2B) The FWC's consideration of work value reasons must:

(a) be free of assumptions based on gender; and

(b) include consideration of whether historically the work has been undervalued because of assumptions based on gender.

7. A Full Bench of the Commission set out some key principles in relation to '*work value reasons'* in s.157(2A) of the Act in the *Aged Care Stage 1 decision*.[5] Relevantly, it said as follows:

Section 157(2A)

1. Section 157(2A) can be said to exhaustively define '*work value reasons*' in the sense that there are no other express provisions in the FW Act which inform the meaning of s.157(2A), although the objects of the FW Act will inform the interpretation and application of the concepts within s.157(2A).

2. The reasons which justify the amount employees should be paid for doing a particular kind of work must be '*related to*' any one or more of the 3 matters in s.157(2A)(a) to (c). There is nothing in the statutory context to suggest that the expression '*related to*' in s.157(2A) was not intended to have a wide operation or that an indirect, but relevant, connection would not be a sufficient relationship for present purposes. The expression '*related to*' is one of broad import that requires a sufficient connection or association between the 2 subject matters; the connection must be relevant and not remote or accidental.

3. Section 157(2A) does not contain any requirement that the '*work value reasons*' consist of identified changes in work value measured from a fixed datum point. But, in order to ensure there is no '*double counting'*, it is likely the Commission would adopt an appropriate datum point from which to measure work value change, where the work has previously been properly valued. The datum point would generally be the last occasion on which work value considerations have been taken into account in a proper way, that is, in a way which, according to the current assessment of the Commission, correctly valued the work. A past assessment which was not free of gender-based undervaluation or other improper considerations would not constitute a proper assessment for these purposes.

[5] *Aged Care Award 2010, Nurses Award 2020, Social, Community, Home Care and Disability Services Industry Award 2010* [2022] FWCFB 200 (***Aged Care Stage 1 decision***).

4. Where the wage rates in a modern award have not previously been the subject of a proper work value consideration, there can be no implicit assumption that at the time the award was made its wage rates were consistent with the modern awards objective or that they were properly fixed.

5. Section 157(2A) does not incorporate the test which operated under wage fixing principles of the past that the change in the nature of work should constitute '*such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification*.' There is simply no basis for introducing such an additional requirement to the exercise of the discretion in s.157(2), which might have been, but which has not been, enacted.

6. In the Pharmacy Decision, the Full Bench described in detail the development by the AIRC of an approach whereby the proper fixation of award minimum rates of pay required an alignment between key classifications in the relevant award and classifications with equivalent qualification and skill levels in the Metal Industry classification structure.

7. Having regard to relativities within and between awards remains an appropriate and relevant exercise in performing the Commission's statutory task in s.157(2). Aligning rates of pay in one modern award with classifications in other modern awards with similar qualification requirements supports a system of fairness, certainty and stability. The C10 Metals Framework Alignment Approach and the AQF are useful tools in this regard. However, such an approach has its limitations, in particular:

   - alignment with external relativities is not determinative of work value

   - while qualifications provide an indicator of the level of skill involved in particular work, factors other than qualifications have a bearing on the level of skill involved in doing the work, including 'invisible skills' as discussed in Chapter 7.2.6

   - the expert evidence supports the proposition that the alignment of feminised work against masculinised benchmarks (such as in the C10 Metals Framework Alignment Approach) is a barrier to the proper assessment of work value in female-dominated industries and occupations (see Chapter 7.2.5), and

   - alignment with external relativities is not a substitute for the Commission's statutory task of determining whether a variation of the relevant modern award rates of pay is justified by 'work value reasons' (being reasons related to the nature of the work, the level of skill and responsibility involved and the conditions under which the work is done).

8. In exercising the powers to vary modern award minimum wages, the Full Bench must take into account the rate of the national minimum wage as currently set in a national minimum wage order (s.135(2)).

9. Statements of principle from work value cases decided under different statutory regimes and pursuant to wage fixing principles which no longer exist are likely to be of only limited assistance in the Commission's statutory task under s.157(2). Some of those statements of principle have no relevance at all, given they are grounded in wage fixing principles which required a change in work value to constitute a significant net addition to work requirements. The adoption of the observations such as those at [190] in the ACT Child Care Decision runs the risk of obfuscating the Commission's statutory task of determining whether a variation of modern award minimum wages is justified by work value reasons, being reasons related to the matters in s.157(2A)(a)–(c). To adopt such an approach may also be said to be adding to the text of s.157(2A) in circumstances where it is not necessary to do so in order to achieve the legislative purpose, and may also be an unwarranted fetter on the exercise of what the legislature clearly intended would be a discretionary decision.

10. It is not helpful or appropriate to seek to delineate the metes and bounds of what constitutes 'work value reasons' divorced from a particular context. In our view the meaning of 'work value reasons' should focus on the text of s.157(2A). Any elaboration will develop over time, on a case-by-case basis as the Commission determines particular issues as and when they arise. [6]

The Modern Awards Objective

8. Section 138 of the Act states:

138 Achieving the modern awards objective

A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.

9. Section 134(1) of the Act contains the MAO:

134 The modern awards objective

What is the modern awards objective?

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

[6] *Aged Care Stage 1 decision* at [293].

(a) relative living standards and the needs of the low paid; and

(aa) the need to improve access to secure work across the economy; and

(ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender based undervaluation of work and providing workplace conditions that facilitate women's full economic participation; and

(b) the need to encourage collective bargaining; and

(c) the need to promote social inclusion through increased workforce participation; and

(d) the need to promote flexible modern work practices and the efficient and productive performance of work; and

(da) the need to provide additional remuneration for:

(i) employees working overtime; or

(ii) employees working unsocial, irregular or unpredictable hours; or

(iii) employees working on weekends or public holidays; or

(iv) employees working shifts; and

(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and

(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and

(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the ***modern awards objective***.

10. The key principles concerning the MAO were summarised by the Full Bench in the *Aged Care Stage 1 decision*.[7] The following propositions can be distilled from that summary:

[7] *Aged Care Stage 1 decision* at [271] – [278].

(a) Each of the matters in s.134(1) of the Act must be taken into account insofar as they are relevant, however no particular primacy is attached to any of considerations, and not all will be relevant in the context of a particular proposal to vary a modern award;[8]

(b) In giving effect to the MAO, the Commission is performing an evaluative exercise in taking into account the s.134(1) considerations and assessing the qualities of the safety net by reference to the statutory criteria of fairness and relevance;[9]

(c) While the s.134(1) considerations inform this evaluative exercise, they do not necessarily exhaust the matters which the Commission may consider in determining a fair and relevant minimum safety net. Further matters may be determined by implication from the subject matter, scope and purpose of the Act;[10]

(d) Fairness in the context of providing a '*fair and relevant minimum safety net*' must be assessed from the perspective of employees and employers covered by the modern award in question;[11]

(e) There is a distinction between what is '*necessary'* and what is '*merely 'desirable'*. That which is desirable does not carry the same imperative for action.[12] Further:

> **[278]** What is 'necessary' to achieve the modern awards objective in a particular case is a value judgment, taking into account the s.134 considerations to the extent that they are relevant having regard to the context, including the circumstances of the particular modern award, the terms of any proposed variation and the submissions

[8] *Aged Care Stage 1 decision* at [271].

[9] *Aged Care Stage 1 decision* at [272].

[10] *Aged Care Stage 1 decision* at [273].

[11] *Aged Care Stage 1 decision* at [272].

[12] *Aged Care Stage 1 decision* at [277].

and evidence. Reasonable minds may differ as to whether a proposed variation is necessary (within the meaning of s.138), as opposed to merely desirable.[13]

The Minimum Wages Objective

11. The MWO is contained in s.284 of the Act:

284 The minimum wages objective

What is the minimum wages objective?

(1) The FWC must establish and maintain a safety net of fair minimum wages, taking into account:

(a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and

(aa) the need to achieve gender equality, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps; and

(b) promoting social inclusion through increased workforce participation; and

(c) relative living standards and the needs of the low paid; and

(e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.

This is the ***minimum wages objective***.

12. The Full Bench in the *Aged Care Stage 1 decision* noted that there is a substantial degree of overlap in the considerations relevant to the MWO and the MAO, although some are not expressed in the same terms.[14]

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[13] *Aged Care Stage 1 decision* at [278].

[14] *Aged Care Stage 1 decision* at [290].

3. THE COMMISSION'S QUESTIONS

Question 1

13. Question 1 posed by the Panel is as follows:

> (1) Having regard to the findings contained in the Stage 1 and Stage 2 gender pay equity research reports, has the work to which the classifications apply been historically undervalued because of assumptions based on gender?

14. Briefly stated, Ai Group:

    (a) submits that the Full Bench should determine the answer to Question 1 with reference only to the classifications contained in the '*Children's Services Stream*' of the CS Award; and

    (b) does not contend that the work to which the relevant classifications apply has been historically undervalued because of assumptions based on gender.

The Relevant Classifications

15. Question 1 is to be answered with reference to '*the work to which the classifications apply'*.

16. These proceedings arise from the decision in the Annual Wage Review 2023-24[15] (***AWR 2024 Decision***), in which the Expert Panel determined that the CS Award (amongst certain other specified awards) merits priority consideration as to whether it has been the subject of gender undervaluation '*with respect to the identified classifications*'.[16]

[15] *Annual Wage Review 2023-24* [2024] FWCFB 3500.

[16] *Gender Undervaluation – Priority Awards* [2024] FWCFB 280 at [3].

17. Evidently, not all classifications in each of the specified awards are to necessarily be the subject of consideration in the proceeding; rather, it is limited to the '*identified classifications*' within these awards.

18. The CS Award covers employees of employers in the '*children's services and early childhood education industry*', who fall within the classifications listed in Schedule B – Classification Structure of the CS Award.[17]

19. Schedule B of the CS Award contains two classification streams:

    (a) B1: Children's Services Employees (**CSE**), and

    (b) B2: Support Worker.[18]

20. In a statement issued on 7 June 2024 (**7 June Statement**),[19] the Commission identified that it had initiated this proceeding in relation to the CS Award to consider variations to '*classifications applying to the occupation of child carer*'.[20]

21. The term '*Child Carer*' however, does not appear in the CS Award. Therefore, it is necessary to identify with precision the classifications in the CS Award to which Question 1 (and this proceeding more broadly) is directed.

[17] Clause 4.1 of the CS Award.
[18] Schedule B of the CS Award.
[19] *Gender Undervaluation – Priority Awards* [2024] FWCFB 280.
[20] 7 June Statement at [1](1).

22. In Ai Group's submission, it is evident that the Expert Panel reached its conclusion regarding the priority classifications on the basis of the Stage 1[21] and Stage 2[22] reports of the gender pay equity research project.[23]

23. The Stage 1 Report contains findings in relation to '*Child Carers*' in both '*Preschool Education*' and '*Child Care Services*' settings.[24]

24. In our submission, it follows that the meaning of the term '*Child Carer*' in this proceeding should be taken from those reports.

25. The term '*Child Carer*' used in the Stage 1 Report is derived from the *Australian and New Zealand Standard Classification of Occupations, 2022* (**ANZSCO**).[25] The Stage 2 Report does not separately define the term '*Child Carer*', but instead adopts the term as used in the Stage 1 Report.[26]

26. The ANZSCO '*provides a basis for the standardised collection, analysis and dissemination of occupation data for Australia and New Zealand*'.[27] Occupations are classified in the ANZSCO using five hierarchical levels, which comprise (from broadest to narrowest) major group, sub-major group, minor group, unit group and occupation. These are briefly described in the ANZSCO in the following way:

[21] Cortis, N., Naidoo, Y., Wong, M. and Bradbury, B. (2023). Gender-based Occupational Segregation: A National Data Profile. Sydney: UNSW Social Policy Research Centre (**Stage 1 Report**).

[22] Fair Work Commission, Stage 2 report – Gender pay equity research, Annual Wage Review 2023 – 24 (4 April 2024) (**Stage 2 Report**).

[23] 7 June Statement at [3].

[24] Stage 1 Report at pages 7 and 70 – 74 (inclusive).

[25] Stage 1 Report at page 7, fn 2; see also page 70.

[26] See for example, Stage 2 Report at [10] and [103].

[27] ANZSCO - Overview.

> The categories at the most detailed level of the classification are termed 'occupations'. These are grouped together to form 'unit groups', which in turn are grouped into 'minor groups'. Minor groups are aggregated to form 'sub-major groups' which in turn are aggregated at the highest level to form 'major groups'…
>
> …Each major group comprises a different number of sub-major, minor and unit groups and occupations.[28]

27. Within the ANZSCO, '*Child Carers*' have the 4-digit classification of 4211.[29] The 4-digit code denotes they are categorised in the ANZSCO:

    (a) In *Major Group 4 – Community and Personal Service Workers* (**Major Group 4**);

    (b) Within *Sub-major Group 42: Carers and Aides* (**Sub-major Group 42**) of Major Group 4;

    (c) Further, within *Minor Group 421 – Child Carers* (**Minor Group 421**) of Sub-major Group 42; and

    (d) Lastly, at the Unit Group level within Minor Group 421, *as Unit Group 4211 – Child Carers* (**Unit Group 4211**).[30]

28. Relevantly, the description of '*4211 Child Carers*' in Unit Group 4211 states:

    Tasks Include:

    - assisting in the preparation of materials and equipment for children's education and recreational activities
    - managing children's behaviour and guiding children's social development
    - preparing and conducting activities for children
    - entertaining children by reading and playing games

[28] ANZSCO Profile and Summary of ANZSCO structure.

[29] Stage 1 Report at page 70 and ANZSCO Extract (**Attachment A**).

[30] See Attachment A.

- supervising children in recreational activities
- supervising the daily routine of children
- supervising the hygiene of children[31]

29. Unit Group 4211 includes the following four occupations:

    (a) 421111 Child Care Worker;

    (b) 421112 Family Day Care Worker;

    (c) 421113 Nanny; and

    (d) 421114 Out of School Hours Care Worker.[32]

30. The ANZSCO provides the following description of 42111 Child Care Worker:

    421111 Child Care Worker

    Alternative Title:

    - Child Care Aide

    Provides care and supervision for children in programs, such as long day care and occasional care, in childcare centres, hospitals and educational centres. Registration or licensing may be required.

    Skill Level: 3

    Specialisations:

    - Child Care Group Leader (Aus) (Skill Level 2)
    - Children's Nursery Assistant
    - Creche Attendant

[31] See Attachment A.

[32] See Attachment A.

- Early Childhood Worker.[33]

31. The ANZSCO provides the following description of 421114 Out of School Hours Care Worker:

> 421114 Out of School Hours Care Worker
>
> Provides care for school age children in an out of school hours care program. Registration or licensing may be required.
>
> Skill Level: 3.[34]

32. In Ai Group's submission, it is clear having regard to the above descriptions of the tasks of a '*Child Carer*' and more specifically, the tasks of a '*Child Care Worker*' and '*Out of School Hours Care Worker*' that these are referable to only the CSE classifications in clause B.1 of Schedule B to the CS Award, and that the term '*Child Carer*' does not extend to '*Support Worker*' classifications under clause B.2 of Schedule B to the CS Award.

33. Specifically, the indicative duties for Levels 1 and 2 (out of a total of three levels) of the Support Worker stream are in identical terms, and are as follows:

- Assisting a qualified cook and/or basic food preparation and/or duties of a kitchen hand.
- Laundry work.
- Cleaning.
- Gardening.
- Driving.
- Maintenance (non-trade).
- Administrative duties.[35]

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[33] ANZSCO - 421111 Child Care Worker.

[34] ANZSCO - 421114 Out of School Hours Care Worker.

[35] Clauses B.2.1(a) and B.2.2 of Schedule B to the CS Award.

34. This list does not bear any similarity to the list of included tasks for *4211 – Child Carer*, nor to the occupation descriptions for *42111 Child Care Worker* or *421114 Out of School Hours Care*.

35. Instead, it may be noted that:

(a) ‘*Kitchenhands*’ are found within *Major Group 8 – Labourers* at *Unit Group 8513 – Kitchenhands*;[36]

(b) ‘*Cleaners and laundry workers*’ are found within *Sub-major group 81 – Cleaners and Laundry Workers*, which has only one Minor group (811) of the same title;[37]

(c) ‘*Gardeners*’ are found within *Major Group 3 – Technicians and Trades Workers* at *Unit group 3626 Gardeners (General);*[38]

(d) ‘*Automobile drivers’* are at Unit group 7311 of *Major group 7 – Machinery Operators and Drivers*;[39]

(e) With reference to ‘*Maintenance (Non-trades)’* Support workers, *Unit group 8993 – Handypersons* is found within *Major group 8 – Labourers*;[40] and

(f) In relation to the reference to ‘*Administrative Duties*’, *Major group 5 – Clerical and Administrative Workers* contains *Unit group 5311 – General* Clerks.[41]

[36] ANZSCO - 8513 Kitchenhands.

[37] ANZSCO - 81 Cleaners and Laundry Workers and ANZSCO - 811 Cleaners and Laundry Workers.

[38] ANZSCO - 3626 Gardeners (General).

[39] ANZSCO - 7311 Automobile Drivers.

[40] ANZSCO - 8993 Handypersons.

[41] ANZSCO - 5311 General Clerks.

36. It follows that Question 1 is to be resolved in relation to the work to which the classifications referable to a '*Child Carer*' apply and that the scope of this proceeding more generally should be confined as such – that is, employees who are classified within the CSE stream in clause B.1 of Schedule B to the CS Award.

37. We also note that any '*findings*' said to be made in the Stage 1 or 2 Reports are necessarily limited to such employees.

The Stage 1 and Stage 2 Reports

38. Turning to the substantive issue for consideration, it is Ai Group's submission that neither the Stage 1 Report nor Stage 2 Report provides a basis for a conclusive determination that the work to which the classifications apply has been historically undervalued because of assumptions based on gender. Accordingly, the appropriate answer in response to Question 1 must be '*no*'.

39. By way of elaboration, the authors of the Stage 1 Report identify their work as focusing on '*feminisation across industries and occupations, where undervaluation and pay equity issues are <u>most likely</u> to occur'*, and providing an '*important basis for <u>targeting interventions'</u>* (emphasis added).[42] At its highest, the Stage 1 Report may be taken as concluding that there are high levels of feminisation within the occupation of '*Child Carer'* under the CS Award.[43]

40. Similarly, the purpose of the Stage 2 Report is described as being to '*<u>provide a foundation</u> for the Commission '<u>to determine</u> whether the Commission (or its predecessors, or, where relevant, State tribunals) <u>has ever undertaken a</u>*

[42] Stage 1 Report at page 78.
[43] Stage 1 Report at page 25.

comprehensive work value assessment of classifications within the awards' identified in the Stage 1 report' (emphasis added).[44]

41. In the *AWR 2024 Decision*, the Expert Panel summarised the findings of the Stage 2 Report in relation to the three potential indicia of gender undervaluation.[45] In the context of the CS Award, the Expert Panel noted that only two of the three potential indicia are relevant – namely, whether there has been a prior work value assessment and alignment with C10.[46] The Expert Panel concluded that a work value assessment has been undertaken but was constrained by the C10 Metals Framework Alignment Approach.[47]

42. At its highest, the Stage 2 Report goes to the issues of whether a comprehensive work value assessment of the occupational groups examined has ever been undertaken.[48] This cannot be said to equate to a finding that the work has been historically undervalued.

[44] Stage 2 Report at page 10.

[45] See *AWR 2024 Decision* at [98] and [99] (Table 19).

[46] *AWR 2024 Decision*, Table 19.

[47] *AWR 2024 Decision* at [113] – [114].

[48] Stage 2 Report at page 10.

Question 2

43. Question 2 posed by the Panel is as follows:

    (2) Would variations to the minimum wage rates prescribed for the classifications:

        (a) be justified by work value reasons within the meaning of s 157(2A) of the Act?

        (b) be necessary to achieve the modern awards objective in s 134(1) of the Act?

        (c) be necessary to achieve the minimum wages objective in s 284(1) of the Act?

44. Ai Group does not contend that variations to the minimum wage rates prescribed by the CS Award for the relevant classifications should be made.

45. For present purposes, our submission in response to Question 2 focuses on two areas.

46. In relation to **Question 2(a),** Ai Group urges the Commission exercise caution in making any finding that increases to minimum rates are justified by work value reasons, in circumstances where:

    (a) The work has previously been the subject of a work value exercise, and the extent to which any constraints on the setting of minimum rates as a consequence of the application of the C10 Metals Framework Alignment Approach has not been quantified; and

    (b) Neither the Stage 1 or Stage 2 Reports provides a basis for concluding the work has been historically undervalued because of assumptions based on gender.

47. In relation to **Questions 2(b) and (c)**, Ai Group submits that central to any consideration of a proposed increase to minimum wage rates prescribed by the CS Award should be a careful assessment of the impact that the increase would have on employers, and the potential for broader adverse social and economic

consequences, in the absence of a clear commitment being made by the Commonwealth government to fund such increases, in their entirety and on an ongoing basis.

48. We elaborate on Ai Group's position, below.

Question 2(a)

49. Our submission addresses the nature of the work performed by Child Carers, including the level of skill and responsibility involved in doing the work, and the conditions under which the work is done, in our response to Question 3.

50. Ai Group submits that to the extent that the Commission concludes (in the context of its determination of Question 3) that the work of Child Carers involves '*invisible skills*' and/or caring work of the nature described in the *Aged Care Stage 3 decision*,[49] it is appropriate to consider:

(a) The extent to which those skills and/or the caring nature of the work were recognised in previous work value assessments; and

(b) The extent to which the skills and/or caring nature of the work are already reflected in the classification structure of the CS Award (and as such, are already compensated for by the existing rates prescribed for the classification).

Previous Work Value Assessments

51. As the Expert Panel observed in the *AWR 2024 Decision*, a work value assessment was undertaken in respect of the work of Child Carers in *ALHMWU re Child Care Industry (Australian Capital Territory) Award 1998 and Children's Services (Victoria)*

[49] 7 June Statement at [4](3); *Aged Care Award 2010, Nurses Award 2020, Social, Community, Home Care and Disability Services Industry Award 2010* [2024] FWCFB 150 (***Aged Care Stage 3 decision****)* at [156(1)] and [172] – [173].

Award 1998 – re Wage rates [2005] AIRC 28, PR954938 (13 January 2005) (***ACT Child Care decision***).[50]

52. The outcome of this work value assessment was to align key classification levels in the relevant awards under consideration (being C5 and C10), with the (then) *Metal, Engineering and Associated Industries Award, 1998 – Part I* (**Metal Industry Award**) [51].[52]

53. The Stage 2 Report notes that *'[w]hen the modern 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*'.[53]

54. In the *AWR 2024 Decision*, the Expert Panel stated that the C10 Metals Framework Alignment Approach '*constrained the proper work value assessment of female-dominated work'* and was an indicator of gender undervaluation.[54] It also referred to the observation made by the Full Bench in the *Aged Care Stage 3 decision* that *'the Full Bench in the ACT Child Care decision made it tolerably clear, in our view, that unconstrained by the C10 Metals Framework Alignment Approach it would have assessed the key classifications in the early childhood education and care awards under consideration as having higher work value than the identified equivalents in the Metal Industry Award'.*[55]

[50] *AWR 2024 Decision* at [113] – [114] as extracted in our response to Question 1, above.

[51] AW789529 Print Q0444.

[52] *ACT Child Care decision* at [364] (6.1) and [367].

[53] Stage 2 Report at [133].

[54] *AWR 2024 Decision* at [113] – [114].

[55] *AWR 2024 Decision* at [113], citing the *Aged Care Stage 3 decision* at [92].

55. *Firstly*, it is important not to overstate the extent to which the above statement may be taken to support the proposition that the C10 Metals Framework Alignment Approach led to the Full Bench placing a value that was lower than warranted on the work of Child Carers.

56. Relevantly, in the *ACT Child Care decision* the Full Bench stated: (emphasis added)

> **[372]** Prima facie, employees classified at the same AQF levels should receive the same minimum award rate of pay unless the conditions under which the work is performed warrant a different outcome. Contrary to the employer's submissions the conditions under which the work of child care workers is performed do *not* warrant a lower rate of pay than that received by employees at the same AQF level in other awards. Indeed if anything the opposite is the case. Child care work is demanding, stressful and intrinsically important to the public interest.[56]

57. The decision certainly does not make clear that the C10 Metals Framework Alignment Approach constrained the Full Bench to a significant, or even material, degree.

58. *Second,* notwithstanding the comments of the Full Bench in the *Aged Care Stage 1 decision* concerning measurement of work value changes from a fixed datum point,[57] in the present circumstances, there should be some differentiation between aspects of the work of Child Carers said to justify an increase on work value grounds due to *changes in the work* since the *ACT Child Care decision* (being the last '*datum point*' in time when there was a consideration of the work value) and aspects of the work which *were considered* in the *ACT Child Care decision*.[58]

[56] *ACT Child Care decision* at [372].

[57] *Aged Care Stage 1 decision* at [293].

[58] See for example, approach in the *Teachers Decision* at [538].

Classification Structure of the CS Award

59. In the *AWR 2024 Decision*, the Expert Panel did not make any finding as to whether the work performed by Child Carers covered by the CS Award involves the exercise of 'invisible' caring skills, however referred to the evidence of the Child Carer role adopted in the *ACT Child Care decision*, as follows: (emphasis added)

> **[115]** As stated above, an important feature of the findings concerning the work value of personal care workers, home care workers and assistants in nursing in the Stage 1 Aged Care decision and the Stage 3 Aged Care decision was that they performed caring work involving the exercise of 'invisible' skills. This might otherwise be described as work which is subject to the 'Five Vs' indicators of gender undervaluation. <u>It is probable that the work performed by Child Carers covered by the CS Award likewise involves the exercise of 'invisible' caring skills</u>. It is sufficient for present purposes to refer to evidence accepted in the ACT Child Care decision that the role of a Child Carer includes:
>
> - Providing a nurturing environment and interacting with the children in such a way that each individual child's emotional needs are met.
> - Providing environments and experiences which are appropriately stimulating and engaging and interacting with the children in such a way that each child's cognitive, language, and creative development is stimulated.
> - Providing experiences and environments that are supportive of children's social development and facilitating the interactions of children in such a way that their social development in a diverse environment is encouraged.
> - Supporting the needs of children and families from socially, culturally and linguistically diverse backgrounds, facilitating understanding of that diversity and providing an environment where all children and families feel valued and included.
> - Observing babies and children sensitively and accurately and using a developmental analysis of those observations to assist in planning and caring appropriately for each child.
> - Planning appropriate programs for individual children and groups of children for all areas of their development and well-being.
> - Guiding children's behaviour and managing situations where a child's behaviour is difficult and challenging.

- Communicating appropriately and sensitively with families in a way that is supportive of the child's well-being and development.[59]

60. The Commission should in this proceeding take into account the extent to which any skills that may be found to be 'invisible' caring skills of Child Carers are already reflected in the classification structure contained in the CS Award. This is a matter that goes squarely to the Commission's consideration of whether the rates of pay for those classifications have been set having regard to those skills.

61. To this end, we set out below a table reconciling what we understand to be the Expert Panel's conceptualisation in the *AWR 2024 Decision* of aspects of the Child Carer role that may involve 'invisible' caring skills, with relevant classification descriptors contained in clause B.1 of Schedule B to the CS Award:

Evidence accepted in ACT Child Care decision regarding work of Child Carer[60]	**Classification descriptors contained in Clause B.1 of Schedule B to the CS Award**
• Providing a nurturing environment and interacting with the children in such a way that each individual child's emotional needs are met. • Guiding children's behaviour and managing situations where a child's behaviour is difficult and challenging.	CSE Level 1(a): • Learning how to establish relationships and interact with children. • Giving each child individual attention and comfort as required. CSE Level 2(a): • Give each child individual attention and comfort as required.
• Providing environments and experiences which are appropriately stimulating and engaging and interacting with the children in such a way that each child's cognitive, language, and creative development is stimulated.	CSE Level 2(a): • Assist in the implementation of the children's program under supervision.
• Providing experiences and environments that are supportive of children's social development and facilitating the interactions of children in such a way that their social development in a diverse environment is encouraged.	CSE Level 1(a): • Learning the basic skills required to work in this environment with children.

[59] *AWR 2024 Decision* at [115].

[60] *AWR 2024 Decision* at [115].

• Supporting the needs of children and families from socially, culturally and linguistically diverse backgrounds, facilitating understanding of that diversity and providing an environment where all children and families feel valued and included. • Communicating appropriately and sensitively with families in a way that is supportive of the child's well-being and development.	CSE Level 3(a): • Under direction, work with individual children with particular needs. CSE Level 5(d) Unqualified Co-ordinator (who co-ordinates and manages a stand along out-of-school hours care and/or vacation care centre) may undertake: • work positively with parents and/or committees CSE Level 6(a): • Liaise with families and outside agencies.
• Observing babies and children sensitively and accurately and using a developmental analysis of those observations to assist in planning and caring appropriately for each child.	CSE Level 3(a): • Record observations of individual children or groups for program planning purposes for qualified staff. CSE Level 4: • Develop, implement and evaluate daily care routines.
• Planning appropriate programs for individual children and groups of children for all areas of their development and well-being.	CSE Level 3(a): • Assist in the preparation, implementation and evaluation of developmentally appropriate programs for individual children or groups. CSE Level 4: • Responsible, in consultation with the Assistant Director/Director for the preparation, implementation and evaluation of a developmentally appropriate program for individual children or groups. CSE Level 5: • Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs. CSE Level 5(d) Unqualified Co-ordinator (who co-ordinates and manages a stand along out-of-school hours care and/or vacation care centre) may undertake: • develop and/or oversee programs and ensure they offer a balance of flexibility, variety, safety and fun;

62. The analysis in the above table supports a finding that the skills identified in the *AWR 2024 Decision* are reflected in the CSE classification stream of the CS Award and that *prima facie*, the minimum rates prescribed for those classifications are intended to compensate employees for the exercise those skills. Such skills cannot be said to be *'invisible'* in the circumstances.

63. Lastly, in relation to the requirement that the Commission consideration whether historically the work has been undervalued because of assumptions based on gender,[61] we rely on our response to Question 1 above, and reiterate our submission that there neither the Stage 1 Report nor Stage 2 Report provide the basis for a conclusive determination that the work to which the classifications apply has been historically undervalued because of assumptions based on gender.

Questions 2(b) & 2(c)

64. In Ai Group's submission, central to any consideration of a proposed increase to minimum wage rates prescribed by the CS Award should be a careful assessment of the impact that the increase would have on employers, and the potential for broader adverse social and economic consequences, should the Commission move to award any increase to minimum wages payable to early childhood education and care (**ECEC**) workers in the absence of a clear commitment being made by the Commonwealth Government to fund such increases.

65. We firstly set out below an overview of the factual matrix within the sector relevant to the Full Bench's consideration of the MAO and MWO, before briefly addressing the elements of the MAO and MWO in turn.

[61] Section 157(2B)(b) of the Act.

Government Funding

66. The childcare services industry is heavily reliant on government (and in particular, federal government) funding. In 2021 – 22, the Australian Government spent more than $10 billion on childcare services. State and territory governments spent an additional $382.5 million in the same period.[62]

67. The Child Care Subsidy (**CCS**) is the main payment to assist households with childcare costs.[63] To receive the CCS, a child must be attending a CCS-approved service and not be attending secondary school.[64]

68. The subsidy rate varies based on household income, number of children in care, activity levels, and an hourly rate cap.[65] The hourly rate cap sets the maximum fee amount subsidised by the government, varying by service provider type and adjusted annually based on the Consumer Price Index.[66]

69. The CCS is administered by Services Australia. To access the CCS, families apply through Services Australia, which includes having their ECEC provider send their child's enrolment details to Services Australia and confirming specified details relevant to the family's income and activity levels.[67]

[62] ACCC Interim Report at page 36.

[63] ASOF at [101].

[64] Productivity Commission, A path to universal early childhood education and care Inquiry report -Volume 3 (Appendices) (**PC Final Report – Vol 3**) at page 63.

[65] ASOF at [102].

[66] ASOF at [103].

[67] PC Final Report – Vol 3 at page 81.

70. The CCS-approved service is responsible for receiving CCS payments on behalf of families and applying this as a fee reduction. Receipts issued by the provider to the service user reflect the amount of CCS received.[68]

Existing Cost Burdens for OSHC Employers

71. A useful starting point is to consider the existing cost burdens for OSHC sector employers and the potential means available to them to recover increases to labour costs.

72. Labour is the biggest driver of cost for supplying childcare. In the OSHC sector, it accounts for 77% of total costs.[69]

73. Over the period 2018 – 2022, costs for childcare providers increased significantly. This was primarily due to labour costs.[70]

74. There are numerous sources of current and significant labour cost pressures in the ECEC sector, which include:

    (a) cost pressures arising from educator labour force shortages, with increased costs associated with attracting and retaining staff impacting service profitability and viability;[71] and

    (b) the outcome of the *AWR 2023 Decision*, in which childcare workers were awarded a 5.75% increase from 1 July 2023 (which in turn contributed to large service fee increases during the period from the September 2022 quarter to

[68] Services Australia, Roles and responsibilities in the administration of Child Care Subsidy (CCS) and Additional Child Care Subsidy (ACCS) 007-17103145 (Accessed 11 October 2024).

[69] ACCC Final Report at page 5, 23

[70] ACCC Final Report at page 16.

[71] ACCC Final Report at page 16.

September 2023 quarter, with average fee increases for centre-based day care (**CBDC**) at 9.8% and for OSHC, 7.2%).[72]

75. A broader source of cost pressure arises for services attended by children with disability. A 2021 census found that around 5% of children attending childcare services have a disability or underlying long-term health condition.[73] Such pressures stem from a higher cost load associated with provision of appropriate services to those children as well as appropriate supports to educators providing those services.[74] Whilst some additional funding is available from the Commonwealth Government's Inclusion Support Program (**ISP**), it is limited in the support it provides to services.[75] The ISP funding for children with disability and/or complex needs does not cover the actual costs incurred by the provider.[76]

76. A recent report commissioned by the Outside School Hours Council of Australia (**OSHCA**), which appears as **Attachment B** to this submission (the **Dandolo Report**), estimated the total cost to employers in the OSHC portion of the ECEC sector alone if minimum rates of pay were increased by 15% would be between $130 million to $180 million, which on average equates to an additional $37,000 per service or an investment of nearly $500 per child.[77]

77. The impost of this increase should be considered in the context of the range of providers operating in the sector, including those operating on a not-for-profit basis.[78] Whilst 35% of services are managed by the largest 1% of providers in the

[72] ACCC Final Report at page 35.

[73] ASOF at [92].

[74] ASOF at [95], [99].

[75] ACCC Final Report at page 28; See also ASOF at [97].

[76] ACCC Final Report at page 164.

[77] Dandolo Partners, *The Cost and impact of different funding approaches to increase OSHC sector wages*, Report for the Out of School Hours Care Association at page 3.

[78] ACCC Interim Report at page 5.

market, most providers are small businesses that operate only one service.[79] Small businesses are at a particular disadvantage when endeavouring to absorb costs arising from wage increases, by virtue of their size and absence of scale efficiencies. Further, the Australian Competition and Consumer Commission (**ACCC**) has recently concluded that approximately 25% of childcare providers structured as companies are making almost no profit or are operating at a loss.[80]

Potential Means to Recover Labour Cost Increases

78. It is axiomatic that any unfunded increase to employee wages arising from this proceeding will increase employment costs.

79. To properly appreciate the impact on employers, it is relevant to consider the potential means available to ECEC employers to recover such cost increases.

80. In the context of the OSHC sector, there exist both:

   (a) Formal constraints which prohibit an employer from:

      (i) Increasing service fees, at the relevant point in time and/or to the extent required to offset the cost of increased employee wage rates; and

      (ii) Reducing the size of its workforce to reduce labour costs, where this would result in a failure to maintain prescribed minimum child-to-educator ratios; and

   (b) Practical constraints, whereby the potential client base for a service may be unable to, or choose not to, withstand service price rises.

[79] PC Interim Report at page 10.
[80] ACCC Final Report at page 16.

81. Turning first to **formal constraints**. Whilst there is no regulatory cap on the price a provider may charge for childcare services, the recent Worker Retention Payment announced by the Australian Government with respect to wages for the ECEC sector requires employers not to increase their fees above a set percentage for two years, from 8 August 2024.[81]

82. Between 8 August 2024 and 7 August 2025, this percentage is 4.4%, with the percentage for the following year to be determined against the ECEC Cost Index published by the ABS.[82]

83. Accordingly, should employers be required to incur additional labour costs which increase their total operating costs by more than the set percentage, they may be placed in the insidious position of increasing service fees beyond the limit (thereby rendering them ineligible for funding, and depriving their employees of funded increases) to be able to afford higher wages costs arising from this proceeding.

84. Further, regulation – including educator-to-child ratios – is a key driver of labour costs.[83]

85. Educator-to-child ratios are a component of the National Quality Framework for children's education and care (**NQF**), administered by the Australian Children's Education and Care Quality Authority (**ACECQA**).[84] OSHC services have specific ratio obligations that differ by age group and jurisdiction.[85] Where the service cares only for school-age children, state and territory specific provisions apply which vary

[81] See: Early childhood wages - Department of Education, Australian Government (Accessed 26 August 2024).

[82] See: Early childhood wages - Department of Education, Australian Government (Accessed 26 August 2024).

[83] ACCC Final Report at page 254.

[84] ASOF at [29], [33].

[85] ASOF at [36](a).

from a ratio of 1:10 to 1:15.[86] Where an OSHC service cares for children who are less than school age, the CBDC ratio for that age cohort applies.[87]

86. Mandatory child-to-educator ratios constrain the extent to which providers can reduce staffing levels and, in turn, reduce staff costs.

87. OSHC services are also susceptible to the potential for higher regulatory burden than other service types, because below-school-age-children may attend OSHC in addition to school-age children. The consequence of this is that two separate learning frameworks – being the '*Early Years Learning Framework*' (**EYLF**) applicable to children who are less than school age, and the '*My Time, Out Place*' (**MTOP**) framework applicable to school aged children – may apply.[88]

88. A further formal constraint exists for OSHC providers, arising from most outside school hours care services being associated with a particular primary school, with sessions of care provided on the school premises to children who attend that school. OSHC services may be run by the school itself, or the school's Parents and Citizens (P&C) Committee, or by a third-party provider – in which case, OSHC providers often compete to supply a primary school for a specified contract length (for example, 2 to 5 years).[89]

89. Where an outside school hours service is operated by a third party, the relationship between the provider and associated school is often governed by a licence agreement that sets out terms in relation to licence fees paid to the school for the use of their premises, fees charged to parents, the length of the agreement and renewal options.[90] For OSHC services governed by a licence agreement with a

[86] ASOF at [39](a) and (b).
[87] ASOF at [39](c).
[88] See ASOF at [51] – [61] inclusive.
[89] ACCC Interim Report at page 13, 57-58.
[90] ACCC Interim Report at pages 57 – 58.

school, the length of the contract and license fees have a material impact on the costs and affordability of service delivery.[91]

90. There are also some limitations on price increases set under state regulatory arrangements.[92] Such constraints can hinder the immediate implementation of fee increases in response to increases in service costs.[93]

91. The license agreement framework for OSHC providers has been summarised by the ACCC as follows:

> The way in which an outside school hours care provider is selected to run a service and the nature of the agreement with the school is dependent on the type of school, and the jurisdiction. For example:
>
> - If a government school wishes to engage a third party outside school hours care service provider, it must follow the relevant procurement policy set by the state or territory government. In most jurisdictions, this requires interested providers to provide an open market expression of interest.
>   - Across all jurisdictions, most contracts with government schools and third-party outside school hours care providers are for a period of 2 to 5 years. In most cases, contracts have the option to be extended for another 2 to 3 years, subject to the service's performance.
>   - While there is variation across jurisdictions, schools are usually required to go out to tender after the contract period and any extension period have passed (often between 5 and 9 years), or more frequently as required.
> - In non-government schools, there is greater variability in how third-party providers are selected. In some cases, a school may have complete discretion in how they select a provider. In other cases, schools may be required to follow a particular policy or procedure. For example, some Catholic schools are required to follow procurement policies set by the relevant dioceses.
>   - Just as there is greater variability in how a third-party outside school hours care provider may be selected in a non-government school, there is also wide variability in the contractual terms that govern these relationships. Among

[91] Outside School Hours Council of Australia (OSHCA*), [Initial Submission to the Productivity Commission Inquiry into the ECEC sector in Australia]*, 19 May 2023 at page 7.

[92] ACCC Interim Report at page 13

[93] Dandolo Report at page 5.

> contracts of this nature that the ACCC has seen as part of this inquiry, a contract length of around 3 years, with an option to extend, is common.[94]

92. The ACCC has found that OSHC license agreements likely constrain fee growth,[95] with fees often determined over a longer period of time and defined in licence agreements, and not necessarily re-evaluated each year.[96] Relevantly, the ACCC has made the following observations regarding the extent to which license agreements influence fees differs across jurisdictions:

> For example, New South Wales Public School Agreements lock in fee increases for each year of the contracted term (normally 5 years) based on long term inflation estimates, and changes must be approved by the Department for Education. Whereas in Victoria, the fees need to be approved by the school council, which can impact the provider's ability to adjust fees.
>
> An agreement may also include requirements about how and when fee adjustments can be made, such as that it must be approved by the school. One large provider noted there are expectations from the school about the fee level and pressure to limit fee increases, which the provider must account for, to protect their relationship with the school.
>
> Another large provider noted that the length of the contract with a school was a consideration when setting fees. For example, a short-term contract would result in higher fees because it was harder to recruit staff for a short period, and this attracted more costs.
>
> One provider notes it may decrease fees to win a school contract. In some cases, if a provider takes over a contract, it may inherit existing fees and cannot change the fees for a year.[97]

93. There are also various **practical constraints** on the extent to which providers can recover cost increases through service fee increases:

[94] ACCC Interim Report at pages 57 - 58.

[95] ACCC Final Report at page 5.

[96] ACCC Final Report at page 7.

[97] ACCC Interim Report at page 68.

(a) *Firstly*, research suggests that providers often set prices having regard to the parent/guardian cohort's capacity or willingness to pay, rather than the level of competition;[98] and

(b) *Second*, additional and different pricing considerations arise for OSHC services, most of which are associated with a primary school at which the services are provided.[99] Whereas CBDC services tend to compete on quality, OSHC providers compete on price and quality, and in the context of the opportunity to operate a particular service.[100] Further, unlike other service types, parents and guardians may simply choose not to use OSHC; consequently, demand is more directly price driven.[101]

Likely Impact of Unfunded Wage Increases

94. Next, it is relevant to consider the likely impact on OSHC service users should a wholly or partially unfunded wage increase be awarded in this proceeding.

95. Australia's system of childcare – and moreover, access to affordable childcare – is a necessity, and essential to participation in the workforce, volunteering, training and/or studying.[102] Increasingly, it is also critical to the workforce participation decisions of grandparents, who provide care to their grandchildren.[103] Maximising workforce participation is critical to the performance and competitiveness of the national economy.

[98] ACCC Interim Report at page 13.

[99] ACCC Interim Report at page 8.

[100] ACCC Final Report at pages 6, 21, 22.

[101] ACCC Final Report at page 22; See also Dandolo Report at page 5.

[102] Australian Competition & Consumer Commission (ACCC), Interim Report (June 2023), 5 July 2023 (**ACCC Interim Report**) at age 9; See also ACCC Final Report at page 15.

[103] PC Interim Report at page 13.

96. At scale, this in turn has important productivity benefits for the broader Australian economy.[104] This is evident, having regard to current rates of childcare usage in Australia, which point to a significant level of reliance on childcare by Australian families. In the March 2024 quarter, 1,498,220 children from 1,069,650 families attended a service approved to operate and administer the CCS.[105] This represents 50.3% of children aged 0 to 5 and 34.6% of children aged 0 to 12.[106] CBDC and OSHC account for the largest share of child care services in Australia, consisting of around 62.5% and 34.5% of services, respectively.[107] The average weekly number of hours per child varies by service type, being 12.9 hours per week for OSHC and 33.7 hours per week for CBDC.[108] The ACCC reports that the number of approved childcare places and enrolled hours of childcare has increased, despite a decline in the population of children aged 0-12, indicating a growing demand for childcare services.[109]

97. Any increased labour costs for employers arising from this proceeding should not result in the introduction of barriers to workforce participation. Affordability has been found to be the most important first consideration for households in determining how much formal childcare to use.[110] As it presently stands, difficulties accessing ECEC due to reasons including affordability is already a barrier to work for many Australians.[111]

[104] ACCC Final Report at pages 15, 18.

[105] Australian Government, Department of Education, 'Child Care Subsidy data report – March quarter 2024', 12 July 2024. Accessed 25 August 2024. (CCS Data Report March 2024); See also ACCC Final Report at page 18.

[106] CCS Data Report March 2024.

[107] ACCC Final Report at page 18.

[108] CCS Data Report March 2024, Table 6.1.

[109] ASOF at [23].

[110] ACCC Interim Report at page 9.; See also PC Interim Report at page iv.

[111] PC Interim Report at page 13.

98. Over the period from 2018 to 2022, childcare fees in Australia increased across all services by between 20% and 32%. When adjusted for inflation, these increases were 4% for centre based and outside school hours care, 6% for family day care and 15% for in home care services.[112]

99. The impact of unfunded wage increases on service users, may be experienced in two ways – increased service costs (where providers can and do pass on the cost increase in the form of increased fees) or reduced availability of services (where providers are constrained from adequately recovering costs and consequently cease to operate).

100. This is reflected in the following recent observations of the Productivity Commission: (emphasis added)

> It is likely the processes that are underway as a result of the changes to the Fair Work Act will lead to some level of wage increase for ECEC workers. Both the multi-employer bargaining process, and the examination of modern awards to identify and address gender undervaluation (including the proceedings flagged by the Fair Work Commission to determine whether award wages in the Children Services Award 2010 should increase on work value grounds) – are significant in nature and sufficiently far reaching to impact a large proportion of ECEC employers and employees.[113]
>
> …
>
> <u>Another key unknown is how any increase in wages would be funded. The two largest funders of the sector are governments and families. It is possible that some providers might be able to fund at least part of any wage increase by reducing costs elsewhere, or by reducing profits or surpluses. But cuts could affect quality, while lower profits or surpluses could have repercussions for service viability and expansion. Moreover, the fact that wage costs make up most of provider costs, and that the ACCC found profits in the sector are ‘highly variable’ (ACCC 2023b, p. 17), suggests that the scope for many providers to fund wage increases without raising prices is probably limited.</u>
>
> <u>With likely limited scope for many services to absorb permanently higher labour costs, wage increases would need to be funded predominately by higher prices for families, a greater fiscal contribution from governments or a combination of both. There are significant impacts</u>

[112] ACCC Interim Report at page 10.

[113] PC Final Report – Vol 2 at page 159.

that need to be considered, irrespective of whether it is families or taxpayers who primarily fund a wage increase.[114]

101. As to the first impact (increased service costs), providers do not face any regulatory constraints regarding the fees charged by their service (subject to any restriction arising from an employer provider's decision to 'opt in' to the worker retention payment scheme, discussed at paragraphs [81] – [82] above).

102. However, there is a cap (the '**hourly rate cap'**) on the amount of CCS the Australian Government will subsidise for each hour of care. The CCS is the main payment to assist households with childcare costs,[115] with Australian Government funding per child increased by 23% in real terms since 2017-18, reaching $7,715 per child in 2021-22.[116] Any fee amount charged above the hourly rate cap is not eligible for the CCS and as a corollary, represents an entirely out-of-pocket cost for service users.[117]

103. The Dandolo Report identified that in order to cover the additional costs to services of an unfunded wage increase, some OSHC services are likely to increase their fees and the impact on families will vary significantly. Dandolo Partners estimated that on average, if and when OSHC services pass on the cost increases via increased fees, this would involve an average 9% fee increase to cover a 15% wage increase.[118]

104. Furthermore, lower income households are more likely to be responsive to price changes, due to any increases in out-of-pocket costs having a disproportionately larger impact on their household income.[119]

[114] PC Final Report – Vol 2 at page 161.
[115] ASOF at [101].
[116] ASOF at [110].
[117] ACCC Interim Report at pages 4, 15, 33.
[118] Dandolo Report at page 4.
[119] ACCC Final Report at page 22.

105. Any price or affordability barriers to accessing ECEC that may flow from the outcome of this proceeding, are likely to have particularly pronounced effects for mothers, given that ECEC enables mothers in particular to maintain a connection to the labour force when children are very young, and allows for increasing hours of work as children grow; which in turn has positive effects on their lifetime earnings and enables them to use and continue to develop their skills.[120]

106. As to the second type of impact (reduced availability of services), in circumstances where employers may have both formal and/or practical constraints as to their ability to increase service fees to a level required to maintain viability and profitability, any threat to the ongoing viability of an OSHC service due to rising costs (including but not limited to rising employment costs) risks the service closing.

107. It is also likely to have adverse effects on the childcare options available to parents should the OSHC service at their children's school cease to operate, which in turn has potential consequences for their participation in the workforce.[121] In particular, the ACCC identified that for parents of primary school aged children, there are limited school-based care programs available and most simply use the service at their child's school (both for convenience and safety, as well as it often being the only option). It follows then that where OSHC is the only option available to parents, closure of a service at a school may mean the parent has no other care options. The ACCC found that parents frustrated or disappointed by the care options for school-aged children sometimes re-evaluate whether to send their children to care at all.[122]

108. Where providers are compelled to charge higher fees – and are not constrained from doing so – there is research to suggest that this may cause or incentivise childcare services to become concentrated in areas of greater advantage (where

[120] Productivity Commission, A path to universal early childhood education and care - Draft report (November 2023) (**PC Interim Report**) at page 12.

[121] ACCC Interim Report at page 57.

[122] ACCC Interim report, p.64

households are more likely to be able to sustain the fee increases). Thus, it may have the effect of compounding disadvantage for lower socio-economic areas by reducing accessibility to locally-available services available.[123]

109. The Full Bench should take into account the potentially deleterious impact of any costs increases on employers that may arise from this proceeding, given that the impact may be felt not just on individual businesses, but also the potential flow-on effects for workforce participation and more broadly, economic productivity.

110. In the context of the above, we now turn to address the relevant considerations forming the MAO and MWO.

111. In the *Aged Care Stage 3 decision* the Full Bench made the same findings in respect of ss.134(1)(h), (ab), (c) and (a) of the MAO as for ss.284(1)(a), (aa), (b) and (c) of the MWO.[124] Noting the similarity and alignment between these considerations, we similarly address the aforementioned subsections together, below.

[123] ACCC Interim Report at page 91.
[124] *Aged Care Stage 3 decision* at [212].

Relative living standards and the needs of the low paid (ss.134(1)(a) and 284(1)(c) of the Act)

112. It is broadly accepted that a threshold of two-thirds of median (adult) ordinary time earnings constitutes identifies the low paid.[125]

113. In *'A Profile of Employee Characteristics across Modern Awards'* prepared for the Commission in March 2023 (**Employee Profile Report**),[126] the average hourly earnings of employees covered by the CS Award were reported as $27.24 (adjusted for casual loading).[127] The low-paid threshold for adjusted earnings in the same period was $23.81.[128]

114. Accordingly, the average ordinary time earnings of $27.24 for employees covered by the CS Award is over the two-thirds threshold and does not meet the criteria to be considered '*low paid'*.

115. On this basis Ai Group submits that it is not apparent that s.134(1)(a) of the Act is relevant to the Full Bench's determination of the matter, in so far as Child Carers have not been demonstrated to meet the definition of '*low paid*'.

116. Further and in the alternate, should the Full Bench otherwise assess Child Carers as low paid, this is but one of a number of countervailing considerations that must be appropriately balanced. It is not a determinative consideration.

[125] See Employee Profile Report at page 26, citing Annual Wage Review 2015–16, [2016] FWCFB 3500 at [359].

[126] Yuen and Tomlinson, Fair Work Commission, A profile of employee characteristics across modern awards (March 2023).

[127] Table B.11 of Employee Profile Report, at page 72. The source data is identified as ABS, *Microdata: Employee Earnings and Hours, Australia*, May 2021.

[128] Footnote 18 in the Employee Profile Report at page 26.

The need to improve access to secure work across the economy (s.134(1)(aa) of the Act)

117. A Full Bench of the Commission recently considered the proper construction of s.134(1)(aa) of the Act in the context of the Modern Awards Review 2023-24, finding there was no reason to deviate from the views expressed by the Expert Panel as to its meaning in the *AWR 2023 Decision*[129] and the *AWR 2024 Decision*.[130]

118. The views of the Expert Panels relevantly included the following:

(a) '*In the award context, job security is a concept which is usually regarded as relevant to award terms which promote regularity and predictability in hours of work and income and restrict the capacity of employers to terminate employment at will*';[131]

(b) '*Beyond the immediate award context, job security has a broader dimension and may be understood as referable to the effect of general economic circumstances upon the capacity of employers to employ, or continue to employ, workers, especially on a permanent rather than casual basis ...*';[132] and

(c) '*In the context of this Review, the relevance of the consideration concerning the need to improve access to secure work across the economy (s 134(1)(aa)) is primarily whether the review outcome might affect the capacity of employers in the future to continue to offer, or maintain permanent employment*'.[133]

119. In the context of the current proceeding, to the extent that any increased employment costs to employers threatens the potential viability of ECEC services,

[129] [2023] FWCFB 3500 (**AWR 2023 Decision**).
[130] Report - Modern Awards Review 2023 - 24 (**Modern Award Review Report**) at [50].
[131] *AWR 2023 Decision* at [28], cited in Modern Award Review Report at [47].
[132] *AWR 2023 Decision* at [29], cited in Modern Award Review Report at [47].
[133] *AWR 2023 Decision* at [133], cited in Modern Award Review Report at [49].

this may consequently jeopardise the capacity of employers to continue to offer and maintain employment (including permanent employment). This would be counter to the objective articulated in s.134(1)(aa).

The need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work, addressing gender pay gaps and providing workplace conditions that facilitate women's full economic participation (ss.134(1)(ab) and 284(1)(aa) of the Act)

120. The need to achieve gender equality in the workplace by providing workplace conditions that facilitate women's full economic participation would likely be undermined if the Commission awards an increase to minimum wages for Child Carers that is not funded by government. As explained earlier in this submission, this may result in higher fees for and / or reduced availability of childcare services, thereby undermining women's participation in the workforce.

121. With respect to the requirement to consider the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value and eliminating gender-based undervaluation of work, we refer to and rely upon our submission in response to Question 1 above, that neither the Stage 1 Report nor Stage 2 Report provide a basis for a conclusive determination that the work to which the classifications apply has been historically undervalued because of assumptions based on gender.

The need to encourage collective bargaining (s.134(1)(b) of the Act)

122. In Volume 2 of its Final Report into the ECEC sector, the Productivity Commission reported that available data suggests the use of enterprise agreements in the ECEC sector is relatively low, with around 13% of employers (covering about 16% of

employees) having an enterprise agreement in place.[134] This was also acknowledged in a recent decision of a Full Bench regarding the grant of a supported bargaining authorisation.[135] Given the low usage of enterprise agreements, it is axiomatic there is ample scope for their use to be encouraged.

123. It is however also trite that an increase to the minimum wages prescribed by the Award may not encourage collective bargaining or indeed, may discourage collective bargaining.

The need to promote social inclusion through increased workforce participation (ss.134(1)(c) and 284(1)(b) of the Act)

124. For the reasons explained above, the impact of unfunded wage increases has the potential to adversely affect the workforce participation of workers who rely on ECEC services in the form of increased service costs (which would impact affordability for households), and/or or reduced availability of services. Therefore, ss.134(1)(c) and 284(1)(b) weigh against the grant of such increases.

The need to promote flexible modern work practices and the efficient and productive performance of work (s.134(1)(d) of the Act)

125. Ai Group submits this is a neutral consideration.

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[134] Productivity Commission, A path to universal early childhood education and care Inquiry report - Volume 2 (supporting papers) (**PC Final Report – Vol 2**) at page 153.

[135] *Long Day Care Decision* at [56].

The need to provide additional remuneration for: (i) employees working overtime; or (ii) employees working unsocial, irregular or unpredictable hours; or (iii) employees working on weekends or public holidays; or (iv) employees working shifts (s.134(da) of the Act)

126. Ai Group submits that the consideration in s.134(1)(da) of the Act is not engaged in this proceeding, which concerns only the base rates prescribed by the Award.

The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden. (s.134(f) of the Act)

127. Section 134(1)(f) weighs heavily against the grant of increases that are not appropriately funded by government.

128. Many employers within the sector face constraints on their ability to increase the prices charged to service users to recover increased labour costs. Constraints may arise from:

    (a) An employer 'opting in' to the '*Worker Retention Payment'* scheme recently announced by the Australian Government (see paragraphs [81] – [82] above)) and as a consequence, being prevented from increasing service fees by more than 4.4% during the period of 8 August 2024 – 7 August 2025, and by a percentage yet to be determined during the period 8 August 2025 – 7 August 2026; and

    (b) Within the OSHC sector, the need for employers to re-negotiate commercial arrangements to permit them to increase service prices.

129. With respect to the latter point, OSHC providers often compete to supply a primary school for a specified contract length (for example, 2 to 5 years). Several features of these contractual arrangements may operate to impair an employer from increasing service prices:

(a) License agreements typically determine and fix prices for extended periods (of up to 5 years); [136]

(b) Licence agreements will not provide for fees to be re-evaluated each year;[137]

(c) A consequence of the licence arrangement is that providers are unable to regularly adjust prices;[138]

(d) There are some limitations on price increases set under state regulatory arrangements;[139] and

(e) OSHC providers may also face an unfair power balance with schools in the context of the contracting arrangements.[140]

130. This sits in contrast to CBDC services, which typically increase their fees in the first quarter of the financial year – to coincide with the annual indexation of the hourly rate cap as well as the most recent Annual Wage Review decision.[141]

131. It follows that, in the absence of government funding for any increases awarded in this proceeding, the likely impact on the employment costs of employers would be very significant (and for the OSHC sector alone, estimated at between $130 to $180 million, if, for example, an increase of 15 percent was awarded)[142] and indeed may threaten the viability of some services.

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[136] ACCC Final Report at pages 7, 80, 103; Submission 34, Outside School Hours Council Australia, submission in response to ACCC Childcare Inquiry September interim report, 19 December 2023.

[137] ACCC Final Report at page 7, 80.

[138] ACCC Final Report at page 103; Submission 34, Outside School Hours Council Australia, submission in response to ACCC Childcare Inquiry September interim report, 19 December 2023.

[139] ACCC Interim Report at page 13.

[140] ACCC Final Report at page 144.

[141] ACCC Final Report at page 72.

[142] Dandolo Partners, *The Cost and impact of different funding approaches to increase OSHC sector wages*, Report for the Out of School Hours Care Association at page 3.

The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards (s.134(g) of the Act)

132. The need to maintain a sustainable modern award system tells against the grant of increases that are not properly justified by work value and / or that are out of step with a consideration of external relativities. This critical in order to ensure that the risk of *'leap frogging'* is avoided.

The likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy (including productivity and business competitiveness and viability) (ss.134(1)(h) and 284(1)(a) of the Act)

133. The outcome of this proceedings could impact the performance of the national economy, due to potential:

    (a) Budget impacts for the Commonwealth and/or state governments; and

    (b) Impairment of workforce participation.

134. Potential government budget impacts may arise in two ways, depending on Commonwealth funding that may be implemented for any wage rate increases arising from this proceeding.

135. The Commonwealth has not presently given any specific commitment regarding full and ongoing funding for the outcome of any increases that may be awarded to Child Carers as an outcome of this proceeding. The absence of funding for any wage increases has the potential to significantly increase employer costs, in circumstances where employers may have both formal and/or practical constraints as to their ability to increase service fees to a level required to maintain viability and

profitability. Any threat to the ongoing viability of an OSHC service due to rising costs (including but not limited to rising employment costs) risks the service closing.

136. It is also likely to have adverse effects on the childcare options available to parents should the OSHC service at their children's school cease to operate, which in turn has potential consequences for their participation in the workforce.[143] Maximising workforce participation is critical to the performance and competitiveness of the national economy.

137. Alternatively, whilst any Commonwealth funding for increases awarded as a consequence of this proceeding would assist to address these considerations, the Full Bench in the *Aged Care Stage 3 decision* acknowledged that:

> …because of its funding commitment, the decision is likely to come at a significant direct cost to the Commonwealth budget. The Commonwealth has indicated that it will be necessary for it to calculate the cost of this commitment once it has the benefit of this decision and will make further submissions as to operative date and phasing-in once it has undertaken this task. The Commonwealth will have the opportunity in this context to provide us with any material indicating that the cost to the budget will have implications for the national economy.[144]

138. Similarly, in the PC Final Report – Vol 2 the Productivity Commission relevantly stated:

> But taxpayer funding for wage increases has costs too. This includes an opportunity cost – the funding that governments spend on supporting a wage increase could be spent on other goods or services and will increase the demands placed on taxpayers to fund the system each year. Raising additional taxes (which predominately apply to incomes) can be expected to lead to lower economic activity more broadly and reduced labour force participation.
>
> Ultimately, it is a policy decision for governments about whether funding a wage increase for ECEC workers is a priority use of public funds…[145]

[143] ACCC Interim Report at page 57.

[144] *Aged Care Stage 3 decision* at [211].

[145] PC Final Report – Vol 2 at pages 161 – 162.

Providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability (s.284(1)(e) of the Act)

139. Ai Group submits that the factors required to be considered pursuant to s.284(1)(e) of the Act are a neutral consideration.

Question 3

140. Question 3 posed by the Panel is as follows:

> (3) Does the work of employees under any of the classifications involve the exercise of 'invisible' skills (including gender-related indigenous cultural skills) and/or caring work of the nature described in paragraphs [156(1)] and [172]–[173] and elsewhere in the *Stage 3 Aged Care decision*?

141. Question 3 necessitates a consideration of:

   (a) *Firstly*, the work performed by employees in the classifications to which this proceeding is directed. In this regard, Ai Group relies on the detailed information in the ASOF regarding the work of Child Carers.

   (b) *Secondly*, the meaning to be ascribed to the terms:

      (i) '*invisible skills*'; and

      (ii) '*caring work*'.

   (c) *Lastly*, whether the work involves the exercise of invisible skills and caring work, as defined.

142. Briefly stated, Ai Group would not oppose the proposition that the work performed by 'Child Carers' is of a caring nature. However, it does not follow – and nor as it presently stands has there been any conclusive determination – that the work performed by Child Carers covered by the CS Award involves the exercise of

'invisible' caring skills. Further, the Full Bench is currently in an insufficiently informed position to assess any invisible skills involved in the work having regard not just to the confirmed presence of those skills, but their criticality and the frequency with which they are used in performing the work.

Meaning of '*Invisible Skills*'

143. In the *Aged Care Stage 3 decision*, the Full Bench determined (amongst other things) that the work of the direct care employees under consideration warranted a further increase (to that granted in the *Aged Care Stage 1 decision*) having regard to the rates payable for the work having failed to properly comprehend the exercise of '*invisible skills*' involved in the work, as follows: (emphasis added)

> **[156]** In respect of all direct care employees covered by the Aged Care Award, the SCHADS Award and the Nurses Award, we are satisfied, for the purpose of s 157(2)(a) of the FW Act, that there are 'work value reasons' (as defined in s 157(2A)) for the minimum award rates of pay for such employees to be increased substantially beyond the 15 per cent interim increase determined in the Stage 1 decision. As earlier stated, the Full Bench made it clear in the Stage 1 decision that the interim increase was not intended to exhaust the extent of the increase justified by work value reasons, and further stated that the quantum of the interim increase was fixed having regard to the necessity that it sit 'comfortably below the level of increase we may determine on a final basis'. A further substantial increase is warranted in our view having regard to the following work value reasons:
>
> > (1) Our historical analysis of the federal award rates of pay for PCWs, HCWs and AINs shows that that <u>they have never been the subject of a work value assessment by the Commission or its predecessors</u>. The pay rate alignment at the Certificate III level in the Aged Care Award, the SCHADS Award and the Nurses Award with the C10 classification in the Metal Industry Award structure has meant that the award rates of pay for PCWs, HCWs and AINs <u>have never properly comprehended the exercise of the 'invisible' skills</u> involved in aged care work identified in the expert report of Associate Professor Anne Junor (Junor Report), the conclusions of which were discussed, and ultimately accepted, at paragraphs [759]–[857] and [893]–[896] of the Stage 1 decision. <u>These skills of interpersonal and contextual awareness, verbal and non-verbal communication, emotion management and dynamic workflow coordination</u> were effectively disregarded by the simplistic use of the masculinised C10 benchmark as the basis for the award pay structures for PCWs, HCWs and AINs. This represents a continuation of the history we have earlier outlined of treating the skills exercised in female-dominated industries and occupations as merely feminine traits and not representative of work value in the traditional, narrowly-defined sense. This mischaracterisation and disregard of 'invisible' skills lies, as was stated in the Stage

1 decision, ‘at the heart of the gendered undervaluation of work.’ The result is that, even leaving aside the issue of changes in work value, the starting-point award rates for direct care employees were not properly set in the first place. [146]

144. In the *Aged Care Stage 1 decision*, ‘*invisible skills*’ were referred to in the following way: (emphasis added)

[410] The Spotlight Tool is a job and skills analysis tool designed as an aid in identifying, naming and classifying ‘invisible skills’ used in undertaking service work processes that are not directly observable. <u>‘Invisible’ in this context means ‘hidden’, ‘under-defined’, ‘under-specified’ or ‘under-codified’. A skill might be hidden because it is diplomatically kept unnoticed or downplayed because it is ‘behind the scenes’. A skill might be under-defined because it is hard to pin down in words, is non-verbal, or is applied in rapidly-changing situations. A skill might be under-specified because it is ‘soft’ or ‘natural’ and is misdescribed as something innate and personal rather than as a skill. A skill might be under-codified because it is integrative, or involves interweaving one’s own activities with others’ activities</u>.

[411] The Spotlight Tool measures skill in 2 dimensions: skill content and skill level. These terms are set out and defined in Annexure 4 to the Junor Report. The content dimensions are:

- Awareness – of contexts and situations; of reactions and ways of shaping them; and of impacts
- Communication and Interaction – managing boundaries; verbal and non-verbal communication; intercultural communication and inclusion, and
- Coordination – of own work; interweaving one’s own line of work with those of others; maintaining and restoring workflow.

…

[413] The relevance of the Spotlight taxonomy to ‘work value’ is explained by Assoc Prof Junor in these terms:

> ‘If the range and level of skills in the Spotlight taxonomy are not fully *identified* and *recognised*, the results will be failure to assign a full and accurate value to a job classification. This is quite likely associated with underestimation of the job’s *size*, and its demands for *effort* and *responsibility*.’

…

[761] The methodology for generating Spotlight Skill profiles for the RN, EN and AIN/PCW classifications is set out at [82] – [93] of the Junor Report. In brief, the work activity

[146] *Aged Care Stage 3 decision* at [156](1).

descriptors prepared by the aged care workers were analysed; those workers were interviewed; and the data was coded and analysed for the purpose of expressing the opinions in the Junor Report.

…

[763] On the basis of the coded data, Assoc Prof Junor produced ‘skill profiles’. The skill profiles were visualised in the form of ‘heatmaps’. The ‘heatmaps’ show the relative incidence, importance, and contribution to work value of activities utilising each Spotlight skill performed by the aged-care workers.[147]

Meaning of ‘*Caring Work*’

145. In the *Aged Care Stage 3 decision,* the Full Bench, having determined an increase to the wage rate for aged care sector Certificate III level employees was warranted on work value grounds – including the exercise of ‘*invisible skills*’ – expressed a view that further consideration of whether other modern awards had undervalued female-dominated ‘*caring*’ work was required. Relevantly, and with reference to the paragraphs of the *Aged Care Stage 3 decision* identified in Question 3, the Full Bench stated: (emphasis added)

[172] Most importantly for our purposes, the ERO rates have been authoritatively determined to be rates which ensure equal remuneration for work of equal or comparable value. They can therefore be relied upon as being free of assumptions based on gender. We are satisfied that, in our consideration of the work value reasons set out in paragraph [156] above, the adoption of $1223.90 per week as the benchmark rate for Certificate III-qualified PCWs, AINs and HCWs will be demonstrative of compliance with the requirement in s 157(2B)(a). The total wage increase which will be produced by the adoption of this benchmark rate, inclusive of the interim increase, will be 23 per cent. This is in our view a wage rate which is appropriately justified by the work value reasons which we have identified and will ensure that aged care sector employees at the Certificate III level have an entitlement to a minimum award wage rate which properly reflects the value of their work, including their exercise of ‘invisible’ skills, and which has been assessed on a gender-neutral basis.

[173] We anticipate, having regard to what was said concerning gender undervaluation in paragraphs [124]–[139] of the Annual Wage Review 2022–23 decision and in the Stage 1 decision, and our analysis and conclusions in this decision, that <u>there is likely to be further consideration of the question of whether female-dominated ‘caring’ work covered by other modern awards has been the subject of gender undervaluation</u>. In that context, <u>our</u>

[147] *Aged Care Stage 1 decision* at [410] – [411], [413], [761] and [763].

identification of a benchmark rate for Certificate III-level PCWs, AINs and HCWs in aged care which aligns with the Certificate III level starting rate in the ERO applying to social and community services employees provides appropriate guidance as to the rectification of historic gender undervaluation in respect of female-dominated 'caring' work. The adoption of such a benchmark rate for work of this nature, in replacement of the C10 rate, would provide a stable anchor point for a modern award system which ensures gender equality in the valuation of work.[148]

Whether the Work involves the Exercise of Invisible Skills and Caring Work

146. In the *AWR 2024 Decision*, the Expert Panel stated it is '*probable*' that work performed by Child Carers covered by the CS Award involves the exercise of 'invisible' caring skills, but did not make any conclusive finding as to this.[149]

147. The ASOF in this proceeding provides detailed descriptions of the work performed by workers in roles variously covered within the scope of the CS Award. However, the ASOF does not identify which of the skills identified for the roles may be considered *'invisible'* caring skills.

148. In previous decisions in which the Commission has considered whether work involves the exercise of invisible skills, it has done so with reference to the application of a '*Spotlight Skills Recognition Tool*' (**Spotlight Tool**).[150] For example, the approach of Associate Professor Junor in the *Aged Care Stage 1* proceeding was to, from the assembled job data, create '*Spotlight skill profiles*' which included counts of instances of the use of each Spotlight skill at each level, with weightings for indications of criticality and frequency.[151]

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[148] *Aged Care Stage 3 decision* at [172] – [173].

[149] *AWR 2024 Decision* at [115].

[150] *Aged Care Stage 3 decision* at [759] – [784]; *Equal Remuneration Case* [2011] FWAFB 2700 (***2011 ERO* decision**) at [152] – [154].

[151] Honorary Associate Professor Anne Junor, *Report prepared on behalf of Unisearch Opinion Services (A business of the University of New South Wales) - Fair Work Commission Matter AM2021/63, Amendments to the Aged Care Award 2010 and the Nurses Award 2010*, 28 October 2021 (**Junor Report**).

149. The Spotlight Tool has various significant limitations. Intrinsic to the methodology underpinning it is a degree of subjective self-assessment by employees.[152] The methodology does not involve an objective analysis of the work performed by the relevant group of employees or the skills they use, nor does it take into account any other (including any countervailing) perspectives, such as those of their employers. As a result, at its highest, the evidence goes to employee perceptions. Further, it does not appear to be confined to the skills that employees are required to exercise by their employers.

150. This necessarily undermines the weight that can be attributed to any analysis undertaken using the Spotlight Tool. It reflects an inherently biased perspective on the skills that are utilised by the relevant employees in the course of their employment. Its usefulness to the Commission's task, which must be based on an objective evaluation of the relevant content and level of skills, is undermined by these factors.

151. In any event, the Spotlight Tool is not the exclusive means by which '*invisible*' skills involved in the work of Child Carers may be identified, and it remains open to the parties to seek to establish the purported existence of invisible skills involved in the work through other forms of evidence.

152. In the context of any such evidence that may be adduced in the proceeding; '*invisible*' caring skills are by definition '*hidden*', '*under-defined'*, '*under-specified*' or '*under-codified'*.[153] As we set out in detail at paragraph [61] in response to Question 2, many skills which we understand the Expert Panel conceptualised in the *AWR 2024 Decision* to be aspects of the Child Carer role that may involve 'invisible' caring skills, are expressly contemplated by the existing classification descriptors

[152] See explanation of how the 'job data' was collected and collated for the purpose of the *Aged Care Stage 1 decision*, in Junor Report at [82] – [90].

[153] *Aged Care Stage 1 decision* at [410].

contained in clause B.1 of Schedule B to the CS Award. These include, for example, the following:

(a) Learning how to establish relationships and interact with children;[154]

(b) Giving each child individual attention and comfort as required;[155]

(c) Assist in the implementation of the children's program under supervision;[156]

(d) Assist in the preparation, implementation and evaluation of developmentally appropriate programs for individual children or groups;[157]

(e) Responsible, in consultation with the Assistant Director/Director for the preparation, implementation and evaluation of a developmentally appropriate program for individual children or groups;[158]

(f) Co-ordinate and direct the activities of employees engaged in the implementation and evaluation of developmentally appropriate programs;[159]

(g) Develop and/or oversee programs and ensure they offer a balance of flexibility, variety, safety and fun;[160]

(h) Learning the basic skills required to work in this environment with children;[161]

[154] CSE Level 1(a)

[155] CSE Level 1(a), CSE Level 2(a).

[156] CSE Level 2(a)

[157] CSE Level 3(a).

[158] CSE Level 4.

[159] CSE Level 5.

[160] CSE Level 5(d) Unqualified Co-ordinator (who co-ordinates and manages a stand along out-of-school hours care and/or vacation care centre).

[161] CSE Level 1(a).

(i) Under direction, work with individual children with particular needs;[162]

(j) Work positively with parents and/or committees;[163]

(k) Liaise with families and outside agencies;[164]

(l) Record observations of individual children or groups for program planning purposes for qualified staff;[165] and

(m) Develop, implement and evaluate daily care routines.[166]

153. Accordingly, whilst such skills may be considered '*caring*' in nature, they are not '*invisible*'. To the extent the existing classification structure in the CS Award expressly recognises the utilisation of caring skills, this demonstrates that they have previously been taken into account[167] and that the rates of pay prescribed by the Award compensate for the exercise of those skills.

[162] CSE Level 3(a).

[163] CSE Level 5(d) Unqualified Co-ordinator (who co-ordinates and manages a stand along out-of-school hours care and/or vacation care centre).

[164] CSE Level 6(a).

[165] CSE Level 3(a).

[166] CSE Level 4.

[167] *ACT Child Care decision* at [115].

Question 4

154. Question 4 is as follows:

> (4) Is the benchmark rate identified in paragraph [170] of the *Stage 3 Aged Care decision* appropriate to apply to any of the classifications for which a Certificate III qualification or equivalent is required?

155. Ai Group submits that it is appropriate for the Full Bench's consideration of Question 4 to occur at three levels:

(a) *Firstly*, insofar as the benchmark rate referred to in Question 4 is higher than the existing minimum rate of pay for a worker under the CS Award who is required to hold a Certificate III, it is first necessary for the Full Bench to determine Question 2 in the affirmative;

(b) *Second,* insofar as a Full Bench of the Commission has previously determined it appropriate to apply the '*benchmark rate*' from the SCHADS Award to certain classifications of workers covered by the *Aged Care Award 2010* (**Aged Care Award**) and *Nurses Award 2020* (**Nurses Award**), it is necessary to consider whether the reasons underpinning this approach may readily be translated to any of the classifications under the CS Award for which a Certificate III qualification or equivalent is required; and

(c) *Third,* even where those reasons may be established, regard must be had to limitations of the rate arrived at the 2011 ERO decision (the **ERO rate**) that was subsequently adopted as the SCHADS Award '*benchmark rate*'.

156. We address each of these issues in more detail, below.

Prerequisite identification of Work Undervaluation

157. Ai Group's position in relation to the first issue is set out in response to Question 2.

Basis for applying Benchmark Rate

158. The Full Bench in the *Aged Care Stage 3 decision* relevantly held that the current weekly wage under the SCHADS Award for a Level 2 employee at entry (rounded to the nearest 10 cents) was appropriate to serve as the benchmark rate for Certificate III-qualified Personal Care Workers, Assistant in nursing / Nursing Assistant and Home Care Workers under the Aged Care Award and Nurses Award. The Full Bench explained the basis for its determination that the SCHADS Award Level 2 classification was an appropriate comparator in those circumstances, as follows: (emphasis added)

> **[170]** We consider that the rate of $1223.90 per week (rounded to the nearest 10 cents) is appropriate to serve as the benchmark rate for Certificate III-qualified PCWs, AINs and HCWs. <u>Prior to the making of the ERO there was, as earlier stated, a pay alignment between these classifications and the entry rate for a Certificate III qualified social and community services employee under the SCHADS Award, and that provides a proper basis for the use of the SCHADS Award Level 2 classification as a comparator in the current circumstances</u>. <u>The basis upon which the ERO rates were determined closely parallel the work value reasons upon which we are proceeding in this matter: the high female composition of the industry in question, the significance of the work being 'caring' work, the disguising of the level of skill and experience required to perform the work, the gender-based undervaluation of the work, and the need to remedy the extent to which assumptions on the basis of gender had inhibited wages growth</u>.[168]

159. Accordingly (and without detracting from our submissions which follow concerning the significant limitations of the ERO rate) on the basis of the approach of the Full Bench in the *Aged Care Stage 3 decision,* whether it is appropriate in the context of this proceeding to apply the benchmark rate to the relevant Certificate III classification in the CS Award requires a consideration of:

(a) *Firstly*, any pre-ERO alignment of the classification with the SCHADS Award Level 2 rate; and

[168] *Aged Care Stage 3 decision* at [170].

(b) *Second*, whether the work value reasons along which the Commission proceeds in this matter are aligned to the basis upon which the ERO rates were determined.

160. On the first issue, the relevant point of comparison is CSE Level 3.1.[169] At the time the CS Award was made, the weekly rate of pay for a CSE Level 3.1 was $637.64.[170] The original rate in the SCHADS Award for a Level 2 classification was $637.62 per week.[171] Accordingly, this consideration is satisfied.

161. As to the second issue, as no findings have yet been made in relation to Question 2(a), it follows that it is not possible at this stage to determine whether any such reasons (should they be found) are of a type that '*closely parallel*' the rational for the ERO rates.

Limitations of the ERO Rate

162. We turn now to the third issue which we submit warrants consideration as part of Question 4 namely, limitations of the ERO rate.

163. By way of starting point, the ERO rate was not arrived at in the context of a work value case. Rather, the proceeding concerned an application for an equal remuneration order under Part 2-7 of the Act,[172] seeking an equal remuneration order applying to employees in the SACS industry nationally, based on the wage rates and classification structure contained in the Queensland SACS award.[173] In response to the applicants' submission that the minimum wages in the modern

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[169] See Clause B.1.4 of Schedule B to the CS Award, which states '*This is an employee who has completed AQF Certificate III in Children's Services or an equivalent qualification or, alternatively, this employee will possess, in the opinion of the employer,'* sufficient knowledge or experience to perform the duties at this level.

[170] Stage 2 Report at page 80.

[171] Stage 2 Report at page 229.

[172] *2011 ERO* decision at [1].

[173] *2011 ERO* decision at [5].

award did not properly reflect the value of the work, the Full Bench concluded that *'[i]n order to succeed in their submission it would be necessary for the applicants to deal with work value and relativity issues relating to the classification structure in the modern award and potentially to structures and rates in other modern awards. No real attempt has been made to deal with those important issues'*.[174] (emphasis added)

164. Respectfully, the statement of the Full Bench in the *Aged Care Stage 3 decision* that '*the ERO rates have been authoritatively determined to be rates which ensure equal remuneration for work of equal or comparable value'*,[175] needs to be carefully considered in the context of how the ERO rates were determined.

165. In *Equal Remuneration Case* [2011] FWAFB 2700 (***2011 ERO decision***), the Full Bench reached the conclusion that there was not equal remuneration for men and women workers in the SACS industry for work of equal or comparable value, by comparison with state and local government employment.[176] The Full Bench concluded that gender partly influenced, but was not the sole reason for, the pay gap.[177] Parties were then invited to make submissions on the extent to which wages in the SACS industry were lower than they otherwise would have been, because of gender considerations.[178]

[174] *2011 ERO* decision at [261].
[175] *Aged Care Stage 3 decision* at [172].
[176] *2011 ERO* decision at [285], [291].
[177] *2011 ERO* Decision at [282], [291].
[178] *2011 ERO* Decision at [286], [291].

166. Several observations may be made in relation to this:

(a) *First*, the Full Bench's remedy was not directed at addressing work value issues per se; but instead, the extent to which gender may be found to have inhibited wages growth in the SACS industry.[179]

(b) *Second*, the extent of any gap attributable to gender was subject to widely varying estimates, of between 15 to 60 per cent, and was ultimately determined in line with a joint position advanced by the applicants and the Commonwealth.[180]

(c) *Third*, the Commonwealth had made clear to the Full Bench that it was '*committed to meeting its share of the burden*' that would flow from '*any decision*' given in the case; and whilst the Prime Minister had announced funding of over $2 billion during the proposed six-year implementation period, there was '*no suggestion of a limit at the figure of $2 billion'*.[181] It was relevant to the Full Bench's conclusion as to the appropriate ERO rates, that *'[t]he Commonwealth has given a commitment to fund its share of the increased costs arising from the proposals. While some state governments are opposed, no government has indicated it will be unable to fund its share*'.[182]

(d) *Fourth*, the approach pre-supposes that payment at the level of government employment was a reliable benchmark for a gender-neutral level of wages for the not-for-profit SACS industry. There was no evidence in the ERO proceedings in relation to this. As the then Vice President Watson concluded in a dissenting judgment in the *2012 ERO* decision, no such presumption could

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[179] *2011 ERO* Decision at [282; *Equal Remuneration Case* [2012] FWAFB 1000 (***2012 ERO* Decision**) at [59] – [60].

[180] *2012 ERO Decision* at [66] – [67]; see also [5].

[181] *2012 ERO Decision* at [14].

[182] *2012 ERO Decision* at [65].

be made, and public sector wage levels had not been established as a reliable benchmark for gender neutral wages in the not-for-profit sector.[183]

167. In the circumstances, Ai Group submits there must be some doubt as to the extent to which the ERO rate may be said to '*ensure*' equal work for equal value, and to have been authoritatively determined as such. Further, it is evident from the above that the commitment of the Commonwealth to pay an agreed gap attributable to gender was, in fact, a determinative factor in the assessment of what that gap was.

[183] *2012 ERO Decision* at [100] – [102].

Question 5

168. Question 5 is as follows:

> (5) Is the benchmark rate identified in paragraph [204] of the *Stage 3 Aged Care decision* appropriate to apply to any of the classifications for which an undergraduate degree qualification or equivalent is required?

169. Ai Group submits that the Full Bench should determine the answer to Question 5 is '*no*', because there are no classifications for which an undergraduate degree qualification or equivalent is required.

170. The highest level in the CSE Stream of the CS Award is Level 6 – Director. The qualification requirement is expressed at B.1.10 of Schedule B (emphasis added):

> A Director is an employee who <u>holds a relevant Degree</u> **<u>or</u>** <u>a 3 or 4 year Early Childhood Education qualification</u>, **<u>or</u>** <u>an AQF Advanced Diploma</u>, **<u>or</u>** <u>a Diploma in Children's Services</u>, **<u>or</u>** <u>a Diploma in Out-of-Hours Care</u>; **<u>or</u>** <u>is otherwise a person possessing such experience, or holding such qualifications deemed by the employer or the relevant legislation to be appropriate or required for the position</u>, and who is appointed as the director of a service.

171. It is evident from the above that a degree *may* be held by a Level 6 employee. However, a degree-level qualification is clearly not *required* to be classified as a Level 6 employee, insofar as there are four alternative options as to how an employee could satisfy the qualification requirement.

172. Further, the options are not all '*equivalent*' to an undergraduate degree qualification. This is evident from the designation of the various qualifications referred to in B.1.10 of Schedule B to the CS Award against the Australian Qualifications Framework (**AQF**).

173. The AQF is the national policy for regulated qualifications in Australian education and training, incorporating the qualifications from each education and training sector into one comprehensive national qualifications framework.[184] AQF levels (and the associated criteria for each level) are an indication of the relative complexity and/or depth of achievement, and the autonomy required to demonstrate that achievement. AQF level 1 has the lowest complexity and AQF level 10 has the highest complexity.[185]

174. The qualification status for an employee who is engaged as a Director as referred to at B.1.10 of Schedule B to the CS Award may potentially range from unqualified (where the employee is '*a person possessing such experience … deemed by the employer or the relevant legislation to be appropriate or required for the position*') up to an AQF Level 10, as follows:

(a) A Director with a '*relevant Degree*' may hold a qualification at AQF level 7 (in the case of a Bachelor Degree),[186] AQF level 8 (in the case of a Bachelor Honours Degree),[187] AQF level 9 (in the case of a Masters Degree),[188] or AQF level 10 (in the case of a Doctoral Degree);[189]

(b) A Director with '*a 3 or 4 year Early Childhood Education qualification*' would most likely be qualified at AQF level 7 (with the typical volume of learning of a Bachelor Degree being 3 – 4 years);[190]

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184 Australian Qualifications Framework, (Second Edition January 2013) at page 9.
185 Australian Qualifications Framework, (Second Edition January 2013) at page 11.
186 Australian Qualifications Framework, (Second Edition January 2013) at pages 47 – 49.
187 Australian Qualifications Framework, (Second Edition January 2013) at pages 50 – 52.
188 Australian Qualifications Framework, (Second Edition January 2013) at pages 59 – 62.
189 Australian Qualifications Framework, (Second Edition January 2013) at pages 63 – 66.
190 Australian Qualifications Framework, (Second Edition January 2013) at page 47.

(c) A Director who holds '*an AQF Advanced Diploma*' is qualified at AQF level 6;[191] and

(d) A Director who holds '*a Diploma in Children's Services*' or '*a Diploma in Out-of-Hours-Care*' is qualified at AQF level 5.[192]

175. For completeness, and without detracting from the detailed basis upon which we submit in response to Question 1 that the '*Support Worker*' stream of the CS Award is not in-scope for the purpose of these proceedings, we note that the highest level in the Support Worker Stream of the CS Award is Level 3, the qualification requirement for which is an AQF Certificate III or equivalent skills (clause B.2.3 of Schedule B).

176. A Support Worker who holds a Certificate III is qualified at AQF level 3.[193]

177. It follows from the above that the benchmark rate identified in paragraph [204] of the *Aged Care Stage 3 decision* is *not* appropriate to apply to any of the classifications in the CS Award, as there are no classifications for which an undergraduate degree qualification or equivalent is *required*.

178. Our conclusion in this regard appears to be supported by the assessment of the Expert Panel in the summary of potential indicia of gender undervaluation in the CS Award contained in the *2024 AWR Decision*. In particular, at Table 19[194] in the decision, alignment to C1 is marked as 'N/A' for the CS Award.

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[191] Australian Qualifications Framework, (Second Edition January 2013) at pages 41 – 43.
[192] Australian Qualifications Framework, (Second Edition January 2013) at pages 38 – 40.
[193] Australian Qualifications Framework, (Second Edition January 2013) at pages 32 – 34.
[194] See *AWR 2024 Decision* at [98] and [99] (Table 19).

Question 6

179. Question 6 is as follows:

> (6) To the extent that any adjustment to the existing classification structure in any of the awards is required, what are appropriate terms (including classification descriptors and minimum wage rates) for a new or modified classification structure?

180. Ai Group does not advance any proposed adjustments to the existing classification structure in the CS Award.

181. At a high level, Ai Group submits that whether or not changes to the classification structure are required may depend upon:

(a) *Firstly*, the terms of the existing classification structure, and in particular, whether it continues to be appropriate; and

(b) *Second*, whether any changes may be appropriate to delineate rates of pay for particular categories of employees in a way that is aligned to the conclusions reached by the Commission regarding value adjustments for particular categories of work.

182. With respect to the first consideration, the existing CSE classification stream of the CS Award reflects qualifications, indicative duties, responsibility and progression based on service or competence (depending on the level).

183. Having regard to the determination by the Full Bench in the *Teacher's Decision,* the existing CSE classification steam of the CS Award addresses what have been described as the '*essential elements*' of a classification structure; namely '*qualifications, displayed competence and acquired experience and responsibility*'.[195]

[195] *Teacher's Decision* at [647].

184. We also refer to our analysis at Question 2 of this submission, regarding the degree to which the existing classification structure in the CS Award reflects skills that have previously been identified by the Commission as potentially of an '*invisible*' caring nature.

Question 7

185. Question 7 is as follows:

> (7) To the extent that any increases to the minimum rates for any classifications are justified by work value reasons in order to remedy gender undervaluation, what is an appropriate implementation timetable for such increases having regard to funding and related issues?

186. While Question 7 is prefaced on increases to minimum rates of pay being justified by '*work value reasons*', Ai Group submits that in addition to this it is also necessary for the Full Bench to find that the increases would be necessary to achieve the MAO and MWO.

187. Further, and following on from the above, the Commission's consideration of an appropriate implementation timetable should occur in the context of the considerations forming the MAO and MWO. To this end, s.166 of the Act permits the Full Bench to specify a date other than 1 July where it is satisfied that it is appropriate to do so.[196]

188. At a high level, Ai Group submits that it will likely be necessary for any increases to be implemented in stages and/or delayed, having regard to various considerations including:

    (a) The quantum and extent of any increases;

    (b) The availability of, and alignment to, government funding (including broader structural changes to government funding within the sector);

    (c) Any impediments on employers' ability to vary service fees and other commercial arrangements to account for business impacts arising from the increases;

[196] Section 166(2) of the Act.

(d) Potential social and economic harm arising from increases to service fees, where employers are not constrained from doing so; and

(e) The extent to which the changes are likely to require changes to employers' payroll, information technology or other business systems.

189. Whilst we briefly address each of these considerations at a conceptual level below, it is at this stage premature to express any definitive view regarding Question 7 since detailed information regarding each of the considerations is as yet unknown, and will significantly influence what amounts to an '*appropriate*' timetable.

Quantum and Extent of the Increases

190. Ai Group refers to and relies upon its response to Question 2 regarding the potential adverse impacts to employers of increased labour costs arising from this proceeding.

191. Ai Group may seek to further address this consideration once the Commission expressed a view (provisional or concluded) as to the extent and nature of any increases that it proposes to award.

Availability of, and Alignment to, Government Funding

192. In light of the sector's high degree of reliance on funding, together with the submissions set out in response to Question 2 regarding the:

(a) Constraints on employers being able to absorb wage increases or recover their costs by increasing prices or reducing labour; and

(b) Potential social and economic harm that may arise from significant service fee increases (where employers are not constrained from doing so) due to the need to recover unfunded wage increases, Ai Group submits that the Commission should assign significant weight in its determination of an appropriate implementation timetable to when the Commonwealth commits to make any funding available for the increases.[197]

Impediments on Employers' ability to vary Service Fees and other Commercial Arrangements

193. For the reasons set out in response to Question 2, many employers within the sector face constraints as to when they may be able to increase service fees and/or the quantum by which fees may be able to be increased to recover increased labour costs that may flow from these proceedings.

194. If any increases awarded in these proceedings are to be implemented in the absence of full government funding, it is critical the Commission is cognisant of the need for those increases to be implemented in a phased and incremental manner that sufficiently accommodates these constraints.

Potential Social and Economic Harm from Increases to Service Fees

195. The Productivity Commission has recognised that without government funding, increases to the pay and conditions of ECEC workers will increase costs to families and may affect ECEC use.[198]

196. In the PC Final Report – Vol 2, the Productivity Commission said the following in relation to the potential impact on families if wages are substantially funded through higher service prices: (emphasis added)

> <u>A downside of substantially funding wage increases through higher prices for families is that this would lead to a contraction in demand for ECEC services</u> – <u>some families would not be willing or able to pay higher prices and would either remove their children from ECEC or reduce the number of hours of ECEC they use.</u> This, in turn, <u>deprives some families of the benefits that arise from ECEC and runs counter to policy intentions to build greater</u>

[197] *Re Aged Care Award 2010* [2024] FWCFB 298 (**Aged Care Implementation Decision**) at [13] – [14].
[198] PC Interim Report at pages 34, 55 – 56.

accessibility into the system. While these demand impacts could be moderated to some extent if price rises were very tightly targeted at families who were the least price sensitive – most likely higher-income households – they are unlikely to be eliminated entirely (and making ECEC more expensive for higher-income households would also undo some of the impact of the Australian Government's Cheaper Childcare reforms, which extended eligibility for the Child Care Subsidy further along the income spectrum).[199]

197. More specifically, a situation in which employers are compelled to recoup increased labour costs through service fee increases may result in:

(a) The introduction or exacerbation for workers of barriers to workforce participation, which is likely to be magnified in its effect on women and in turn, impact adversely on gender equality in workplace participation (and which in turn has adverse consequences for mothers' connection with the workforce, skill development and utilisation and lifetime earnings);

(b) Adverse productivity outcomes for the broader Australian economy, in so far as access to affordable childcare is a fundamental enabler for parents and guardians (including, increasingly, grandparents who provide care to their grandchildren) to be able to work, volunteer, train and/or study; and

(c) Causing or incentivising childcare services to become concentrated in areas of greater advantage (where households are more likely to be able to sustain the fee increases), thus compounding disadvantage for lower socio-economic areas by reducing accessibility to locally-available services (in addition to lower income households already being more likely to be responsive to price changes due to a disproportionately larger detrimental impact on their household income).

[199] PC Final Report – Vol 2 at page 161.

198. The Commission should therefore refrain from implementing a timetable for any increases that is misaligned to the availability of appropriate levels of government funding.

Changes to Employers' Payroll, Information Technology (IT) or Systems

199. Lastly, the Commission should also have regard to the timeframes required by employers to implement any changes and/or upgrades that may be required to their payroll systems software and configurations, as well as any broader IT and/or business systems changes, in order to implement changes to any rates of pay and/or classifications that may flow from this proceeding.

Attachment A

Australian Bureau of Statistics

Unit Group

Latest release

4211 Child Carers

ANZSCO - Australian and New Zealand Standard Classification of Occupations

Reference period: 2022

Released 22/11/2022

Sections

4211 Child Carers

Child Carers provide care and supervision for children in residential homes and non-residential childcare centres.

Indicative Skill Level:

The occupations Child Care Worker and Out of School Hours Care Worker in this unit group have a level of skill commensurate with the qualifications and experience outlined below.

In Australia:

- AQF Certificate III including at least two years of on-the-job training, or AQF Certificate IV or at least three years of relevant experience (ANZSCO Skill Level 3)

In New Zealand:

- NZQF Level 4 qualification, or at least three years of relevant experience (ANZSCO Skill Level 3)

In some instances relevant experience and/or on-the-job training may be required in addition to the formal qualification.

The occupation Family Day Care Worker in this unit group has a level of skill commensurate with the qualifications and experience outlined below.

In Australia:

- AQF Certificate II or III, or at least one year of relevant experience (ANZSCO Skill Level 4)

In New Zealand:

- NZQF Level 4 qualification, or at least three years of relevant experience (ANZSCO Skill Level 3)

In some instances relevant experience and/or on-the-job training may be required in addition to the formal qualification.

The occupation Nanny in this unit group has a level of skill commensurate with the qualifications and experience outlined below.

In Australia:

- AQF Certificate II or III, or at least one year of relevant experience (ANZSCO Skill Level 4)

In New Zealand:

- NZQF Level 2 or 3 qualification, or at least one year of relevant experience (ANZSCO Skill Level 4)

In some instances relevant experience and/or on-the-job training may be required in addition to the formal qualification.

Registration or licensing may be required.

Tasks Include:

- assisting in the preparation of materials and equipment for children's education and recreational activities
- managing children's behaviour and guiding children's social development
- preparing and conducting activities for children
- entertaining children by reading and playing games
- supervising children in recreational activities
- supervising the daily routine of children
- supervising the hygiene of children

Occupations:

- 421111 Child Care Worker

- 421112 Family Day Care Worker
- 421113 Nanny
- 421114 Out of School Hours Care Worker

421111 Child Care Worker

Alternative Title:

- Child Care Aide

Provides care and supervision for children in programs, such as long day care and occasional care, in childcare centres, hospitals and educational centres. Registration or licensing may be required.

Skill Level: 3

Specialisations:

- Child Care Group Leader (Aus) (Skill Level 2)
- Children's Nursery Assistant
- Creche Attendant
- Early Childhood Worker

421112 Family Day Care Worker

Alternative Title:

- Family Day Carer

Provides care and supervision for babies and children, usually in the carer's own home and under local government or community-based schemes. Registration or licensing may be required.

Skill Level:

- 4 Australia
- 3 New Zealand

421113 Nanny

Assists parents in the provision of ongoing care and supervision for babies and children, usually in the child's home.

Skill Level: 4

421114 Out of School Hours Care Worker

Provides care for school age children in an out of school hours care program. Registration or licensing may be required.

Skill Level: 3

Attachment B

The cost and impact of different funding approaches to increase OSHC sector wages

Report for the Out of School Hours Care Association

DANDOLO REPORT

dandolopartners

Introduction

The Outside School Hours Council of Australia (OSHCA) is seeking to understand the cost of increasing wages for out of school hours care (OSHC) educators.

Background

The Outside School Hours Care (OSHC) sector has been significantly impacted by the pandemic and the significant drop in demand that accompanied lockdowns and substantial periods of school closure.

Amongst other things, many experienced OSHC educators left the sector during this period.

This has exacerbated existing challenges with the OSHC workforce – which has highly variable levels of qualification across the country, a less well-defined sense of professional identity compared with other early childhood education and care (ECEC) educators, working in for example, long day care and family day care, non-standard working hours, and a highly distributed workforce, all of which is combined with high levels of responsibility for children's safety, wellbeing and learning.

While the challenges are as acute, and the sector is as important for enabling families to balance work and parenting, the OSHC workforce has not attracted the kind of public or policy attention that the remainder of the ECEC workforce has. As a result, there's a risk that OSHC will be overlooked in any move to fund a wage increase for the wider ECEC sector, which would have severe unintended consequences on the sector.

This project

Outside School Hours Council of Australia (OSHCA) commissioned dandolopartners (dandolo) to analyse the cost of increasing OSHC educator wages. Specifically, we:

- Build a profile of the OSHC workforce, and estimate the proportion of the workforce paid at each award increment and the proportion paid above award
- Model the cost of different levels of wage increases – from 5% to 25%.
- Estimate the cost of increasing wages 'across the board' for all educators, as well as a more conservative assumption where only award rates are increased.
- Unpack the implications of an unfunded wage increase for the OSHC sector.

This report

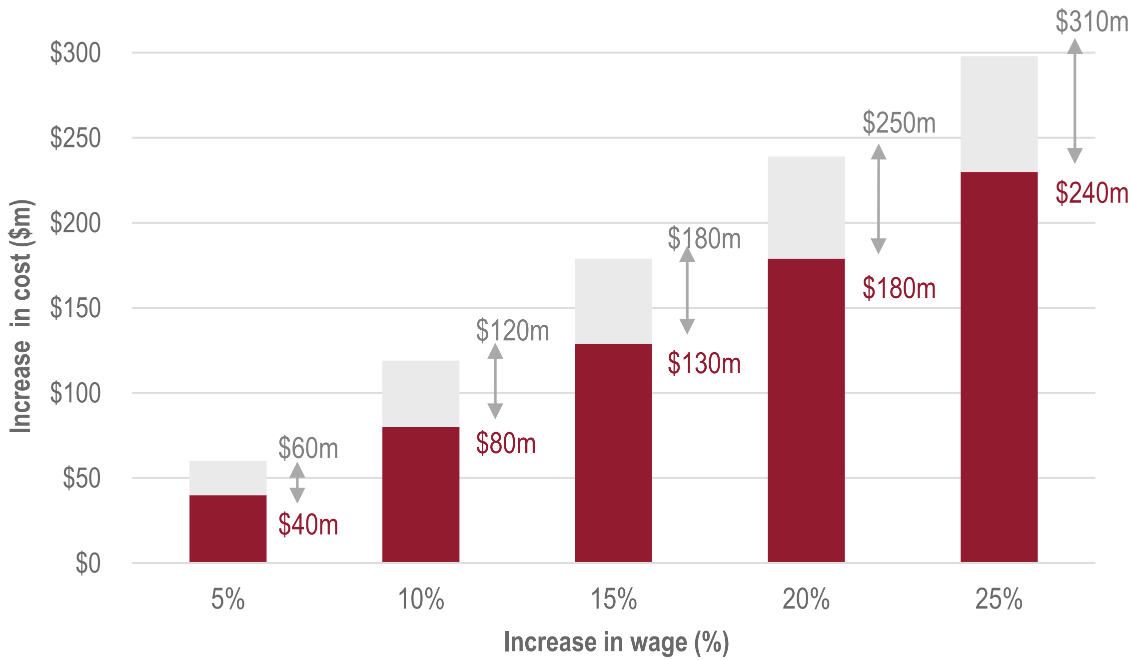
Executive summary

The expected cost of a wage increase

There is pressure to increase OSHC wages. We estimate that the total cost of a 15% wage increase would be between $130 million to $180 million.

The *higher cost* assumes all educators receive an equivalent percentage wage increase.

We estimated the total annual cost of increasing early educator wages in Outside School Hours Care (OSHC) services*:



The *lower cost* assumes there is an increase to the award rate. Therefore, only those at award, or below the new award increase, will see an increase in their wage.

If wages increased by 15%, we estimate that the total cost would be between $130 million to $180 million. The lower estimate is if there is an increase to the *minimum* rate, while the higher estimate is an increase to all educators, including those already paid above award.

On average, this is an additional $37,000 per service, or an investment of nearly $500 per child.*

[1] ACECQA, *National Snapshot Q4 2022*; ACA (2022), *Resolving the educator shortage crisis;* ELAA, CELA and CCC (2022), *Investing in our future: Growing the education and care workforce*

*2021 ECEC National Workforce Census (https://www.education.gov.au/child-care-package/resources/2021-early-childhood-education-and-care-national-workforce-census-report) *4,152 OSHC services, 314,100 children attending OSHC services in reference week*

Potential impact of an unfunded wage increase

To cover the additional costs to services of an unfunded wage increase, some services are likely to increase their fees and the impact on families will vary significantly.

If and when services pass on the cost increases via increased fees this will vary based on a range of factors

We estimate an average 9% fee increase to cover a 15% wage increase.*

Alongside family usage of OSHC services, family out of pocket costs are likely to be impacted by:

1. **Starting position of fees**. Some services (across state, regional, metro) already charge higher fees than others.
2. **Service fees relative to the hourly rate cap.** The effect of fee adjustments on out-of-pocket expenses hinges on whether existing fees fall below, match, or exceed the hourly rate cap.
3. **Share of employment costs of service total costs.** Considerable diversity exists in employment costs of services across the sector

Impacts on actual out-of-pocket costs for families will vary dramatically depending on circumstances

A major factor that drives variation in out-of-pocket fees for families is the amount of Child Care Subsidy (CCS) they receive from the government for use of childcare and education services. A family can receive a subsidy of up to 90%, on service fees that are on or below the hourly rate cap (HRC).

If fees go above the HRC then the family, no matter their financial circumstances, will cover all the increase above the cap. Therefore, if services increased their fees to cover an increase in wage costs, then the impact on families will vary dramatically, not only by the level of subsidy they receive, but how far a service increases its fees above the HRC.

	Single parent who works few hours, at a low fee service which has a lower percentage of wages as total costs	**Couple both working full-time at a service which charges at the hourly rate cap and has a higher percentage of wages as total costs**
*Increased cost per annum per child**:*	**$48**	**$1,100**

*To cover the cost of an unfunded 15% wage increase, we assume that the **average service** would increase their fees by 9%. This represents the increase in revenue needed for a service with median employment costs (i.e. wages represent 60% of total costs).

**For the single parent out of pocket scenario we used average OSHC fees ($8 per hour) and 60% of employment costs out of total costs for a service. For the parent couple scenario we used fees equal to the HRC ($12.02 per hour) and 70% of employment costs out of total costs for a service.

Potential impact of unfunded wage increase on service costs and viability

If a service either increases their fees, or absorbs the cost, there are unavoidable knock-on impacts for families.

Some services can't or won't increase fees:

This can be for a few reasons, for instance:

Contractual and licensing constraints: Many OSHC services operate within agreements and licenses negotiated with schools. Such constraints can hinder the immediate implementation of fee increases in response to increases in services costs.

Difference in types of OSHC services: OSHC services vary in terms of the times they are offered, the fees they charge, and the services they provide. Implementing fee increases might be more challenging for services that are already charging higher fees e.g. at or above the rate cap.

And some services may not be able to viably absorb increased costs:

For instance, those services operating in:

Low-Income areas: If these families are asked to pay more, they might not be able to, which could lead them to stop using the service.

Highly competitive markets: In places where there are many options for services, and if fees go up, families might choose to use a different service instead.

Even if a service could absorb the cost of a wage increase, there would be unavoidable knock-on impacts for families:

Either:

- Services will need to offset this cost by reducing spending in other areas of the service.
- Some services may no longer be viable and cease to offer services to families.

Options for a funded wage increase

We considered two approaches the government could use to fund a wage increase. We measured the approaches against two criteria.

The two approaches we analysed were:

Direct wage subsidy
The actual cost to services of the increase in wages would be met by a direct government subsidy – with an expectation this is passed on in full to employees.

Page 26

Hourly Rate Cap increase
A wage increase would be built into the existing system through a percentage increase in the Hourly Rate Cap (HRC), which would flow through to services as an increase in revenue.

Page 27

For each approach, we considered:

Efficiency of administration and implementation

Impacts for families, services, and the workforce

Pages 28-32

Direct wage subsidy

A wage subsidy involves additional cost and administrative burden but is otherwise efficient to operate. It results in no additional out-of-pocket costs to families, supports service viability and promotes attraction and retention of the workforce.

Efficiency

Administrative cost and burden — Moderate efficiency

The administrative costs of a direct wage subsidy are higher than an HRC change.

- **For government**: A wage subsidy requires the development and operation of a new system for processing payments to services. Using the cost of administering JobKeeper as a proxy, the administrative cost of a wage subsidy would be around $1.95m annually.[1] This is less than 1% of the total cost of the CCS, but considerably more than an HRC increase.
- **For providers**: There is also administrative burden for providers, in managing and documenting the subsidy.

'Leakage' of money through the system — Low efficiency

'Leakage' refers to inefficient movement of money through the system – and in this context, captures the dual risks of providers using the increased revenue for something other than wages, and of government needing to spend more than is strictly needed.

Because a direct wage subsidy can be designed with high requirements for evidence and audit, there are strong mechanisms for ensuring:

- Any investment in wages is passed directly to employees
- No excessive / unnecessary funding is provided.

Risk of fraud — Low efficiency

A wage subsidy can be designed with strong accountability mechanisms, including evidence requirements and routine auditing. This means the risk of fraud is low.

Impact

Families — Positive impact

There is no risk of increased out-of-pocket costs for families, as the increased cost of delivery is met through the wage subsidy.

There are potential positive impacts for families, if services are no longer closing rooms and restricting numbers. Continuity of educator relationships is also important for children's wellbeing and learning.

Service viability — Positive impact

Risks to service viability are significantly mitigated. There are unlikely to be differential effects on providers with different operating models. For example, services that have comparatively high wages bills because they staff over-ratio, already pay above-Award or hire more qualified educators would not be penalised.

Workforce — Positive impact

A wage subsidy is more likely to guarantee all educators benefit from a wage increase.

Wages are important for workforce wellbeing and recognition, and will contribute to attraction and retention in the workforce. Higher wages will contribute to a more professional and high-quality workforce.

[1] The ANAO reports that the total cost of administering JobKeeper was $286m. This is the equivalent of $63 per worker per year, applied to the 31,000 OSHC workers.

Source: ANAO (2022), Administration of the JobKeeper Scheme (https://www.anao.gov.au/work/performance-audit/administration-the-jobkeeper-scheme); Australian Government (2022), 2021 ECEC National Workforce Census (https://www.education.gov.au/child-care-package/resources/2021-early-childhood-education-and-care-national-workforce-census-report)

Increasing the HRC

Increasing HRCs is comparatively easy to implement, but its effects are highly variable, inequitable and inefficient.

Efficiency

Administrative cost and burden

Low efficiency

The administrative cost of an HRC increase is relatively low, because it leverages existing features of the CCS system.

- **For government**: There are establishment costs for government in processing a change to the Minister's Rules and changing CCS ITS settings, but these are likely to be able to be absorbed within existing resourcing. The largest cost is likely to be in communicating the change to families. There are no ongoing administrative costs.
- **For providers**: There are no establishment or ongoing costs for providers, beyond supporting communication of the change to families.

'Leakage' of money through the system

High efficiency

'Leakage' refers to inefficient movement of money through the system – and in this context, captures the dual risks of providers using the increased revenue for something other than wages, and of government needing to spend more than is strictly needed.

The risk of leakage is high because:

- There are no mechanisms to ensure increased revenue is directed to wages – there is scope for providers to channel the additional revenue into profit or to cover other costs. This risk would be mitigated if Award rates compelled high wages.
- It is likely that government expenditure will be more than is required to meet the wage increase. As the analysis on Page 43 highlights, a 15% wage increase could require a 21% increase in HRCs to ensure services in all circumstances were able to increase revenue sufficiently.

Risk of fraud

Low efficiency

The risk of deliberate fraud is not high. However, as noted previously, this mechanism does not ensure that wage increases are passed on to the workforce.

Impact

Families

Negative impact

The only way in which an HRC increase leads to increased revenue for services is via a fee increase. Although families will not bear the full cost of the increase, this mechanism does result in higher out-of-pocket costs.

The magnitude of the increase depends on:

- How much subsidy a family is eligible for – but families on lower subsidy rates are most exposed (i.e. those who receive less than 50% subsidy)
- How much fees increase by and how close their current fees are to the HRC

Service viability

Variable impact

There is significant variability in operating models in the OSHC sector and an HRC increase will not have a consistent effect across the whole sector as a result. Our analysis shows that:

- Services unable to increase fees do not benefit at all from an HRC increase
- Services with high employment costs (as a proportion of total costs) are the most exposed
- Services with low employment costs (as a proportion of total costs) *and* the ability to increase fees are likely to experience substantial windfall gains.

Workforce

Variable impact

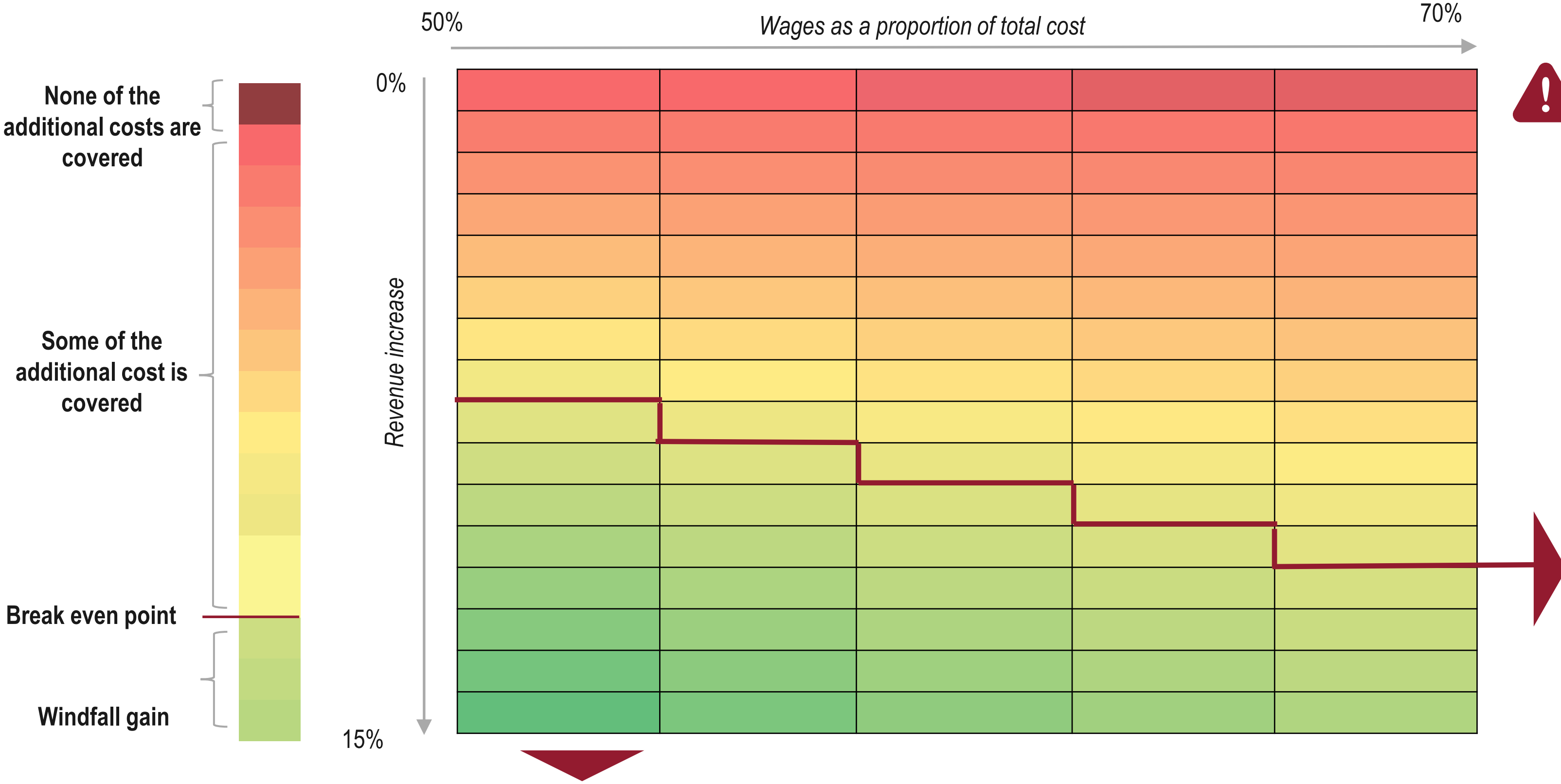
An HRC increase does not ensure or enable all services to increase wages. Some employees will benefit, but services that are already investing significantly in their workforce are the most disadvantaged by an HRC increase.

Adequacy of an hourly rate cap increase

Services with higher employment costs and limited ability to increase fees are significantly exposed, while others are likely to benefit from windfall gains.

The model takes into account the two key variables that influence whether or not services will break even – their ability to increase fees and whether they have high or low employment cost.

This heat map shows how much of the total cost of a wage increase is covered by an equivalent increase in fees



Services with high employment costs and little capacity to increase fees are worst off

They are **not able to cover any of the cost** of an increase in wages through increased revenue

Services with high employment costs are least likely to break even

Services with low employment costs and the ability to increase fees are likely to receive windfall gains.

They will receive **more than enough revenue** to cover the increased costs.

Note: We do not have data on the number of services in each of these scenarios and therefore cannot estimate the proportion of services likely to be out of pocket. For the purpose of this model, we have assumed an equal distribution of services into each category.

About OSHC and its workforce

Overview of OSHC

OSHC services provides education and care for primary school-age children (generally 5 to 12 years) before and after school hours and during holidays.

OSHC programs are designed to support working parents and carers to balance work and parenting by providing a safe and engaging environment for primary school aged children outside of school hours.

Qualified educators, regulated programs and a shared learning framework

Trained staff or educators run OSHC programs, under the requirements of the National Quality Framework and guided by the My Time, Our Place learning framework.

Services operate in partnership and under contract to schools

Most OSHC services operate in partnership with schools, generally operating under a contract with either the schools or relevant Government department. States and territories have different approaches to OSHC, with some having much tighter central control and regulation over contract terms and fees.

Fees are subsidised by government to reduce out of pocket costs for families

The Child Care Subsidy (CCS) is a payment made by the Commonwealth's Department of Education to subsidise the costs of Long Day Care, Family Day Care, In-Home Care and OSHC services. The CCS is income tested and is usually paid directly to approved services (including OSHC) to reduce the out-of-pocket costs that eligible families pay. The average fee is $8.05 an hour.

Families make a co-contribution to their child care fees and pay the OSHC service the difference between the fee charged and the subsidy amount. The subsidy amount for each child varies depending on the family's income and level of employment / study activities, and additional subsidies are available for families experiencing significant disadvantage

Supports children's play and learning and is a key enabler of parents' workforce participation

OSHC provides structured play-based programs which supports children's wellbeing, learning and development in important ways. It's also a critical enabler of families balancing work and parenting responsibilities

OSHC programs and services

OSHC is typically available in or near schools, community centres, or early learning facilities across Australia. OSHC programs provide a range of activities and opportunities for children to participate in, such as sports, arts and crafts, games, and social interactions which promote active citizenship. Healthy snacks or light meals are often provided to the children during the before and after-school care periods and during vacation care.

Program type	Number of hours	Description
Before hours care	Up to 3 hours	Time before and after school care provides play and leisure opportunities that are meaningful to children and support their wellbeing, learning and development
After hours care	Up to 4 hours	
Vacation care	Half-day care and full-day programs	Vacation care provided during school holidays and other breaks from school.

Note – the majority of data for the OSHC sector averages these three service types together. However, in practice, the operating model and staffing profile can be distinctly different.

Source: Australian Government, 2021 Early Childhood Education and Care National Workforce Census

Overview of OSHC

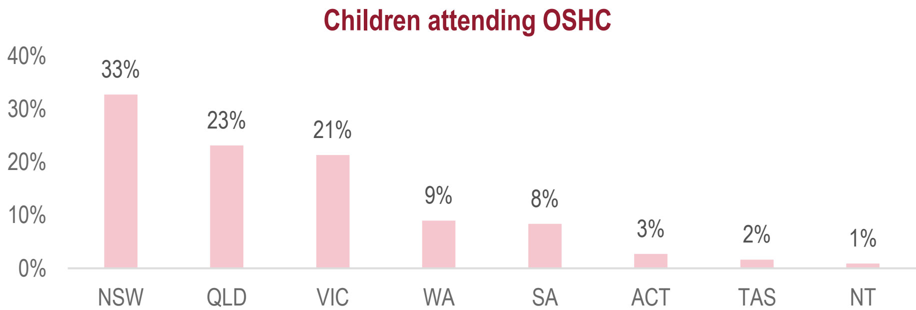
There are over 5,000 providers of OSHC and they support more than 500,000 children from nearly 400,000 families

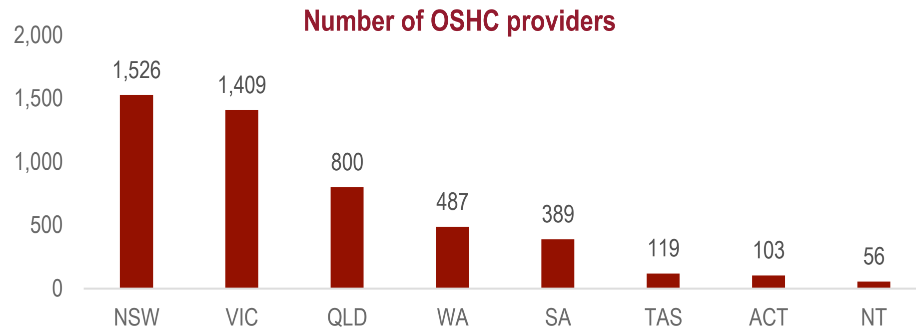
Who uses OSHC?

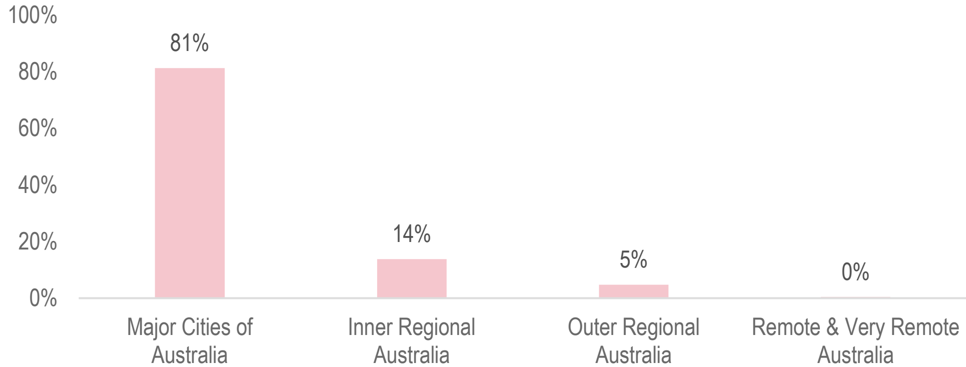
OSHC is used by more than 500,000 children from 390,000 families across Australia, with the vast majority located in major cities. The highest proportion of children attending OSHC are from NSW and Queensland.

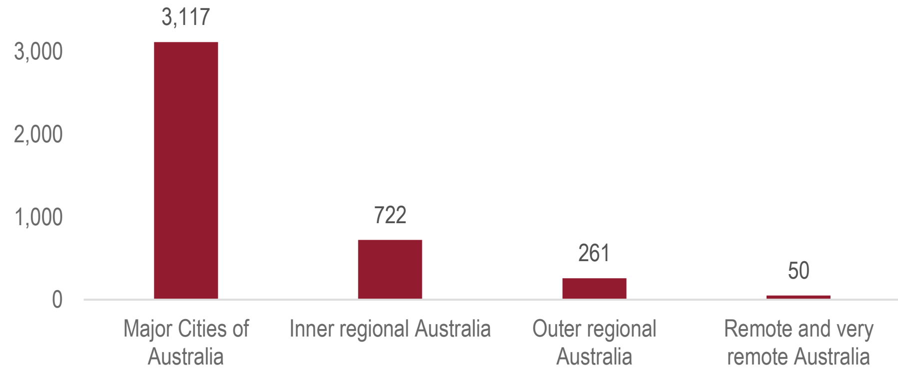
Who provides OSHC?

There are nearly 5,000 approved providers of Outside School Hours Care (OSHC) in Australia as of 2022. The majority of services are in NSW and Victoria and the highest proportion of OSHC services are in major cities – with a comparatively low proportion in regional and remote Australia.









There are significant differences between jurisdictions in terms of the size of services, the qualification requirements for educators, ratio requirements, and the basis of contracts between schools and providers. This means that – for example – Queensland and Victoria have a similar number of children attending OSHC, but Victoria has nearly 600 more services.

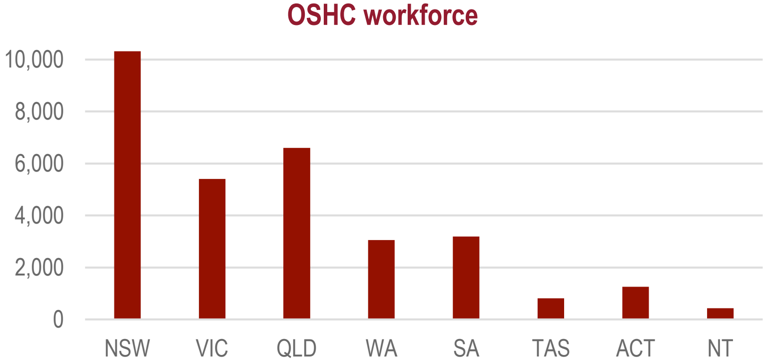
Sources:
ACCC Childcare inquiry 2023 June 2023 interim report
Australian Government, 2021 Early Childhood Education and Care National Workforce Census

The OSHC workforce

There are over 31,000 people in the OSHC workforce, and on average, they are a youthful workforce with high levels of turnover, relatively low wages and highly variable qualification requirements.

Workforce size

There are around 31,085 people in the OSHC workforce.



Average wages

The average wage for an OSHC educator in Australia is between $55,000 – $62,000 per year, with considerable variation between jurisdictions. Nearly 70% of the workforce is paid at Award rates and conditions.

Average hours worked

The majority of the workforce works part time or on a casual basis, with:

- Two thirds of educators working less than 19 hours per week
- Only 10% working full time hours – largely in coordinator and administrative roles.

Workforce demographics.

Around 40% of the workforce is aged under 25. While around 15% of the workforce has more than 10 years experience, more than half the workforce has less than 3 years of experience.

Educator to child ratios

There are no national educator-to-child ratio requirements for educators caring for school age children. Instead, state and territory specific provisions apply. All jurisdictions adopt a 1:15 ratio, except for Western Australia (1:13) and the ACT (1:11).*

Qualification requirements

There is significant variation between jurisdictions for the qualifications required to be an OSHC educator – from no specific qualification requirements in NSW and Tasmania through to education or youth-specific qualifications in others. As a result, nearly half the workforce does not have a directly related qualification. In addition, nearly 40% do not access professional learning relevant to their work. Highest level of qualification completed by OSHC educators varies across jurisdictions**

State	Qualification requirements
New South Wales	There are no state specific qualification requirements.
Victoria	Accepts 40 different qualifications that are Certificate III-level and / or Diploma-level.
Queensland	Accepts a broad range of different qualifications including Certificate III and IV level qualification, Diplomas and Bachelor degrees.
Western Australia	Accepts 18 different qualifications including Cert III and IV level qualifications and Diplomas.
South Australia	Accepts 36 different qualifications including Certificate in Child Care, Graduate Diplomas and Bachelor degree.
Tasmania	There are no state specific qualification requirements.
Northern Territory	Accepts any 'over-preschool age' qualification approved for work with children over preschool age in any participating jurisdiction
Australian Capital Territory	Accepts 10 different qualifications including Certificate IV level and diploma level qualifications.

Source: Australian Government, 2021 Early Childhood Education and Care National Workforce Census, ACECQA, Qualifications for Working in OSHC Services
*See page 37 for educator to child ratio and educator highest qualification table breakdown by state

The OSHC workforce

The OSHC sector needs to address a number of key challenges order to to ensure that children have access to high-quality care and education outside of school hours.

Shortage of qualified educators

The demand for OSHC educators is growing, but there is a shortage of qualified educators available to fill these positions. This is due to a number of factors, including low salaries, high turnover rates, and a lack of training opportunities. Expectations of the OSHC workforce have been increasing as the workforce has become increasingly professionalised – heightening the importance of skills and qualifications.

There is also high competition for workforce with a tight labour market. A key challenge is making the OSHC sector attractive when other industries can pay higher wages for less demanding work.

High turnover rates

The turnover rate in the OSHC workforce is high, which can make it difficult to provide consistent care and education for children. This is due to a number of factors, including low salaries, complex and challenging work that requires holding significant risk, a lack of career progression opportunities and significant competition for the workforce. It is important to note that the types of hours worked in the OSHC sector also contributes higher turnover – flexible morning / afternoon / holiday hours tend to appeal to people in particular life stages (such as university students) and those seeking flexible hours.

Strategies for the OSHC workforce often focus on creating more career pathways for OSHC educators to enable a more permanent, professionalised and skilled workforce. This would give them the opportunity to progress in their careers, and it would also help to attract and retain qualified staff. However, the economics and scale of the sector means that this is only achievable for a proportion of the workforce.

Lack of professional learning opportunities

Whilst larger providers are able to support professional and career development, the sector is very fragmented and there is a general lack of training opportunities available for OSHC educators, which can make it difficult for them to stay up-to-date on the latest best practices. This can also make it difficult for them to progress in their careers.

Professional status

The profile and status of the OSHC sector has traditionally been low – and unlike for the Long Day Care sector, the profile and recognition of the workforce has not been increasing. This lack of professional recognition contributes to attraction and retention challenges.

Competitive wages

The salaries for OSHC educators are relatively low, especially compared to other industries that compete for similar staff. This can make it difficult to attract and retain qualified staff. This is a particular challenge in areas where the cost of living is often higher.

Increasing salaries for OSHC educators would make it more attractive to work in this field. This would help to attract a quality workforce, and it would also help to reduce turnover rates and support retention.

Growth in the use of childcare

Since 2018 there has been an increase in the number of children enrolled in childcare throughout the year, both children ages 0-5 (53% in 2018 to 70% in 2022) and children ages 6-13 (21% in 2018 to 25% in 2022). If the sector continues to grow, more stress will be put on the workforce and further cost will be needed to implement a wage increase.

Sources:

- ACECQA, National Workforce Strategy for Children's Education and Care 2022-2031
- Cartmel and Hurst, More than Just Convenient Care, NSW Government, 2021
- Productivity Commission, Early Childhood Development Workforce, 2011
- DPMC Draft National Strategy for the Care and Support Economy May 2023
- ACCC Childcare inquiry 2023 June 2023 interim report

Modelling a wage increase

Calculating the cost of a wage increase

We matched the Outside School Hours Care (OSHC workforce) with wages and costs and applied two approaches to estimate the costs of a wage increase.

To estimate the total investment required to deliver the wage increase, we:

1. Built a profile of the OSHC workforce

This included a breakdown by:

- Jurisdiction
- Qualification and experience levels
- Employment status (full-time, part-time, casual)
- Employees paid above award level.

2. Matched workforce profile with average wage rates and costs

This included the direct costs associated with a wage increase:

- Payroll tax (for relevant services)
- Superannuation
- Long service leave loadings
- Workers' compensation

3. Applied a proportionate wage increase

For this we considered two options:

- All OSHC educator wages are increased by the same amount: for example, all wages increase by 15%, including the workforce already paid above Award.
- Lifting the award rates so that workers paid at award rates see an increase, but those already paid above award remain at their current wage.

Estimated the total cost of the wage increase

The total cost of a wage increase will depend on the size of the increase. We modelled a range of wage increases, from 5% to 25%

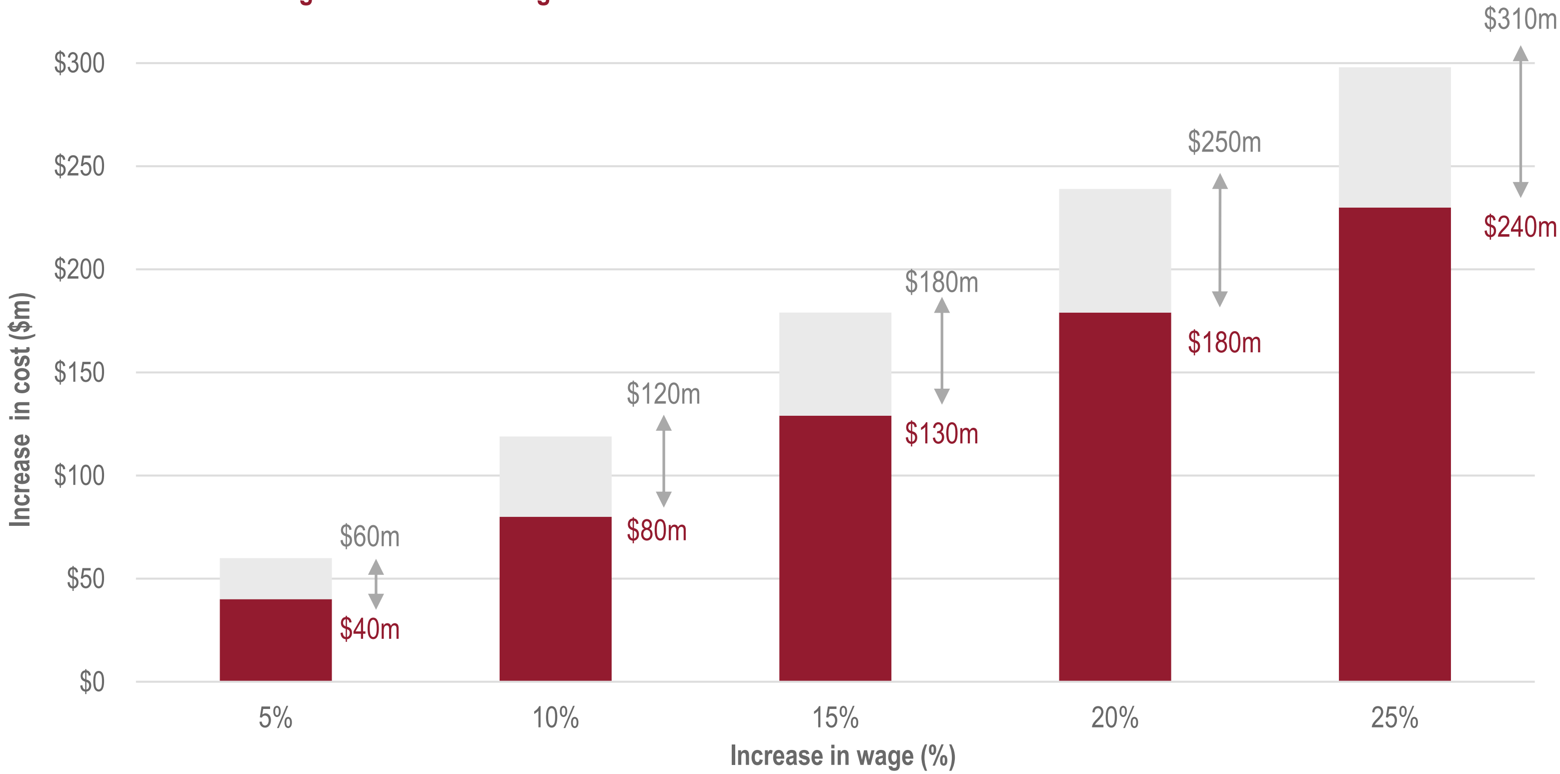
The cost of a wage increase

We estimate that a cost of a 15% wage increase ranges from $130 million to $180 million.

Our estimate of the total cost of a wage increase includes all educators currently employed in Outside School Hours Care (OSHC), and includes the total employment cost (wages, superannuation, workers compensation, payroll tax where relevant, and long service leave loadings).

We test two different scenarios – an 'across the board' increase that lifts wages for all employees, and a more conservative increase in award rates only.

Total annual cost of increasing OSHC educator wages



The *higher cost* assumes all OSHC educators receive an equivalent percentage wage increase.

The *lower cost* assumes there is an increase to the award rate. Therefore, only those at award, or below the new award increase, will see an increase in their wage.

Implications

Impact on families

One way some services can manage wage increases is to increase fees, but this won't happen in a uniform way.

Four key drivers of the impact of OSHC fee increases on families:

1. Starting position of fees

Some services already charge higher fees than others. Therefore, if all services were to increase their fees by the same proportion of the increase in wages – some fee increases would be higher than others.

See page 20

2. Demand from families

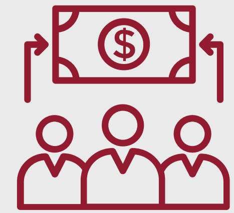
The extent of service utilisation by different families, including factors such as the number and age of children, as well as the duration of service usage. Additionally, family attributes like median annual income, work hours, and marital status play a role.

See page 21

3. Service fees relative to the hourly rate cap

The effect of fee adjustments on out-of-pocket expenses hinges on the current childcare subsidy received by each family and whether existing fees fall below, match, or exceed the hourly rate cap.

See page 22



4. Share of employment costs of service total costs

Considerable diversity exists in employment costs of services across the sector. The estimated range of employment costs as a proportion of total service cost is between 50% and 70%, with a median of 60% as part of total costs. These disparities mirror variations in operational contexts.

See page 23

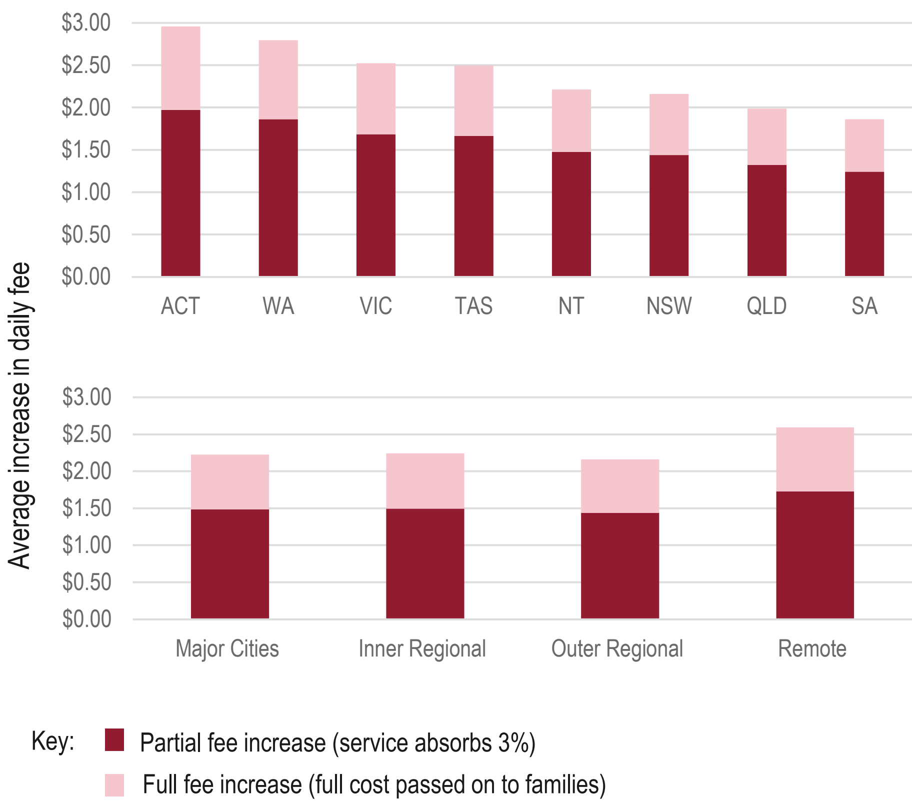
** We do not have any data on the proportion of services who fit each of these categories (wage costs and capacity to meet fees). For the purpose of modelling the effects of these different scenarios, we assume an equal distribution of all services into these categories.*

1. Starting position of fees

If a wage increase is unfunded, services will likely need to increase fees to cover the increased cost of delivery. Families living in major cities and in higher socio-economic areas would be most affected.

Some services already charge higher fees than others. Therefore, if all services were to increase their fees by the same proportion of the increase in wages – some fee increases would be higher than others.

If all services increased their fees by 9%:



Some states have higher average fees for OSHC services than others. Therefore, if all services increased their fees by a given percentage, those families who live in states with higher current fees will see larger out of pocket costs than those living in states with lower fees, on average.

For example, following a 9% increase in fees to cover a 15% wage increase – families living in ACT and WA will see higher out of pocket costs than those in QLD and SA, on average.

On average, OSHC service fees in remote regions are slightly higher than OSHC service fees in metropolitan regions. Therefore, if all services increased their fees by a given percentage, those families who live in remote regions will see larger out of pocket costs than those living in metro regions, on average.

This analysis is based on an expected 9% increase in fees, following a 15% increase in wages (using the assumption that wages are on average 60% of total costs for OSHC services). We estimate the impact on the average fee for each jurisdiction, ARIA classification and SEIFA quintile. Fee data is derived from Child Care Subsidy data tables – December 2022

2. Out of pocket impact on families

Fee increases will impact families in different ways, depending on their circumstances. All families will see an increase in out-of-pocket fees, those with more children and larger income will see the highest increase.

	Single parent who works few hours		Couple both working full-time	
Family profile:*	A single parent who works **12 hours** a fortnight, has an income of **$25k** and attends an average fee service **($8 per hour)**		A family who works **>48 hours** a fortnight has an income of **$170k** and attends a service where fees are at the rate cap **($12.02 per hour)**	
Estimated increase in out-of-pocket costs	1 child	2 children	1 child	2 children
Following a **9%** increase in fees, annual costs will increase by …	$48	$96	$1,100	$2,200
Following a **15%** increase in fees, annual costs will increase by …	$78	$156	$1,800	$3,600

Following an increase in fees:

All families will see an increase in out-of-pocket costs. Families with **more children** enrolled in OSHC services and **of higher income** will see a larger increase in out-of-pocket costs, as fees push well beyond the hourly rate cap**.**

** For each family, we assumed they have one child aged 6 years old (and another child 8 years old for the 2 children analysis), who attends a service for 3 days per week and 4 hours per day. The household income figures reflect the 10th percentile, median and 80th percentile – with $25k reflecting the average Parenting Payment rate, and $170k a higher income household. Low, high scenarios use 60%, 70% of wages of total costs, respectively.*

Source: Starting Blocks Child Care Subsidy Calculator (https://www.startingblocks.gov.au/child-care-subsidy-calculator).
How Much do Australians Earn? (https://grattan.edu.au/wp-content/uploads/2022/03/Income-cheat-sheet-2022.pdf)

3. Fees relative to the hourly rate cap

Increasing the HRC can enable some services to increase fees paid by families. Family out-of-pocket costs depend on whether a service is able to increase their fees, how current fees compare with the HRC, and the amount of CCS a family receives.

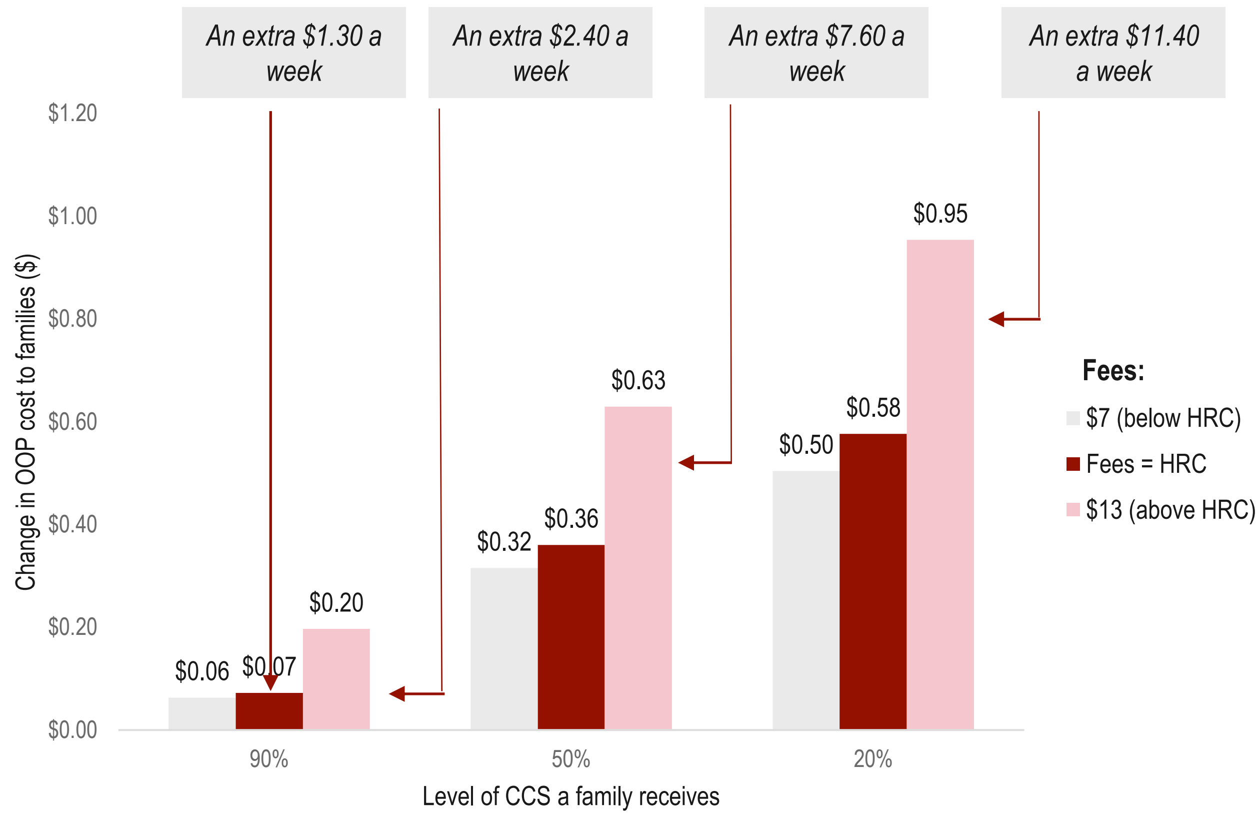
Increasing the HRC is intended to enable services to increase fees (and therefore revenue) without the full cost of that increase being borne by families.

However, the amount families will pay depends on their circumstances.

Our analysis shows that, even with HRC increases:

- **Out-of-pocket costs will increase for all families**
- **The increase is smallest for low-income families paying fees at or below the current HRC**
  - Families on 90% subsidy paying low-to-medium fees would need to pay up to an extra $2.40 a week
- **The increase is largest for families paying fees above the HRC**
  - Middle income families in a high-fee service could need to pay an extra $7.50 a week, and high-income families could pay $11.40 extra per week.
  - The sharp increase for families in high-fee services is because they are already above the HRC – so all the additional cost is borne by the family.

The impact on out-of-pocket costs depends on the amount each family currently receives in CCS and whether current fees are below, at or above HRC*



Hourly rate cap for school-age children: $12.02

** This analysis assumes a 0% fee increase and 4 hour sessions 3 times a week*

4. Share of employment costs of service total costs

Services with high employment costs (as a proportion of their total costs) will need more revenue to cover a wage increase.

There is significant variability in wage bills across the sector. As a proportion of total costs, wages vary between 50% and 70% with a median of 60%.*

The differences in employment costs reflect differences in operating context:

Wages as a proportion of total cost:

Low ←→ **High**

50% **60%** **70%**

Services with low employment costs (as a proportion of total costs) are more likely to have:

- Very high property costs
- A less well qualified and experienced workforce, who cost less
- No staffing above ratio
- Fewer younger children in the services
- Lower quality ratings

Services with high employment costs (as a proportion of total costs) are more likely to have:

- Very low property costs (i.e. peppercorn rent)
- A highly qualified and experienced workforce, who are paid more
- Significant additional staffing above ratio
- A higher proportion of younger children enrolled
- Higher quality ratings

A wage increase will cost more for services with high employment costs – and they will need to increase their revenue by more.

** We do not have any data on the proportion of services who fit each of these categories (wage costs and capacity to meet fees). For the purpose of modelling the effects of these different scenarios, we assume an equal distribution of all services into these categories.*

Implications following an increase in service fees

If a service increases their fees, families will either see an increase in their out-of-pocket costs or reduce service usage.

If a service increases their fees

Then

Families will see increases in their out-of-pocket costs for use of OSHC services

Following an increase in OSHC fees, if families can, or are still willing to, pay for these services they will see an increase in their out-of-pocket costs.

Some families may struggle more than others with an increase in their out-of-pocket costs. In particular, those with lower socio-economic status.

Or

Families will reduce their use of OSHC services

This will have negative impacts on:

1. **Services**. For example,
    1. A reduction in service occupancy and revenue. Where lower number of children enrolled, or lower number of hours used of the service result in reduced fees paid by these families and less revenue gained by services.
    2. An increase in the 'lumpiness' of staff costs. A reduce in use or enrollment in OSHC services may still result in a service having to pay for the same staff matrix – given the reliance on staffing ratios. For example, if the staff to child ratio was 1:15 and you originally had 30 children in class, you would need 2 educators. If the number of children enrolled decreased to 16, you would still be required to have 2 educators on staff.
2. **Families**. For example:
    - Reduction in workforce participation. If families decide to take their children out of OSHC services, for some families the only viable choice may be reducing their own work hours in order to look after the children.

Some service can't or won't increase their fees

The structure of the OSHC sector and the variation in service capacity to absorb cost increases mean that some services may not be viable following an increase in wages not funded by the government.

Following an increase in OSHC educator wages, some services may face obstructions to increasing fees:

The structure of the OSHC sector can create constraints on the ability of some services to adjust their fees. This situation may result in certain services becoming unviable. This is due to several interrelated factors of the OSHC sector:

1. **Contractual and licensing constraints**: Many OSHC services operate within agreements and licenses negotiated with schools. These contracts often impose limitations on fee adjustments or require lengthy negotiation processes for any changes. Such constraints can hinder the immediate implementation of fee increases in response to increases in services costs.

   Further, schools are increasingly savvy in seeking to get the best deal for their communities, which could limit the ability to increase fees more flexibly.

2. **Difference in types of OSHC services:** OSHC services vary in terms of the times they are offered, the fees they charge, and the services they provide. Implementing fee increases might be more challenging for services that are already charging higher fees e.g., at or above the rate cap.

Following an increase in OSHC educator wages, some services may not be able to viably absorb increased costs:

Some services will find it more difficult to handle the extra expenses that come with paying higher wages. This is likely to be the services used by families who are very sensitive to changes in costs. For instance:

1. Low-income Areas: In neighbourhoods where people don't earn much money, it's hard for them to afford higher fees. If these families are asked to pay more, they might not be able to, which could lead them to cease their enrolment in the service. These services are more likely to operate in remote regions, where there is greater unmet demand.

2. Multiple choices: In places where there are many options for services, raising fees can be tricky. Families in these areas are careful about how much they pay, and if fees go up, they might choose to use a different service instead.

Implications following an absorption of increased wage costs by services

Some services may be able to offset the cost of an increase in wages, while others may not be able to, thus reducing service viability.

If a service absorbs the cost of a wage increase

Then

Services will need to offset this cost by reducing spending in other areas of the service

By trying to save costs services may:

- Lower spending on areas to improve service quality
- Lower spending on areas which focus on supporting children with extra needs
- Need to increase reliance on staff waivers

Or

This may be a threat to service viability

Some services may not be able to offset or absorb the costs of an increase in their staff wages. This poses a threat to service operation and may lead to service closures.

The services which are least likely to absorb costs are:

- Non-profit
- Services with low enrollment or demand
- Services in remote regions
- Services with high overhead costs

How government can respond

Direct wage subsidy

A wage subsidy is a direct payment to services that covers the increase in their wages bill.

Wage subsidies are used across a range of sectors to supplement employee wages. We have reviewed key features of wage subsidy schemes in:

- Early childhood contexts (the Quality Fund, teacher supplement in Victoria, WAGE$ in the US); and
- Other sectors (employment, social and community services, aged care).

Case study: Aged Care Wage Increase

- The Fair Work Commission has ordered a 15% wage increase for aged care workers.
- Award rates will rise from June 2023 and the Commonwealth has agreed to fully fund the increase.
- The wage increase will be funded via a lift in the core funding to aged care services.
- There are currently concerns that the funding increase will not be passed on in full to employees.

Case study: WAGE$

- WAGS$ is a United States wage subsidy provided direct to teachers and educators where their salary is below minimum thresholds.
- Subsidy levels are based on employee qualifications, and may consider geography, role, hours worked, age of children, type of program. Similar programs target ECEC programs operating in low SES communities in the US.
- The total amount provided to teachers and educators is generally limited – only two states achieve pay parity with K-12 settings.
- Funding is provided to the employer retrospectively and in 6 month lump sums, and encourages a minimum 6-month commitment to the same employer.
- It's not built into ongoing funding, so is subject to budget and priority changes.

Wage subsidies differ in how they are organised and managed, but the design features appropriate for an Australian ECEC wage subsidy include:

- **Payments that cover the wage increase**: A payment to providers that is a percentage increase on their existing wages bill.
  - For example, if the annual total wages bill for a service is $500,000 and the wage increase is 15%, the service would receive a $75,000 subsidy.
- **Requirements to pass on the funding**: A wage subsidy is paid directly to the providers, with the requirement that it is passed on in full to educators. This means there is no administrative burden for educators.
- **Process and evidence requirements**: Wage subsidies can be paid monthly and retrospectively. Strong evidence requirements can mitigate the risk of fraud. For example:
  - Submitting annual audited financial statements confirming the total wages bill
  - Submitting payroll data confirming the wage increase has been passed on to educators
  - Periodic audits of a random sample of providers, and enhanced audit / evidence requirements for large providers

See Appendix 2 for more detail on wage subsidies in ECE and other industries

Hourly rate cap increase

An HRC increase uses the existing CCS system to enable more revenue to flow through to services to meet the cost of a wage increase – with government and families sharing the cost of the increase.

Increasing the HRC is a way of enabling services to increase their fees without the full cost of the fee increase being passed on to families.

It means that the cost of any fee increase is shared between families and government – with the size of that share depending on the amount of subsidy a family is entitled to and what fees they are already paying.

What is the hourly rate cap?

The HRC is a design feature of the CCS system. It sets an approximate benchmark for the hourly fee. Services can choose to charge more than the hourly rate cap, but families only receive subsidies up to the rate cap. For example:

- A family on the maximum subsidy level receives a subsidy of 90% of the hourly rate cap (currently $12.02 per hour in OSHC services).
  - If fees were set at the HRC level, they would pay $1.20 an hour, and government pays the remaining $10.81.
  - If fees were $13 per hour - $0.98 above the HRC - they would pay $2.18 an hour ($1.20 + $0.98) and government would continue to pay the remaining $10.81.
  - If fees are below the HRC, they receive 90% of the actual fee.

A family's subsidy level depends on their household income and level of activity.

Increasing the HRC means services can increase fees (gaining more revenue to fund wages) – but families don't pay the full cost.

In this approach, the full cost of the wage increase can be shared between providers, families and government.

The HRC is built into the design of the CCS system. An HRC increase can be:

- Executed through the Ministers Rules rather than legislative change
- Changed in the CCS IT system without significant additional effort, as it is designed to change annually in line with inflation

However, it is important to note that this is a less direct funding mechanism than a wage subsidy.

This is because the CCS is a complex funding model, operating in a diverse and dynamic market, and because there is not a simple relationship between HRC levels and service revenue.

There are a range of factors that will determine the way that the increased cost is shared between providers, government and families. For example:

- **There is variability in whether / how much services can increase fees**: Up to 52% services already charge below the HRC[1] – most likely because their families cannot afford to pay more or because of significant competitive pressure. Increasing the HRC will not benefit these services.
- **Some services do not receive much revenue via the CCS**: Some services have a high proportion of families on low subsidy levels (because they are higher income earners) – in these circumstances, families would bear most of the additional cost.

[1] AIFS Child care package evaluation: Final report February 2022 (Section 4.3)

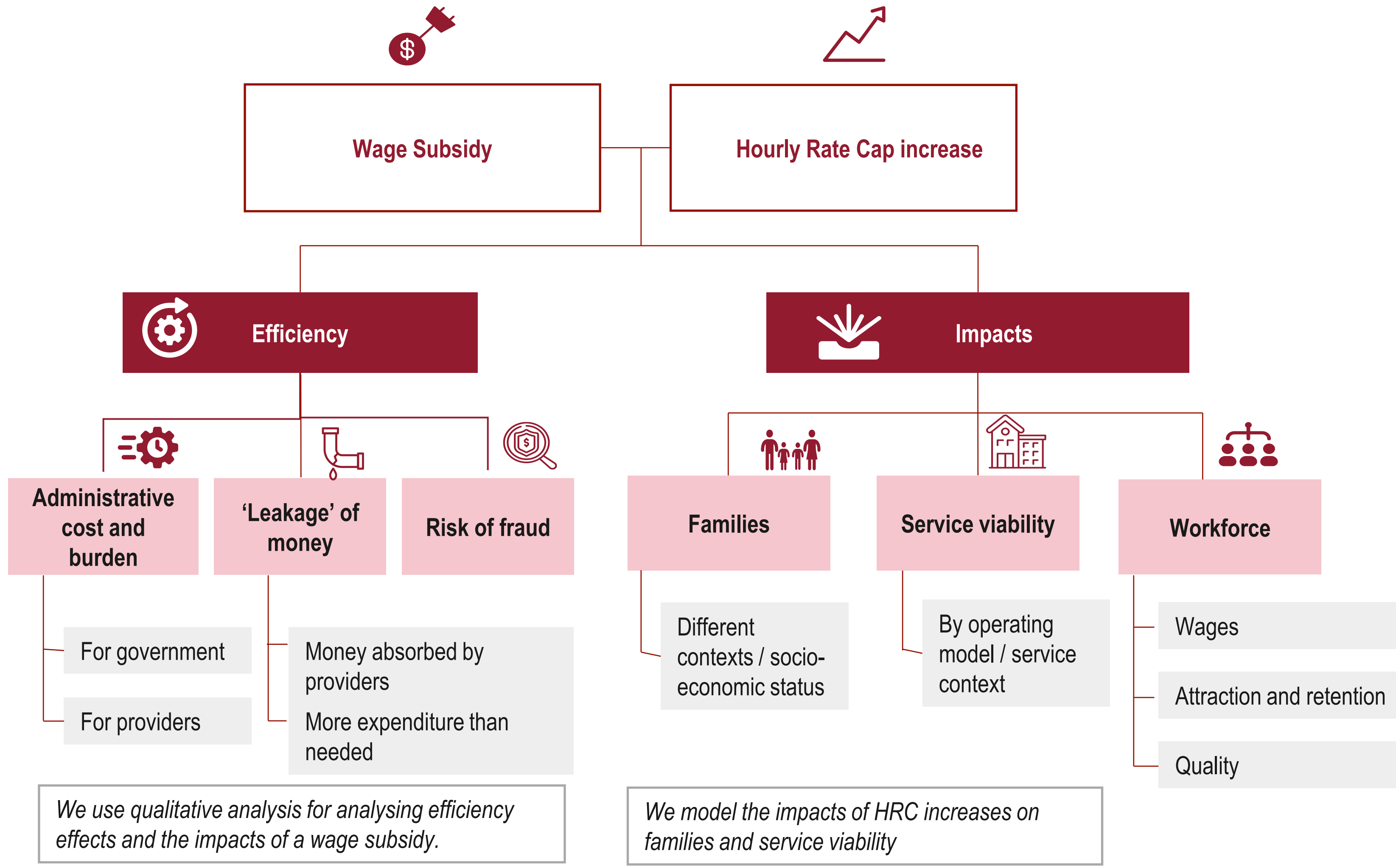
Assessing the options

We assess each of the options, considering both the efficiency of the approach and the impact on families, service viability and the workforce.

We consider two options for funding a wage increase – and test the impact of an unfunded wage increase

We assess how efficient they are and what impact they're likely to have

To do this, we systematically consider a range of variables



Direct wage subsidy

A wage subsidy involves additional cost and administrative burden but is otherwise efficient to operate. It results in no additional out-of-pocket costs to families, supports service viability and promotes attraction and retention of the workforce.

Efficiency

Administrative cost and burden

Moderate efficiency

The administrative costs of a direct wage subsidy are higher than an HRC change.

- **For government**: A wage subsidy requires the development and operation of a new system for processing payments to services. Using the cost of administering JobKeeper as a proxy, the administrative cost of a wage subsidy would be around $1.95m annually.[1] This is less than 1% of the total cost of the CCS, but considerably more than an HRC increase.
- **For providers**: There is also administrative burden for providers, in managing and documenting the subsidy.

'Leakage' of money through the system

Low efficiency

'Leakage' refers to inefficient movement of money through the system – and in this context, captures the dual risks of providers using the increased revenue for something other than wages, and of government needing to spend more than is strictly needed.

Because a direct wage subsidy can be designed with high requirements for evidence and audit, there are strong mechanisms for ensuring:

- Any investment in wages is passed directly to employees
- No excessive / unnecessary funding is provided.

Risk of fraud

Low efficiency

A wage subsidy can be designed with strong accountability mechanisms, including evidence requirements and routine auditing. This means the risk of fraud is low.

Impact

Families

Positive impact

There is no risk of increased out-of-pocket costs for families, as the increased cost of delivery is met through the wage subsidy.

There are potential positive impacts for families, if services are no longer closing rooms and restricting numbers. Continuity of educator relationships is also important for children's wellbeing and learning.

Service viability

Positive impact

Risks to service viability are significantly mitigated. There are unlikely to be differential effects on providers with different operating models. For example, services that have comparatively high wages bills because they staff over-ratio, already pay above-Award or hire more qualified educators would not be penalised.

Workforce

Positive impact

A wage subsidy is more likely to guarantee all OSHC educators benefit from a wage increase.

Wages are important for workforce wellbeing and recognition, and will contribute to attraction and retention in the workforce. Higher wages will contribute to a more professional and high-quality workforce.

[1] The ANAO reports that the total cost of administering JobKeeper was $286m. This is the equivalent of $63 per worker per year, applied to the 31,000 OSHC workers.

Source: ANAO (2022), Administration of the JobKeeper Scheme (https://www.anao.gov.au/work/performance-audit/administration-the-jobkeeper-scheme); Australian Government (2022), 2021 ECEC National Workforce Census (https://www.education.gov.au/child-care-package/resources/2021-early-childhood-education-and-care-national-workforce-census-report)

Increasing the HRC

Increasing HRCs is comparatively easy to implement, but its effects are highly variable, inequitable and inefficient.

Efficiency

Administrative cost and burden — Low efficiency

The administrative cost of an HRC increase is relatively low, because it leverages existing features of the CCS system.

- **For government**: There are establishment costs for government in processing a change to the Minister's Rules and changing CCS ITS settings, but these are likely to be able to be absorbed within existing resourcing. The largest cost is likely to be in communicating the change to families. There are no ongoing administrative costs.
- **For providers**: There are no establishment or ongoing costs for providers, beyond supporting communication of the change to families.

'Leakage' of money through the system — High efficiency

'Leakage' refers to inefficient movement of money through the system – and in this context, captures the dual risks of providers using the increased revenue for something other than wages, and of government needing to spend more than is strictly needed.

The risk of leakage is high because:

- There are no mechanisms to ensure increased revenue is directed to wages – there is scope for providers to channel the additional revenue into profit or to cover other costs. This risk would be mitigated if Award rates compelled high wages.
- It is likely that government expenditure will be more than is required to meet the wage increase. As the analysis on Page 43 highlights, a 15% wage increase could require a 20% increase in HRCs to ensure services in all circumstances were able to increase revenue sufficiently.

Risk of fraud — Low efficiency

The risk of deliberate fraud is not high. However, as noted previously, this mechanism does not ensure that wage increases are passed on to the workforce.

Impact

Families — Negative impact

The only way in which an HRC increase leads to increased revenue for services is via a fee increase. Although families will not bear the full cost of the increase, this mechanism does result in higher out-of-pocket costs.

The magnitude of the increase depends on:

- How much subsidy a family is eligible for – but families on lower subsidy rates are most exposed (i.e. those who receive less than 50% subsidy)
- How much fees increase by and how close their current fees are to the HRC

Service viability — Variable impact

There is significant variability in operating models in the OSHC sector and an HRC increase will not have a consistent effect across the whole sector as a result. Our analysis shows that:

- Services unable to increase fees do not benefit at all from an HRC increase
- Services with high employment costs (as a proportion of total costs) are the most exposed
- Services with low employment costs (as a proportion of total costs) *and* the ability to increase fees are likely to experience substantial windfall gains.

Workforce — Variable impact

An HRC increase does not ensure or enable all services to increase wages. Some employees will benefit, but services that are already investing significantly in their workforce are the most disadvantaged by an HRC increase.

Adequacy of an hourly rate cap increase

Services with higher employment costs and limited ability to increase fees are significantly exposed, while others are likely to benefit from windfall gains.

The model takes into account the two key variables that influence whether or not services will break even – their ability to increase fees and whether they have high or low employment cost.

This heat map shows how much of the total cost of a wage increase is covered by an equivalent increase in fees

Services with high employment costs and little capacity to increase fees are worst off

They are **not able to cover any of the cost** of an increase in wages through increased revenue

Services with high employment costs are least likely to break even

Services with low employment costs and the ability to increase fees are likely to receive windfall gains.

They will receive **more than enough revenue** to cover the increased costs.

Note: We do not have data on the number of services in each of these scenarios and therefore cannot estimate the proportion of services likely to be out of pocket. For the purpose of this model, we have assumed an equal distribution of services into each category.

What an hourly rate cap increase looks like across services

It is difficult to set an HRC that is adequate for all services. If wages increase by 15%, you need to increase HRCs by 21% to ensure all services who can *partially* or *fully* increase fees can break even – and at this point, some services would be receiving a significant windfall gain. Services who cannot increase fees do not benefit from an HRC increase in any scenario.

We modelled the circumstances in which an HRC increase would enable services to generate enough revenue to meet the cost of a 15% wage increase.

To cover the cost of a 15% wage increase ….	**The HRC is increased by the same amount as the wage increase (15%)**	**The HRC is increased more than the wage increase (21%)**	
Service A: High employment costs and can partially increase fees *This service staffs over-ratio, is already paying staff above-award rates and is on peppercorn rent*	71%	100%	HRC needs to increase by at least 21% for this service to break even
Service B: Low employment costs and can fully increase fees *This service is paying at award rates, has a high reliance on casual staff, and tends to employ less experienced educators*	200%	280%	But at a 21% HRC increase, this service gets a windfall gain of nearly 3x the *additional* revenue they need
Service C: Cannot increase fees *This service could have high or low employment costs, but its families are extremely price sensitive and it cannot increase fees*	X	X	A service that cannot increase fees does not benefit from an HRC increase in any scenario

Proportion of the wage increase that is covered by the HRC increase

- Cost of a wage increase is covered
- Cost is not covered

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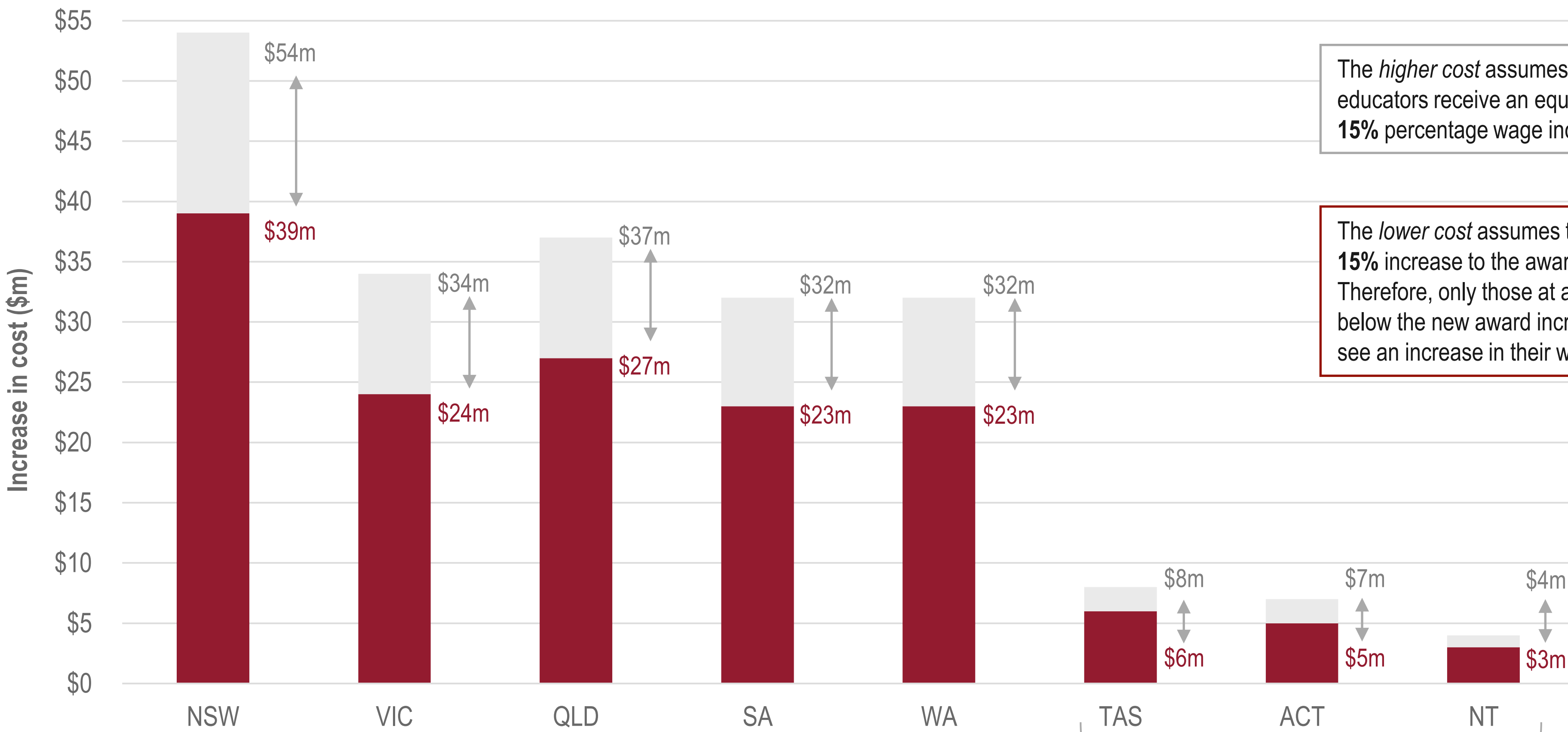
See Appendix 3 for a chart showing the relationship between HRC level and the proportion of costs covered.

Appendices

The cost breakdown by state of a 15% wage increase

Variation in size and qualification levels of workforce by state means that some states (NSW, QLD, VIC, SA and WA) will see much larger increases in cost following an increase in OSHC wages.



The *higher cost* assumes all OSHC educators receive an equivalent **15%** percentage wage increase.

The *lower cost* assumes there is a **15%** increase to the award rate. Therefore, only those at award, or below the new award increase, will see an increase in their wage.

New South Wales has the majority of enrolments and the largest workforce, and therefore the greatest cost in delivering a wage increase

Victoria, Queensland, South Australia and Western Australia all see similar increase in costs following a wage increase – even though Victoria and Queensland have double the enrolments (this can largely be explained by differences in ratio and qualification requirements)

Tasmania, Northern Territory and Australian Capital Territory have relatively small increase, reflecting the smaller number of services and enrolments in these jurisdictions.

Educator to child ratio, educator qualification breakdown, by state

Educator to child ratios and highest level of qualification completed by OSHC educators vary across jurisdictions

State	Educator to child ratio
NSW	1:15
VIC	1:15
QLD	1:15
SA	1:15
WA	1:13
TAS	1:15
NT	1:15
ACT	1:11

Highest level of qualification completed	State							
Percentage	**NSW**	**VIC**	**QLD**	**SA**	**WA**	**TAS**	**NT**	**ACT**
Bachelor degree and above	7.9	19.0	10.6	22.6	10.5	6.0	6.6	4.5
Bachelor degree pass 4 years (or equivalent) and above	5.7	15.1	7.9	17.4	9.3	4.9	2.7	3.6
Bachelor degree pass 3 years (or equivalent)	2.2	3.8	2.7	5.2	1.2	1.1	3.9	0.9
Advanced Diploma/Diploma	16.0	34.6	27.3	21.4	23.1	21.3	18.3	8.8
Certificate III/IV	16.8	20.2	19.1	8.3	30.2	33.9	23.4	7.6
Below Certificate III	1.6	1.5	1.0	2.7	1.1	1.3	1.6	0.7
Subtotal staff with an ECEC-related qualification [c]	**42.3**	**75.2**	**58.0**	**55.1**	**64.9**	**62.5**	**49.9**	**21.6**
Total staff without an ECEC-related qualification	**57.7**	**24.8**	**42.0**	**44.9**	**35.1**	**37.5**	**50.1**	**78.4**

Sources:
ACCC Childcare inquiry 2023 June 2023 interim report
Australian Government, 2021 Early Childhood Education and Care National Workforce Census Data Tables

Appendix 1 – Modelling the cost of a wage increase

1. We built a profile of the OSHC workforce

By getting a deeper understanding of the OSHC workforce profile we were able to more accurately measure the impact of wage increases.

We broke down OSHC workforce numbers by…

Qualification level

Source
National Workforce Census (2021)

Notes and assumptions

- Data was from a reference week in May 2021, with a response rate of 98.7% of OSHC services
- We applied the general qualification distribution to each jurisdiction.

Jurisdiction

Source
National Workforce Census (2021)

Notes and assumptions

- NWC reports qualifications and jurisdictions separately, and the timeframes for accessing the underlying data were not feasible for this project.
- We assumed qualification spread is consistent across jurisdiction.

Full vs part time employment

Source
National Workforce Census (2021)

Notes and assumptions

- NWC reports total headcount and the proportion of the OSHC workforce working hours in bands (1-19 hours, 20-34 hours, 35-40 hours, 41+ hours).
- We assumed the hours of work are consistent across jurisdictions.

Permanent vs casual employment

Source
OSHC data

Notes and assumptions

- 29% Casual, 71% Permanent
- We assumed this breakdown across jurisdictions

2. We matched workforce profile with average wage rates and costs

Using our profile of the OSHC workforce, we matched the workforce according to award rate, considering qualification, experience and employment type.

We determined current average wage rates

Average award wage by qualification level / level of experience

Source
Propose: Children's Services Award

Notes and assumptions
Breakdown of wages by level → Mapping levels to qualifications → Using NWC years of experience data to apportion workers to sub-levels.

Levels don't map precisely to qualifications.

We assumed the same proportion of the workforce in each sub-level across jurisdiction.

Percentage at or above award

Source
National Workforce Census (2021)

Notes and assumptions
NWC data on the proportion of the workforce with wages above the award is not broken down by qualification or experience (although it does account for setting).

We applied the proportion above award rates equally across all qualifications.

Permanent vs casual employment

Source
Children's Services Award

Notes and assumptions
A casual employee must be paid the hourly rate payable for a full-time employee plus a casual loading of 25% for each ordinary hour worked.

2. We matched workforce profile with average wage rates and costs

We also considered the cost to the employer of increasing employee wages.

We determined the additional costs associated with wage increase

Payroll tax % (by jurisdiction)	Superannuation %	Workers compensation %	Leave liability
Source Payroll Tax Australia (*Payrolltax.gov*)	**Source** *Australian Taxation Office (ATO)*	**Source** Safe work Australia	**Source** *Early Learning Association Australia*
Notes and assumptions Some jurisdictions have substantially different payroll tax rates for different turnover thresholds, and for regional services in Victoria – these were averaged. Not-for-profit are payroll tax exempt and we used the ACECQA National Register to map ownership type by jurisdiction.	**Notes and assumptions** We assumed everyone pays the base rate of 11%	**Notes and assumptions** By jurisdiction	**Notes and assumptions** We assumed the Victorian Portable LSL rate of 1.65% applies nationally

*We also calculated leave loading in our final analysis

3. We applied a proportionate wage increase

There are a two different ways to apply a wage increase – a percentage increase on the total wages bill or lifting base rates in the award.

We then calculated the total cost of a wage increase. Depending on the policy objective, we calculated both:

1

A percentage increase across the board
We applied a percentage increase to the total wages bill in the sector. This assumed **all** employees receive a percentage increase in their wage.

2

Lifting wages to a minimum threshold
This approach lifted the base rates across the board so that no employee would earn less than a certain amount. There's no guarantee that this would be passed onto any employee earning over the award, however.

Estimate of the total cost of a wage increase

Appendix 2 – Wage subsidy design

Wage subsidies in other industries

Model	Sector	Key details
Workforce Australia Wage Subsidy https://www.workforceaustralia.gov.au/businesses/about/how-to/user-guides/wage-subsidy	Employment for target cohorts	• $10k per worker that meets the criteria • Duration depends on how long the employee has been unemployed • Requires employee and employer to enter into a wage subsidy agreement • Both employer and employee validate the employment relationship and accuracy of payment details • Managed through a Workforce Australia portal, with employers signing up for an employer profile
Jobs Victoria wage subsidy https://business.vic.gov.au/__data/assets/pdf_file/0008/2039345/Jobs-Victoria-Fund-Guidelines-updated.pdf	Employment for target cohorts	• Varying amounts, depending on context • Provided for up to 12 months • Managed via a grant agreement between the employer and the relevant department, requiring consent from the employee, and a statutory declaration that conditions are met • Employers must provide ongoing evidence that the employee is still employed on the terms stipulated in the agreement, and employers receiving more than $200k have an additional level of financial scrutiny • Independent audits are conducted to ensure compliance / reduce fraud
Disability Employment Services (DES) Wage Subsidy Scheme	Employment for people with disability	• Rate is negotiated between the employer and the disability employment service provider • Time limited – provided for the first 13 weeks • Disability employment providers act as brokers between the employee and employer • Requires an agreement between employer and employee, and the disability employment service
Social and Community Services (SaCS) Award – supplementary funding https://www.dss.gov.au/our-responsibilities/communities-and-vulnerable-people/grants-funding/fair-pay-for-social-and-community-services-workers/sacs-funding-supplementation-frequently-asked-questions	Social and community services	• Funding calculated using a formula - program funding amount x % SACS wage component x SACS ERO increase^ (i.e. not per employee) • Organisations can only use supplementation funding to cover costs arising from the Equal Remuneration Order (ERO) – including staff wages directly affected by the ERO and on-costs (i.e. superannuation and leave entitlements) that have increased because of the ERO • Employers who already pay above award are not required to increase wages proportionately, but may choose to do so (or may choose to use that money in any other way they choose, consistent with their grant requirements) • Acquitted via existing agreement accountability processes, although organisations need to complete a financial declaration and provide a financial acquittal to confirm the funding was used to meet wage costs • Only provided for established programs, not new programs (as this will be factored in, going forward)
Aged care wage increase https://www.fwc.gov.au/hearings-decisions/major-cases/work-value-case-aged-care-industry	Aged Care	• The Fair Work Commission has ordered a 15% wage increase for aged care workers. The Commonwealth has agreed to fully fund the increase. • The Commonwealth will increase core funding to aged care services, but there are currently concerns that employers will not pass the full increase on to employees.

Wage subsidies in ECEC contexts

Model	Sector	Key details
US Early Childhood Wage Subsidy (i.e. North Carolina, Florida, New Mexico, Nebraska, Tennessee) https://www.childcareservices.org/programs/wages/ https://cscce.berkeley.edu/wp-content/uploads/2022/04/6-Compensation-Strategies.pdf	ECEC	• Provided direct to early childhood teachers and educators where there salary is below minimum thresholds • Employees submit an application form and provide evidence in the form of a payslip, proof of qualification level and financial statements from employers • Subsidy levels are based on employee qualifications, on a sliding scale from vocational qualifications to postgraduate degrees, and may take into account geography, role, hours worked, age of children, type of program. Similar programs target ECEC programs operating in low SES communities. • The total amount provided to early childhood teachers and educators is generally relatively limited (estimated at $100-$6,500pa) – only two states achieve pay parity with K-12 settings. • Funding is provide to the employer retrospectively and in 6 months lump sums, and encourages minimum of 6 month commitment to the same employer • Employers are not allowed to use the funding in lieu of normal wage increases. • Not built into ongoing funding, so subject to budget and priority changes
Early Years Quality Fund Special Account https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1213a/13bd133 https://www.anao.gov.au/work/performance-audit/administration-early-years-quality-fund	ECEC	• Established to support the introduction of new early childhood teacher requirements under the NQS, and provided a dedicated financial commitment (i.e. not out of Consolidated Revenue) • Supported wage increases of ~$3-6/hr up to a cap of $300m (under a demand-driven, first-in-first-served basis – although with half hypothecated for small providers and half for large providers) • Eligibility was limited to LDCs and providers were required to demonstrate they were limiting fee increases to 'actual' operating cost increases and instituting enterprise bargaining agreements. • Limited to a two-year period without ongoing funding. • Applications submitted on a provider basis, but each service assessed separately • Employers required to demonstrate they had an EBA that matched the required pay conditions • ANAO report pointed to significant deficiencies in the efficiency, equity and appropriateness of the design of the subsidy
Early Childhood Teacher Supplement (Victoria)	ECEC	• Loading paid to cover the cost of employing a teacher, paid as a single annual grant in addition to core / recurrent funding • Applied for annually on the basis of employment relations at the time • Calculated per enrolment and by the experience level of the teacher • Providers reported that administrative requirements were onerous (annual cycle of applications and did not fully cover the employment costs)

Appendix 3 – HRC increase

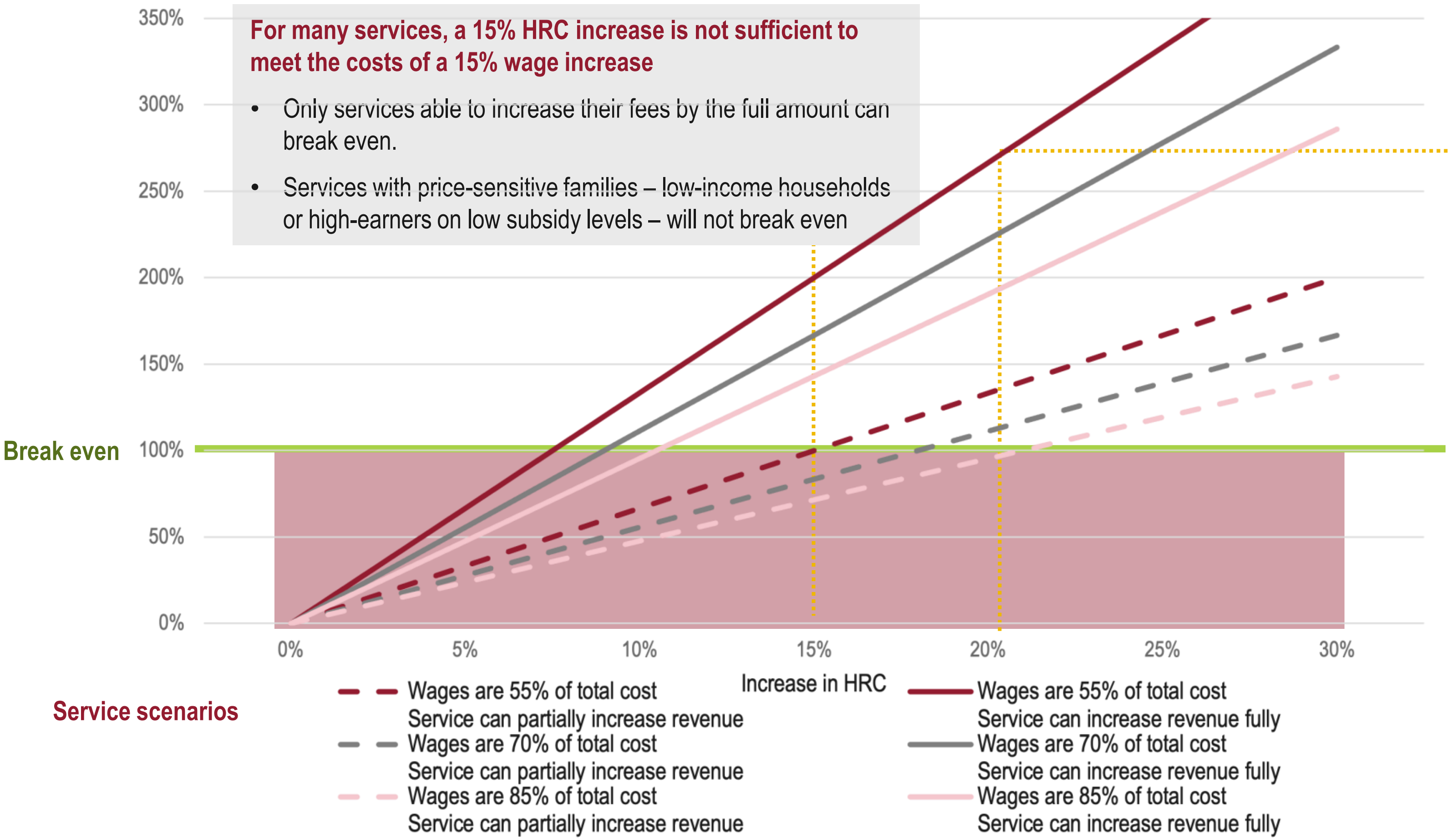
Increasing the HRC - Covering wage costs across services

If wages increase by 15%, the HRC would need to increase by 21% to ensure services who could partially or full increase fees are able to break even – and at this point, some services would be receiving a significant windfall gain.

This graph shows how much of the cost of a 15% wage increase is covered by an HRC increase

For many services, a 15% HRC increase is not sufficient to meet the costs of a 15% wage increase

- Only services able to increase their fees by the full amount can break even.
- Services with price-sensitive families – low-income households or high-earners on low subsidy levels – will not break even



To ensure services in most scenarios would have sufficient revenue to cover a 15% wage increase using the HRC, the HRC would need to increase by over 20%

- At this point, some services would be getting a windfall gain – nearly 3x the amount of revenue they needed to cover the cost of the wage increase
- These are more likely to be services under-investing in their workforce

There are some services who can't increase their fees and therefore don't receive increased revenue from an increase in the HRC

Note: We did not have data on the number of services in each of these scenarios and therefore did not estimate the proportion of services likely to be out of pocket. For the purpose of this model, assumed an equal distribution of services into each category.

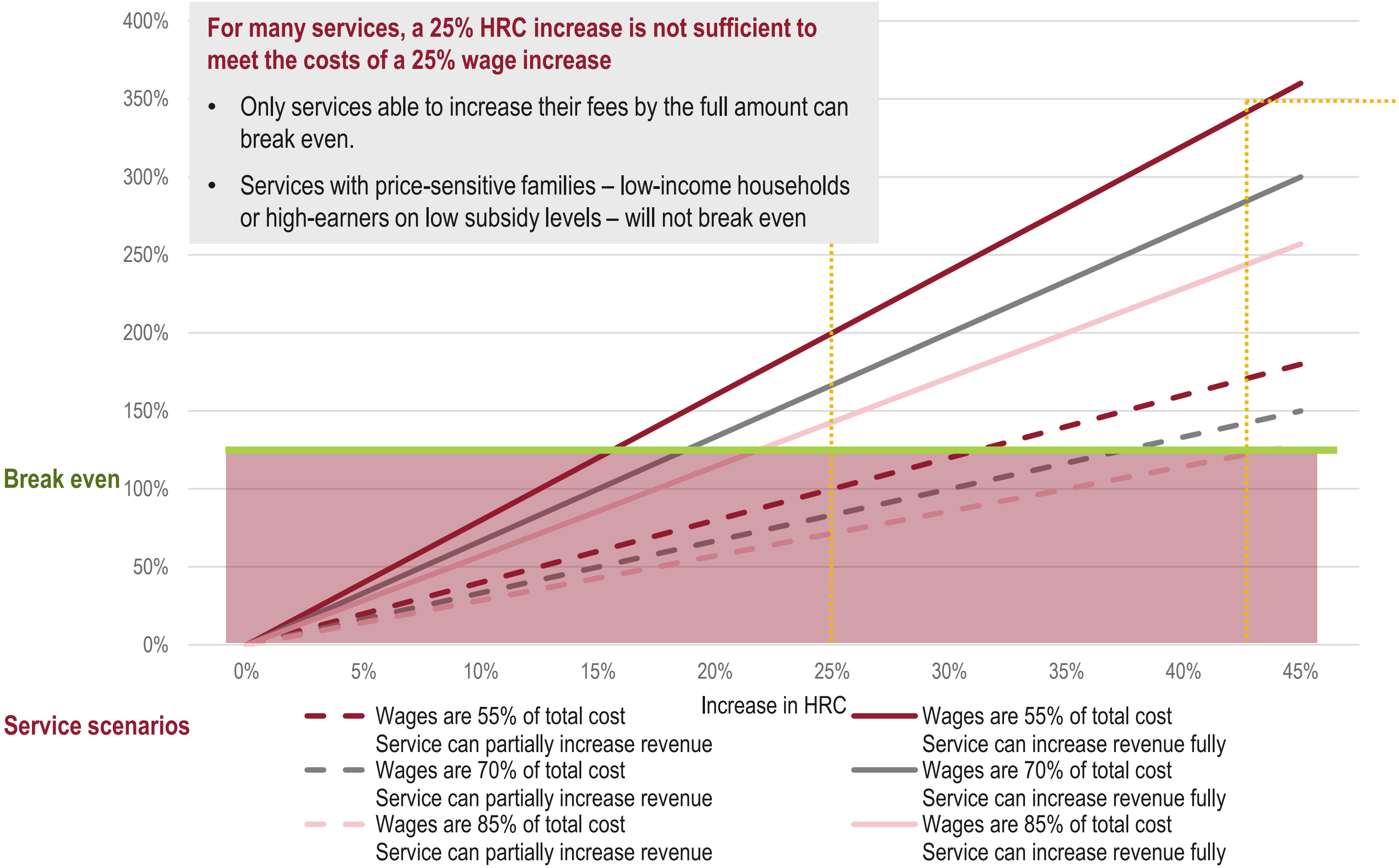
Increasing the HRC - Covering wage costs across services

If wages increase by 25%, the HRC would need to increase by approx. 43% to ensure services who could partially or full increase fees are able to break even – and at this point, some services would be receiving a significant windfall gain.

This graph shows how much of the cost of a 25% wage increase is covered by an HRC increase

For many services, a 25% HRC increase is not sufficient to meet the costs of a 25% wage increase

- Only services able to increase their fees by the full amount can break even.
- Services with price-sensitive families – low-income households or high-earners on low subsidy levels – will not break even



To ensure services in most scenarios would have sufficient revenue to cover a 25% wage increase using the HRC, the HRC would need to increase by approx. 43%

- At this point, some services would be getting a windfall gain – greater than 3x the amount of revenue they needed to cover the cost of the wage increase
- These are more likely to be services under-investing in their workforce

There are some services who can't increase their fees and therefore don't receive increased revenue from an increase in the HRC

Note: We did not have data on the number of services in each of these scenarios and therefore did not estimate the proportion of services likely to be out of pocket. For the purpose of this model, assumed an equal distribution of services into each category.