



Early Childhood Australia
A voice for young children

**OUR
VISION:
EVERY
YOUNG
CHILD IS
THRIVING
AND
LEARNING**

Inquiry into the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016, and the Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2016

Senate Standing Committee on Education and Employment

Early Childhood Australia

September, 2016

About us:

Early Childhood Australia (ECA) is the national peak early childhood advocacy organisation, acting in the interests of young children, their families and those in the early childhood sector. ECA advocates for quality in education and care as well as social justice and equity for children from birth to eight years. We have a federated structure with branches in each state and territory. In 2013, ECA celebrated 75 years of continuous service to the Australian community.



Executive Summary

Early Childhood Australia (ECA) welcomes the opportunity to provide input into the inquiry into the provisions of the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016

The *Jobs for Families Child Care Package* Bill represents the largest changes to the financing of early childhood education and care since the introduction of Child Care Benefit. We welcome the additional investment that this Bill represents of more than \$3 billion over four years. It is a substantial investment in improving access to early childhood services for working families.

We believe that the proposed new Childcare Subsidy will improve access to early childhood services for many working families. However we are concerned about the impact of the proposed activity test on families in insecure work or who cannot accurately predict their income and the impact this will have on young children's access to quality early learning programs prior to school entry. Children whose parents are not participating in eligible activity may lose subsidised access entirely, and children in low-income families will have their hourly subsidised access halved.

Whilst the stated goal of this package is workforce participation of parents, children's access and participation is equally critical to Australia's future prosperity. The participation of vulnerable children in quality early learning would add \$13.3 billion to GDP by 2050 (PWC 2014). We also know that access to these programs amplifies children's development, with lasting effects throughout their schooling. It is therefore critical that children's rights are considered and the provisions of this Bill are seen through the lens of what is in children's interests.

In partnership with other major networks, we have identified changes that we believe will strengthen the package, particularly to support children's long term outcomes. We would like to see the Jobs for Families Childcare Package passed with these amendments:

1. Increase the base entitlement (below the activity test) to at least 15 hours per week of subsidized early learning.

This will ensure that children can have continuous access to two sessions across two days when families are unable to maintain consistent activity sufficient to meet the requirements of the activity test.

It is important to note that under the current system the base entitlement is 24 hours but the value of Child Care Benefit is lower. The proposed system brings the entitlement down to 12 hours but at a more generous rate of subsidy. We are concerned that this is too low and may result in many children attending early learning just one day per week, which is inadequate. We have previously argued for the entitlement to be increased to 18 hours per week but recognise this is costly and would require additional investment. The 15 hours can be achieved within the funding envelope through savings offsets.



2. Increase the household income threshold for the base entitlement from \$67K to \$100K.

This would be consistent with the threshold for other family payments (Family Tax Benefit) and ensure consistency of access for more children and families – particularly those in low paid work with tenuous or irregular employment patterns. This would ensure that children who would otherwise be potentially excluded from early learning will have access to the subsidy.

According to the Australian Early Development Census 1 in 5 Australian children are vulnerable on one or more developmental domain at school entry. To address this we need to increase children's access to quality early learning programs that support their development in key areas such as social and cognitive skills and language development.

3. Increase the subsidy to 22.5 hours for Aboriginal and Torres Strait Islander children

We propose increasing the base entitlement for Aboriginal and Torres Strait Islander children from 12 hours to 22.5 hours, supporting at least three sessions a week. Aboriginal and Torres Strait Islander children are twice as likely as other children to start school developmentally vulnerable. Increasing their participation in early childhood education is a key target of the Closing the Gap initiative, a target Australia is falling short in meeting.

We also support establishing a specialised Aboriginal and Torres Strait Islander program to top up funding from Child Care Subsidy and fees to ensure viability of Indigenous services situated in disadvantaged communities. Many Indigenous services emerged out of a gap in the mainstream market and are not currently viable under mainstream funding mechanisms.

4. Recognise the variability of circumstances for many families by allowing transition periods between levels of the activity test

ECA supports sector advocacy on allowing up to six weeks transition period where a families entitlement to subsidy has changed. This would give families who have had a major change in income (that might see them lose the base entitlement) or reduction in hours of work (that might see their hours of subsidy cut) maintained at their previous level of entitlement for six weeks.

ECA, together with other stakeholders, has identified savings measures within the package to offset the estimated cost of these changes.

It is important to note these represent a compromise and we remain committed to better outcomes for children over the long term. Realising this objective should particularly include that all children have access to two days per week of subsidised early childhood education from the end of paid parental leave until school entry, while those children who have experienced disadvantage and may be vulnerable developmentally should have up to 4 days per week. This will require additional investment and increased sector capacity but will return social and economic benefits that enhance Australia's future prosperity. Our advocacy for this will continue to be a priority, particularly through the partnerships that have formed to deliver the **Early Learning Everyone Benefits** campaign.



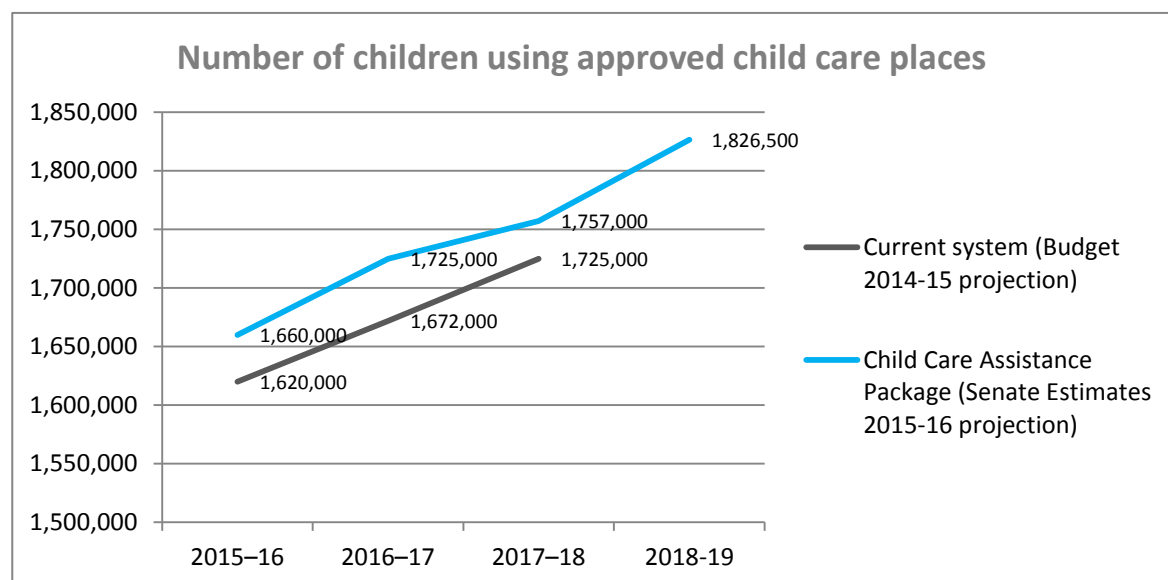
These childcare reforms are vital for our children's learning and development, for our future prosperity, and for workforce participation. They are an overdue step along the way to universal access to quality early childhood education and care. The reforms stand on their own merits, and their passage should not be connected to any proposed cuts to Family Tax Benefits. The government has implemented or identified savings that will pay for these reforms without any link to the Family Payments Structural Reform and Participation Measures bill. We ask that the Committee recommend, and the Parliament pass, the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016 with amendments to ensure the changes we have outlined.

Assessing the impact of the changes

Children's participation

ECA is an advocacy body for young children. We have been primarily concerned throughout the development of this package about the impact on children's participation in early childhood education and care.

The changes contained in the *Jobs for Families Childcare Package* have the potential to significantly affect children's access and participation in early learning.



We welcome the overall rise in the number of children projected to access approved early childhood education and care services over the forward estimates. Overall it is estimated that there will be an additional 32 000 children in approved early childhood education and care places in 2017-18; the first year of the Child Care Subsidy. Beyond this point, participation growth is projected to slightly



increase to 3.96 per cent out to 2018–19, with a further 69 500 children using approved early childhood education and care.

Growth on previous year (projected in 2015–16 Budget)

2015–16	2016–17	2017–18	2018–19
5.73%	3.92%	1.86%	3.96%

We think this growth is substantial, and is showing that overall the Child Care Assistance Package will benefit most families. However, we are concerned that while net overall figures are projected to increase, this masks a significant number of children who will be exiting the system at the same time, many of whom may be vulnerable and are not eligible for the Government's 'low income result' provision of 12 hours per week subsidy.

ECA wanted more information on the aggregate impacts of the Package on children and families across income brackets and circumstances. We commissioned modelling from the ANU to try to get a better understanding of that and the report from that project was previously tabled with the Senate Committee in January 2016 (Phillips 2016).

This independent analysis suggested that more families would be impacted by the activity test than estimated by the government's modelling, because the government's model lacked data about the hours worked by parents. The largest number of children at risk of being excluded from early childhood education was those whose parents were unable to consistently meet the proposed activity test.

Activity test

Early Childhood Australia understands that the key objective of the Government's Child Care Assistance Package is to support workforce participation of parents. This is a legitimate goal and should be supported, including by ensuring that subsidies broadly align to work hours. However, we also believe that workforce participation objectives can be realised at the same time as providing children with early childhood development opportunities, by providing children with at least two days of early learning.

We remain concerned about the impact on children through the implementation of a new activity test in this package. The impact of the proposed activity test would exclude some children altogether from access to subsidised early learning, because both parents do not have a requisite level of activity. For example, families with one stay-at-home parent will not be able to access subsidised early learning for their children. Moreover, families where one parent is unable to find work may no longer be eligible unless they are participating in another activity.

Additional families will currently be accessing the Child Care Rebate but will not be working enough hours to be eligible for the Child Care Subsidy.

If the activity test result is zero, the amount of child care subsidy for the individual for the week, for the sessions of care provided by the service to the child, is nil.



(Family Assistance Legislation Amendment [Jobs for Families Child Care Package] Bill 2015, Schedule 2, Part 1—Amount of child care subsidy, Clause 1[1])

The children and families potentially affected by a tightened activity test include:

- Children in families where both parents aren't working /don't meet the activity test will only have access to 24 hours subsidy per fortnight (currently have access to 24 hours Child Care Benefit per week).
- Children in families earning over \$65 710 up to the Child Care Benefit upper income limit where only one parent is in work will have no access to subsidies (currently have access to 24 hours of Child Care Benefit per week).
- Children in families where one parent doesn't work sufficient hours (under eight hours per fortnight) will lose access to 24 hours of Child Care Benefit and Child Care Rebate.

ECA recognises that the current Child Care Benefit is usually paid at a much lower rate than is proposed under Child Care Subsidy, for those eligible to receive the payment. The new Subsidy may therefore provide a greater level of assistance to families on very low incomes. This is welcome and supports the principles of supporting children's learning and development needs and targeting childcare fee assistance to those who need it the most including disadvantaged and vulnerable families and children.

Nonetheless, there is a group of children who were previously eligible for Child Care Benefit who will no longer be able to access the Child Care Subsidy at all. Many of these children are in families which do not have high incomes (though are above the \$65 710 limit) and are still considered to be vulnerable against independent indicators like the Australian Early Development Census (AEDC). Evidence shows that these are the children that would significantly benefit from access to quality early learning. The independent modelling we commissioned shows that low to middle income families are the biggest losers from the activity test changes, and that this could be significantly ameliorated if activity test eligibility conditions were modified.

Analysis of public submissions on the Child Care Assistance Package RIS show that, of the 78 submissions made, more than 98 per cent of those that commented on the activity test opposed the Government's formulation of the test. There was a strong concern about the negative effect on children's participation.

ECA believes that the Government should consider an alternative policy with a base level of provision for children, regardless of their parents' activity. Early Childhood Australia urges the Government to ensure a minimum of two days of quality early childhood education and care by providing up to two days of subsidy per week, rather than per fortnight, regardless of parental activity. This would rebalance the package to support children's development and participation while also contributing to the goal of lifting workforce participation by providing families with stability.

Hours of provision



ECA remains concerned that the children that receive a 'low income result' will be disadvantaged as a result of their status.

These children will only be eligible for 24 hours per fortnight, or 12 hours per week, of subsidised access to early learning, which we believe is not enough to support children's optimal development.

Research shows that 15 hours per week is the evidence-based minimum dosage for the provision of early childhood education and care. The UK's Effective Provision of Pre-School Education (EPPE) study examined the difference between 10 hours of provision and 15 hours and found that children benefited more when they attended for 15 hours. Moreover, they found that disadvantaged children benefited even more from having even greater access. Dr Edward Melhuish, author of the EPPE study, stated:

- The [UK] Government reacted [to the EPPE Study] by providing a free early childhood place from the third birthday onwards—15 hours per week.
- The reason it was 15 hours per week is because we had in our sample children who went for five hours, 10 hours, 15 hours, 20 hours, 40 hours, 50 hours, sometimes even, a week.
- What we found was there was an improvement in the effect of preschool up to 15 hours.
- We did find some evidence that for the disadvantaged kids more than 15 hours is extra beneficial. But for the general population 15 hours seems to do the trick. (Melhuish, 2015)

Other research, outlined by ECA in our *Evidence Brief on Two Days of Subsidised Early Childhood Education and Care for all Children*, shows similar results (ECA 2016). On this basis we strongly recommend that the minimum provision be increased to at least two days or 15 hours per week for all children and up to 24 hours per week for disadvantaged children.

There is also a practical problem in providing 12 hours of subsidy. The RIS suggests that 24 hours per fortnight can be applied to two six-hour sessions per week. However, most services operate for a longer period of time to accommodate the working hours of most families—10, 11 or 12 hours per day. Therefore, 24 hours per fortnight is more likely to provide only one day of subsidised care per week.

While ECA is prepared to work with the Government and the sector to try to maximise access for children with only 12 hours of subsidy eligibility, we are very concerned that the majority of providers will not be willing or able to offer shorter sessions and that those who do may need to increase the hourly cost of the service in order to do so—eroding the value of the subsidy for these families and further disadvantaging children whose families are on low incomes.

Recommendations 1 & 2:

Ultimately, ECA believes that children should be eligible to access at least two days of subsidised quality early learning to support their development, regardless of their parents' activity. Within the funding allocated to the package, we have identified a compromise to:

- (1) increase the base entitlement from 12 to 15 hours per week (delivered over 2 days) and**
- (2) increase the household income threshold for this base entitlement from \$67,000 per annum to \$100,000 per annum.**



Aboriginal and Torres Strait Islander children

Budget Based Funded services will transition to mainstream funding under the Child Care Subsidy. These services may also be assisted by the Community Child Care Fund, though legislation does not cover the Fund. The Regulation Impact Statement does not provide much detail, though the Fund is time limited, and this has created uncertainty about the continuity of services for children.

Many Aboriginal and Torres Strait Islander families are currently not engaged in recognised activity, making it difficult for these families to qualify for Child Care Subsidy. The Secretariat of National Aboriginal and Islander Child Care (SNAICC) estimates at least half of the Indigenous parents now using early childhood education and care would not meet the activity test.

The likely consequence of BBF services moving to the Child Care Subsidy model, even with Community Child Care Fund support, will be that many Aboriginal and Torres Strait Islander children who are attending full-time services (up to five days per week) currently will drop back to just 12 hours under the low income result provision (which may be equivalent to one day per week). This is an unacceptable outcome of the transition to the new program.

One in two Aboriginal and Torres Strait Islander children are vulnerable in one or more domains of early childhood development, compared with one in five children in the general population (Australian Government, 2013). The focus of the program therefore must be on improving the participation of Aboriginal and Torres Strait Islander children on current levels. This means funding the growth of services supporting Aboriginal and Torres Strait Islander children is a priority, starting by ensuring existing services have sustainable funding arrangements.

ECA particularly supports Aboriginal and Torres Strait Islander families being exempt from the activity test due to the high concentrations of vulnerability in their communities. Aboriginal and Torres Strait Islander children are more likely to be vulnerable in two or more domains under the Australian Early Development Census (AEDC). In remote communities there is also a lack of work for families to enable them to meet the activity test. Providing an exemption would remove complexity and support greater engagement of Aboriginal and Torres Strait Islander communities in the mainstream subsidy model.

It is still unclear about how BBF services will remain sustainable under mainstream funding. Modelling commissioned by SNAICC and undertaken by Deloitte Access Economics suggests that the proposed reforms will have a disproportionately negative impact on these services, and will cause the most damage in small, regional and remote services. This modelling should be taken into account by the Government when designing the Community Child Care Fund in supporting services to continue to serve their communities.

BBF services still remain out of scope of the *National Quality Framework* (NQF). All Aboriginal and Torres Strait Islander children deserve to have access to quality early learning programs, with the same structural and process quality standards of other Australian children. The Commonwealth ultimately has responsibility for taking leadership in bringing services funded under their own BBF program, under the scope of the NQF. There is still an opportunity to support this outcome in the process of making changes to the Education and Care Services National Law.



We support the Government's approach in working intensively with Aboriginal and Torres Strait Islander services during the transition to new funding arrangements. To provide certainty the Government could commit to outcomes to be achieved for Aboriginal and Torres Strait Islander children as a result of this process.

We suggest that a commitment be provided that all Aboriginal and Torres Strait Islander children are provided with access to 'NQF quality' early learning at, at least the same level of affordability and access of the previous program.

Recommendation 3:

(3) Aboriginal and Torres Strait Islander children are eligible for at least 22.5 hrs of subsidised 'NQF quality' early education with top up funding to ensure the sustainability of Indigenous services in unviable markets where the mainstream subsidy system will not be adequate to ensure continuous service delivery that is affordable for families.

Families with tenuous and variable workforce attachment

ECA recognises that some families will be able to increase their activity to meet the new activity test. However, we are concerned about the children in families facing significant barriers to increased activity including long-term unemployment and limited employment options. We are also very concerned about families in highly variable circumstances where employment is sporadic, unpredictable or unavailable. Many of these circumstances, particularly for higher income/non-income support families will have the consequence of families failing to meet the new activity test.

For these families, a base level of support of two days would be ideal. This ensures that children themselves have attachment to an early childhood service, providing the parent with a crucial precursor for transitioning into work (see Recommendations 1 & 2).

ECA also supports a graduated approach to the activity test to better align the numbers of hours worked with the number of hours provided under the Child Care Subsidy. However, it has become increasingly clear that the three-tiered activity test as proposed may add significant complexity to the subsidy system. In particular, families with changing work hours are likely to find it difficult to reconcile their work arrangements with their eligible subsidised hours.

In response to concerns around parents working variable hours and the eligibility under the activity test, the Government will assist those working casual or irregular hours (such as fly-in fly-out workers or shift workers) so families will be able to estimate their fortnightly average hours of activity over a three-month period. This is a welcome move.

However, some families will have to report their change of circumstances to the Department of Human Services as soon as practicable. This may have the unintended consequence of leaving families with large debts due to sudden and unexpected changes in their circumstances. This especially results from a reduction in the hours of eligible activity undertaken, or a change in family income.



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To ensure that there is a level of flexibility built into the system, we are suggesting that families are provided with up to six weeks to respond to changes in circumstances.

Families initially reporting a low income result should also be able to maintain the same number of hours as an entitlement for the rest of the financial year, though at subsidy rate commensurate with their income. This will ensure continuity of access to early childhood education and care for children on low incomes.

Recommendation 4:

Families are provided with the flexibility of six weeks to respond to sudden and unexpected changes in their circumstances.



Implementation Issues

Children at risk of abuse or neglect

Early childhood education and care services play an important early intervention role. ECEC services may be important protective factors in supporting the child's development and wellbeing in addition to community services that work with at-risk families, and many early childhood services that strengthen families and reduce risk to children.

ECA's primary concerns are that vulnerable children have access to early childhood education and care services. The Additional Child Care Subsidy will only pick up a narrow range of children at risk of serious abuse and neglect. The Bill requires under s204K(1)(3) that an approved provider that gives the Secretary a certificate under 27 section 85CB of the Family Assistance Act must, no later than six weeks after the day the certificate takes effect, give an appropriate state/territory body notice that the provider considers the child to whom the certificate relates is or was at risk of serious abuse or neglect. We note that there are many children who are at risk of abuse or neglect who are not known to state and territory child protection authorities. The Commonwealth will have to work closely with child protection authorities to clarify how these notifications will be treated.

There are also a range of other vulnerable children who are not yet at risk of abuse and neglect, but require early intervention support so that families do not reach this stage of the child being placed at risk. We see early childhood education and care services playing this fundamental early intervention role. However, the Additional Child Care Subsidy would not support these children to access care, unless they are picked up under the 'grandparents' or 'transition to work' components of the payment.

We are concerned about the making of determination of risk of serious abuse and neglect in s85CE(4). If the Secretary neither makes a determination nor refuses the application by the end of the 28 days after the application was made, the Secretary is taken at that time to have refused the application. We believe the intention of the Bill in s85CE(3) is to ensure determinations are made in a reasonable time. However, subsection (4) may place service providers in a difficult position of having to refuse access to an at-risk child. We suggest that time can be extended if a decision cannot be made within 28 days, allowing for a later determination to be made.

Recommendation 5:

The Government provide greater flexibility in the Bill in relation to the time in which a determination of children at risk of serious abuse or neglect is made.



Eligible activity—volunteering

Volunteering plays an important role in strengthening communities and it is a sensible idea to recognise it as an activity. Early Childhood Australia would like to see a broad definition of volunteering provided. We seek clarification from Government on how volunteering will be treated as an eligible activity under the new package.

Age eligibility

There was to be a new age requirement in the legislation for eligibility for Child Care Subsidy that the child is 13 or under and does not attend secondary school. Changes have since been made to allow some flexibility in relation to children over the age of 13 and their eligibility for the Child Care Subsidy. Stakeholder consultations highlighted circumstances where older children who cannot look after themselves (for example, those with a disability) may still require care. To address this, the new Bill introduces a new rule making power that enables the Minister to specify certain groups of children for whom the age restriction may not apply.

Early Childhood Australia maintains that children and young people over the age of 13 are more appropriately accommodated in services that properly cater for older children, recognising that despite having a disability and additional support needs these children still have a right to age appropriate support. For these children to continue to attend a service designed for and primarily attended by younger children is not an appropriate long term outcome.

ECA believes that a transition plan is needed to support children over the age of 13 to move on to age appropriate programs. The current place-based approach of the Department of Social Services *Outside School Hours Care for Teenagers with Disability Programme* is currently too limited to support all of the children affected (For example, there is no site under this Programme in the ACT and many other Local Government Areas LGAs) but could be expanded.

Recommendation 6:

The Government outlines a transition guarantee for children with a disability over the age of 13 to access programs supported by the Department of Social Services.

Maintaining value over the long term - indexation

The indexation models applied to the new system have the potential to exacerbate existing issues with the decline in the real value of government child care assistance.

The current system for indexing Child Care Benefit under Family Assistance Law provides for indexation of the upper income threshold as well as the lower income threshold by CPI.

However in this Bill, the second, third and upper income thresholds will not be independently indexed under the new legislation, as the thresholds are defined by the lower income threshold plus certain fixed dollar amounts, each time the lower income threshold is indexed, the other income thresholds will only increase by the same amount as the lower income threshold.



This means that effectively, indexation could be cut to below 1 per cent for the upper income thresholds (based on average CPI). The result will be that over time, many families experiencing normal wage increases will receive less government support than if the second, third and upper income thresholds were indexed independently. Therefore, the same families will receive less Child Care Subsidy over time. This is an analogous effect to taxation 'bracket creep' and it will affect all families along both linear tapers earning between \$65 710 and \$170 710 and the taper between \$250 000 and \$340 000 (in 2017–18 dollars). For example, a family earning \$145 000 in 2017–18, in just one year, could see a real reduction of their Child Care Subsidy rate by around 0.78 percentage points on the previous year, according to our analysis.

The hourly cap and annual cap will also be indexed year on year to the Consumer Price Index (CPI). However the Government's Legislative Outyears Customisable Model of Child Care (LOCMOCC) figures show that long day care prices are projected to increase by 6.9 per cent in 2017–18 and 6.1 per cent in 2018–19 (Hansard, 2015, p. CA018). As the price growth predicted to more than double CPI, the real value of the Child Care Subsidy will decline for families that attend services with prices above the hourly cap, and for higher income families meeting the annual cap.

To ensure that the level of subsidy provided by the Commonwealth remains effective in meeting the goals of the Child Care Assistance Package over time, we recommend that an independent review is undertaken two years after the implementation.

Recommendation 7:

An independent review of the Child Care Assistance Package is undertaken in July 2019 with a focus on the subsidy level and whether it remains effective in meeting the goals of the Child Care Assistance Package to improve affordability for families.

Families living in high cost markets

Families living in high cost markets are at greater risk of being adversely affected by the new Child Care Subsidy arrangements. The new subsidy cap that applies is linked to an above median price. However in some markets, the median price *in the market* may be one or more standard deviations higher than the national average, exposing some families to higher out-of-pocket costs.

Higher prices may be as a result of a range of market factors including land/rent costs, cost of utilities and labour market factors. The gap fee or out-of-pocket cost for families living in these high cost markets is likely to be much higher, especially families eligible for the maximum subsidy rate of 85 per cent.

To support these families one element of the Community Child Care Fund, funded in the 2015–16 Budget, was 'Access to Affordability Support'. This was intended to target child care services operating in high cost areas, enabling them to apply for funding under a competitive grant process, so they could reduce fees for lower income families.

The Government has now decided not to proceed with this element of the package.



We are concerned that the Access to Affordability Support program is not being replaced with any support for families accessing services in high cost markets.

We agree with the concerns raised in consultations that this element of the program could be administratively complex in terms of implementation, however remain of the view that the issue must be addressed.

The RIS suggests that families in high cost markets should rely on the same subsidy level as everyone else which does not address the affordability issue for these families.

Recommendation 8:

New measures to support low income families living in identified high cost markets be identified and implemented.

Flexibility

The Bill and RIS do not provide much detail about the Government's position in relation to hourly billing, sessions of care and opening hours.

The Government has indicated in the media that it would like to move to a model where parents only pay for what they use. However, the Bill suggests that sessions will still be used as the basis for charging fees, even though the subsidy rate is applied by the hour. Further detail will be contained in subordinate legislation which is yet to be released. Further clarification on how sessions of care will be treated is necessary to assess the impact. Moving to a model where each child attends for their own different 'individual session' of care would be highly complex for staff to administer and may significantly increase costs on an hourly basis, as there are fixed operational costs regardless of utilisation levels.

There are also workforce impacts. We are concerned that educators' work hours would have to be reduced to meet new billing arrangements, with the potential for job losses and less security for the remaining workforce. Educators need to have security of work and we are concerned about the difficulty of attracting staff to fill part-time positions or be rostered for 'odd' times that may result from hourly billing practices. This has the potential to exacerbate existing workforce issues in attracting and retaining skilled early childhood educators.

Significant effects on services from hourly billing include:

- increased fees for families as under the current models, services have fixed staffing costs
- a move to a casualised workforce, which would have industrial implications for permanent staff currently employed under an EA or an Award
- more unemployment of women who currently are employed in the early childhood sector
- a shortage of staff in the sector, as most staff need guaranteed hours of work. It would be even harder for service operators to attract and retain staff—more graduate early childhood education teachers would choose to work in the school sector because of security, better conditions etc.



- inconsistency for children and families if number of part-time or casual staff is increased—relationships and attachments affected
- difficulties in forming cohesive educational teams if staffing is inconsistent
- loss of quality in services if high staff turnover
- more administration with more staff shifts, rosters changing every fortnight depending on fluctuating attendance patterns
- more complex for families to understand—particularly the percentage of capped hourly rates, not the centre's hourly fee (which is most likely to be above the Government capped hourly fee, particularly if the staff are top of the range, experienced or highly qualified).

The Bill will also remove minimum operating hours for services (though there is still a requirement for services to be open 48 weeks of the year). We are concerned that removing the minimum daily opening hours may mean that long day care services are *less* flexible for families rather than increasing flexibility. For example, this has the potential to reduce opening hours to suit a majority of families but still may affect the minority of families that use longer hours. This is particularly the case in long day care where the minimum operating hours are currently eight hours per day. It is important that the impact of this micro-policy measure is monitored once the package is implemented.

Notwithstanding the above concerns, we do think that this will benefit rural and remote services to be viable and indeed sustainable as they can provide services at times or days to suit the needs of the community they serve and potentially reduce overheads.

Recommendation 9:

Sessions of care are determined by services to meet local demand, not on the basis of the actual hours used by children.



Grandparents

Early Childhood Australia welcomes the continuation of fee relief under Additional Child Care Subsidy (grandparent) for grandparents who are primary carers of their grandchildren.

Registered Child Care Benefit (CCB) will be abolished under the new package. ECA had concerns about Registered CCB because it was not providing meaningful fee relief for some families, and the subsidies were not being provided to NQF regulated services. However, the abolishment of Registered CCB could mean some families may not be able to afford access to services under the new package.

Parents transitioning to work

Early Childhood Australia welcomes provision for support under Additional Child Care Subsidy for parents transitioning to work. This is a replacement for the current Jobs Education Training (JET) Child Care Fee Assistance. JET eligibility includes those parents who are on the following payments:

- Farm Household Allowance
- Parenting Payment
- Partner Allowance
- Widow Allowance
- Carer Payment
- Widow B Pension
- means tested ABSTUDY
- Newstart Allowance
- Youth Allowance as a job seeker
- Special Benefit where you would qualify for Parenting Payment or Newstart Allowance but you do not meet the residency requirements.
- While many of these payments are still included for eligibility under Additional Child Care Subsidy (transition to work), the Bill is not clear whether 'a transition to work payment' includes:
 - ABSTUDY
 - Austudy
 - Farm Household Allowance
 - Partner Allowance
 - Widow Allowance
 - Carer Payment
 - Widow B Pension
 - Special Benefit where you would qualify for Parenting Payment or Newstart Allowance but you do not meet the residency requirements.

We seek clarification on whether additional payments, including the above, will be included as a transition to work payment under the Minister's rules (see Recommendation 14).



Transition

Early Childhood Australia believes that the complexity of the change to shorter sessions for low income families with base entitlement as well as the potential move to an hourly or utilisation based billing model necessitates a program of transitional support for early childhood services. A program might support services on how to roster with children attending and being billed for different sessions, and how to set appropriate hourly fees based on these variables.

The Government's new Information and Computer Technology System (ICT system) accompanying the Child Care Assistance Package also requires support. While the new ICT system has the potential to reduce regulatory burden for services and be less complex than current interfaces with the Government's Child Care Management System (CCMS), a change to any new ICT system requires training and support, and assumes a level of ICT literacy and investment by services to implement the system. It is currently unclear how the roll out of this technology will take place, including what the role of third party software providers will be.

In the past, several transition programs have been funded for much smaller regulatory changes such as for child to staff ratio changes under the NQF and the recent changes to the Community Support Programme for family day care services. The complexity of the Child Care Assistance Package justifies similar support to ensure that the transition is smooth for services and families.

Recommendation 10

A transitional support program is funded to support services before, during and after the transition to the Child Care Assistance Package.

Service approvals

A fundamental principle of the current subsidy system is that it is demand driven and that service approvals are uncapped. The uncapped service approval system ensures that providers meet conditions of approval. However, once these conditions are met, new services and their families can attract child care assistance, and this approval is not subject to a cap by the Government. This enables service providers to respond to local market demand, particularly in meeting child care shortages, by opening new services or expanding the number of places available by amending service approvals.

This system has not always been perfect and market failure still exists in some areas, especially where demand continues to outstrip supply, or in areas where there are too many services. ECA has argued for a greater role by governments in planning for meeting the increasing demand for early childhood education and care services.

However, ECA would not like to see arbitrary caps placed generally on services, particularly in areas of significant market demand. We seek clarity from the Government in Minister's Rules or other subordinate legislation in relation to what must be considered in relation to the allocation of places under s198A.



Early Childhood Australia supports efforts to tighten compliance on unscrupulous providers and sharp practice. In these cases caps may be warranted if it is targeted and would not adversely impact children and families' participation in early childhood education and care.

Specific provisions

85GA Funding agreements

We welcome references in this Bill to meeting Australia's obligations under the Convention on the Rights of the Child under s85GA (1)(b)(ii). However, we are concerned that omitted from the specific reference is children's right to education under Article 28. The intention of this package should not only be to provide child care for children of working parents (Article 18) but also to ensure that young children have access to early childhood education programs. We believe that Article 28 should be expressly mentioned regardless of whether the legislation relies on the welfare power.

Definition of a 'centre-based day care service'

ECA is concerned that this Bill creates a loophole for poor quality early childhood services to become eligible for Commonwealth subsidies. This Bill has effectively abolished the definition of long day care, which now forms part of a broader definition 'centre-based day care', together with occasional care.

What this means is that occasional care is included under the subsidy system, and long day care is effectively treated the same, with limited regulation on daily opening hours etc. In principle this is fine, but it may have unintended consequences.

We are still concerned that long day care services can theoretically opt out under state/territory legislation and become out of scope occasional care services (if they operate on an ad hoc or casual basis) so that they don't have to meet certain NQF requirements. These services will still be able to attract Commonwealth subsidies.

We are particularly concerned that these services may not be subject to the assessment and rating process or early childhood teacher requirements.

These concerns have been raised with the Commonwealth and the states. The appropriate place to deal with this issue is through the Education and Care Services National Law, not this package.

The NQF Review is considering which service types are considered within the scope of the NQF. Given the potential of a loophole, it is now critical that occasional care is included within scope of the NQF. This is a shared responsibility of both Commonwealth and state and territory governments.

Recommendation 11

The Education and Care Services National Law be amended to include occasional care within scope of the National Quality Framework.



Subordinate legislation

The *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015* only outlines a framework for the operation of new government child care assistance. It does not provide a full view of the substantive policy as is proposed to be enacted through subordinate legislation.

Minister's rule making powers are provided under proposed s85GB. Specific references to Minister's rules in amendments to the *A New Tax System (Family Assistance) Act 1999*, which are yet to be made or provided, include:

- s2—Hourly rate of Child Care Subsidy
- s4—Activity-tested amount of Child Care Subsidy
- S4A—Large centre-based day care providers
- s10—Sessions of care—allowable absences
- s11—Individual's activity test result
- s14—Minister's rules result
- s16—Provider's deemed activity test result
- s67EB—Payments to providers of individuals' entitlements to CCS or ACCS by fee reduction
- s85CA—Additional Child Care Subsidy—Eligibility for ACCS (at risk)
- s85CB—Certificate of risk of serious abuse or neglect
- ss85CG, 85CH and 85CI—Additional Child Care Subsidy—Temporary financial hardship
- s85CK—Additional Child Care Subsidy—Transition to work
- s85EA—Limitations on eligibility for child care subsidy and additional child care subsidy
- s85ED—No eligibility for child who is in care of State or Territory or member of prescribed class
- s85GA—Funding agreements
- s194A—Application for approval
- s194C—Provider eligibility rules
- s194D—Service eligibility rules
- s194E—Fit and proper person considerations
- s195C—Conditions for continued approval—operating period for each approved child care service
- s195E—Condition for continued approval—compliance with conditions imposed by Minister
- s195H—Consequences of breach of conditions for continued approval
- s196A—Application to add or remove service
- s196C—Removing a service on application
- s197C—Cancellation on request
- s198A—Allocation of child care places to approved child care services
- 199F—Certain providers not required to comply with requirements
- s199G—Minister's rules in relation to backdating of approvals etc.
- s200B—When a child is enrolled
- s200C—Variation of complying written arrangements
- s200D—Updates in relation to enrolled children
- s204B—Requirement to report for enrolled children
- s204F—Requirement to notify Secretary of certain matters



- s204G—Requirements prescribed by Minister’s rules in relation to children who are members of a prescribed class
- s205A—Business continuity payments
- s230A—Application of family assistance law to providers that are partnerships

We believe that this subordinate legislation requires scrutiny as the impact of the package is not clear from reviewing the primary legislation. Some consultation is currently occurring on draft Minister’s rules and it is important that this occurs.

Recommendation 12

All draft subordinate legislation is published for review before the implementation of the Child Care Assistance Package.



Summary of recommendations

Recommendations 1 & 2:

Ultimately, ECA believes that children should be eligible to access at least two days of subsidised quality early learning to support their development, regardless of their parents' activity. Within the funding allocated to the package, we have identified a compromise is to:

- (1) increase the base entitlement from 12 to 15 hours per week (delivered over 2 days) and
- (2) increase the household income threshold for this base entitlement from \$67,000 per annum to \$100,000 per annum.

Recommendation 3:

Aboriginal and Torres Strait Islander children are eligible for at least 22.5 hrs of subsidised 'NQF quality' early education with top up funding to ensure the sustainability of Indigenous services in unviable markets where the mainstream subsidy system will not be adequate to ensure continuous service delivery that is affordable for families.

Recommendation 4:

Families are provided with the flexibility of six weeks to respond to sudden and unexpected changes in their circumstances.

Recommendation 5:

The Government provide greater flexibility in the Bill in relation to the time in which a determination of children at risk of serious abuse or neglect is made.

Recommendation 6:

The Government outlines a transition guarantee for children with a disability over the age of 13 to access programs supported by the Department of Social Services.

Recommendation 7:

An independent review of the Child Care Assistance Package is undertaken in July 2019 with a focus on the subsidy level and whether it remains effective in meeting the goals of the Child Care Assistance Package to improve affordability for families.

Recommendation 8:

New measures to support low income families living in identified high cost markets be addressed by increasing Child Care Subsidy rates for families affected.

Recommendation 9:



Sessions of care are determined by services to meet local demand, not on the basis of the actual hours used by children.

Recommendation 10

A transitional support program is funded to support services before, during and after the transition to the Child Care Assistance Package.

Recommendation 11

The Education and Care Services National Law be amended to include occasional care within scope of the National Quality Framework.

Recommendation 12

All draft subordinate legislation is published for review before the implementation of the Child Care Assistance Package.



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