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A voice for young children

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

*Inquiry into the provisions of the **Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015***

Senate Standing Committee on Education and Employment
Early Childhood Australia

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.



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Introduction

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 2015*.

This is an important inquiry to fully assess the impacts of the Child Care Assistance Package on children, families and early childhood services. This 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 over \$3.2 billion over four years. It is a substantial investment in improving access to early childhood services for working families.

We believe that the new Jobs for Families childcare legislation will improve access to early childhood services for many working families but we are concerned with the complexity of the package for families in insecure work or who cannot accurately predict their income.

ECA also welcomes the continued growth in the overall number of children accessing childcare places supported by the Child Care Assistance Package. However, we are concerned about the effect of the activity test on children's participation in early childhood education and care (ECEC). 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 also critical to Australia's future prosperity. In fact we now know that vulnerable children's participation in quality early learning alone would add \$13.3 billion to GDP by 2050. 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 is seen through the lens of what it is in children's interests—an obligation that we all have under the Convention on the Rights of the Child. However, we believe that the package is yet to strike a balance between supporting workforce participation of parents and getting better outcomes for all children.

The Bill does not provide a complete picture of the operation of the new Child Care Assistance Package, read with decision Regulation Impact Statement (RIS). To date, there has not been enough detail provided in the RIS on the aggregate or individual impact of these changes on children, families and services. Much of the operational detail of the package is also contained in Ministerial rules which have not been released, yet these are critical policy elements of the package.

With these limitations in mind, we have provided recommendations which we believe will strengthen the package, particularly to support children's interests. We would like to see the package passed with these amendments.



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Assessing the impact of the changes

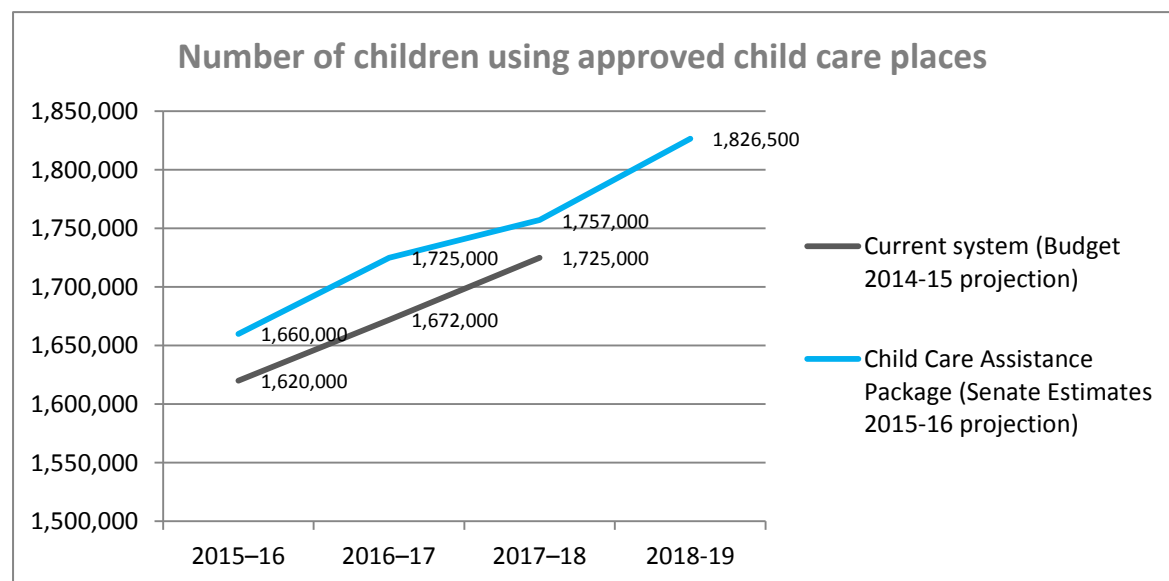
The changes contained in the Child Care Assistance Package hold significant gravity for children's access and participation in early learning. It is pleasing to see that the changes are likely to see the total number of children and families using early childhood education and care grow following the introduction of the package.

However, we would like to see information on the aggregate impacts of the Child Care Assistance Package on children, families and services, as the Regulation Impact Statement (RIS) did not adequately 'identify who is likely to be affected [by government policy], what is the nature of the impact they will experience' (DPMC 2014, p.18). Instead, the RIS focused on the manner in which the commitment should be implemented focusing on micro-policy elements of the package, despite the core policy not being an election commitment. As a result, there is not enough information provided by the Government in the RIS on the details of the proposed package, making it difficult to assess how many children and families will be able to access early learning over the next four years as a result of these measures, and how many will miss out.

Impact on children

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.

While very little information was provided in the RIS regarding the number of children accessing early childhood education and care, information was presented by the Government during Senate estimates (Hansard, 2015, p. CA018). This shows the total number of children using child care over the forward estimates under current Government Child Care Assistance and the new Child Care Assistance Package from 1 July 2017.





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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.

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])



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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.

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.

Recommendation 1

All children are provided with access to at least two days of subsidised quality early learning to support their development, regardless of their parents' activity.



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Low income result

Hours of provision

ECA still 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.

There is research showing 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)

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.



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Recommendation 2

The 'low income result' provision for families earning under \$65 710, not meeting the activity test, is increased from 24 hours per fortnight to 48 hours per fortnight.

For families earning over \$65 710, not meeting the activity test, the minimum provision is increased from 0 hours per fortnight to 30 hours per fortnight.

Supporting 'low income result' children

We are also particularly concerned about disadvantaged children being excluded from services because of their status as 'low income result' children.

There is a risk that services will provide places to children attending full time ahead of children attending for only 12 hours per week. Children with a 'low income result' are likely to be much more costly for services to accommodate because of the need for expensive, shorter sessions. It may be more profitable for services to provide access to children attending for more than 12 hours.

The decision to 'Change POA to focus only on children at risk of serious abuse or neglect (who attract the Additional Child Care Subsidy) and children whose parents are working' may also be used as a barrier by services to exclude 'low income result' children who can only access 12 hours per week of subsidy, in favour of families meeting the activity test. While the Department states 'that there is little evidence that the existing POA Guidelines are being effectively implemented', the new low income result of 24 hours per fortnight may act as catalyst for services to use the POA Guidelines in a way that is contrary to their original intention.

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.



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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 3

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 is 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.

Early Childhood Australia does not believe that children and young people over the age of 13 fit into an early childhood or child care program. However, these older children and young people, many of which have disability, must be provided for through a separate program which supports their needs. ECA is very concerned that funding to support children over the age of 13 that are currently receiving Child Care Benefit will cease, with no program that can support their needs.

ECA welcomes the Government's efforts in supporting the transition of these children to other programs. We would appreciate further advice on exactly how children will transition to new programs to ensure families are not worse off.



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The current place-based approach of the Department of Social Services *Outside School Hours Care for Teenagers with Disability Programme* is far too limited to support these children. For example, there is no site under this Programme in the ACT and many other Local Government Areas (LGAs).

Recommendation 4

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.

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 which 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 families 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. We understand that SNAICC has commissioned independent modelling on a range of different BBF service types. 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.



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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 when draft changes to the Education and Care Services National Law are announced this year.

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 5

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 while improving overall participation.

Impact on families

Complexity

One of the key principles that ECA originally put to the Productivity Commission was to remove the complexity of the current system for families and providers. However, we are concerned that the Government's package increases complexity for families as well as service providers.

The proposed activity test is very complicated, with four tiers and multiple exemptions. Despite there now being only one payment, Child Care Subsidy is also now determined by two tapers in five tiers, annual and hourly caps, with differing rates for each service type.

The result is that families will continue to find it difficult to understand how much support they receive from the Government, and importantly, how increasing their level of work might be assisted by the Government.

This complexity would be reduced by providing a minimum level of access to all children and adjusting the activity test (see Recommendation 1).

Affordability

ECA believes that the new Jobs for Families childcare legislation will improve access to early childhood services for many working families.



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The Government has stated that ‘on average, families with annual incomes of between around \$65 710 and around \$170 000 will be around \$30 a week better off’. Some tables were also provided in the Budget around how families will fare on different incomes.

This does not provide an adequate assessment of how families in other situations will fare under new subsidy arrangements and since the Budget there have been changes to the Child Care Assistance Package, with the subsidy to drop from 50 per cent to 20 per cent for families who earn more than \$340 000. It is therefore important for full, up to date ‘cameo modelling’ to be provided which allows families to assess how they are affected under new arrangements.

We support the new measures regarding changes to the Child Care Subsidy upper income thresholds. This will only significantly impact higher income families. We would not like to see the thresholds reduced any further as this would begin to impact on a much more significant number of families.

The new arrangements to the upper thresholds will see a saving of up to \$441 million. We would like to see the savings from these changes reinvested in providing increased provision for all children, and particularly children from low income families, in line with the recommendations of this submission.

Recommendation 6

The Government releases official cameo modelling on the impacts of the new Child Care Subsidy for families on varying incomes and numbers of children, and attending services with different session lengths and prices, compared with Child Care Benefit and Child Care Rebate modelled for the same financial year.

Caps on subsidy hours and the activity test

We see a particular issue with the first tier of the activity test which only provides up to 18 hours per week subsidy for families with over four hours of eligible activity. The result is that families attending for two standard 11-hour long day care sessions may be considerably worse off than current Child Care Benefit and Child Care Rebate arrangements, as some of these hours would no longer be subsidised. To limit the impact on families we suggest that this level of provision is increased to at least 22 hours per week.

Recommendation 7

The first tier of the activity test is increased to 22 hours per week or 44 hours per fortnight to improve affordability for families accessing standard hours services.

Threshold 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.



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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.

Hourly and annual cap indexation

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 8

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



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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 would be administratively complex in terms of implementation. Part of the reason for this was that fee reduction was to be funded through block grants directly to service providers.

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. As a result, families living in high cost markets will face a significant price barrier to accessing quality ECEC services, including the most disadvantaged families.

This should be dealt with through the mainstream subsidy rate rather than as a grants program. We suggest that low income families living in identified ‘high cost markets’ be provided with a greater Child Care Subsidy rate or ‘top up’ rate.

Recommendation 9

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

Families with loose 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.



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Families with variable work hours

ECA 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.

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 10

For families on the 24 hour entitlement support is quarantined for the full financial year so children maintain access to and benefit from early learning and to ensure parents do not incur debts or experience significant reductions in hourly entitlements.

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

Flexibility

The Bill or RIS does 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



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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).

Recommendation 11

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

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



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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.

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



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- 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).

Impact on services

Transition

Early Childhood Australia believes that the complexity of the change to hourly billing models 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 12

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



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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.



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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 Decision RIS has not been released at the time of writing. 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 13

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



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- 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

Key operational and policy features of the package will be contained within subordinate legislation. We believe that this subordinate legislation requires scrutiny as the impact of the package is not clear from reviewing the primary legislation.

Recommendation 14

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



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Summary of recommendations

Recommendation 1

All children are provided with access to at least two days of subsidised quality early learning to support their development, regardless of their parents' activity.

Recommendation 2

The 'low income result' provision for families earning under \$65 710, not meeting the activity test, is increased from 24 hours per fortnight to 48 hours per fortnight.

For families earning over \$65 710, not meeting the activity test, the minimum provision is increased from 0 hours per fortnight to 30 hours per fortnight.

Recommendation 3

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 4

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 5

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 while improving overall participation.

Recommendation 6

The Government releases official cameo modelling on the impacts of the new Child Care Subsidy for families on varying incomes and numbers of children, and attending services with different session lengths and prices, compared with Child Care Benefit and Child Care Rebate modelled for the same financial year.

Recommendation 7

The first tier of the activity test is increased to 22 hours per week or 44 hours per fortnight to improve affordability for families accessing standard hours services.

Recommendation 8

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.



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Recommendation 9

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 10

For families on the 24 hour entitlement support is quarantined for the full financial year so children maintain access to and benefit from early learning and to ensure parents do not incur debts or experience significant reductions in hourly entitlements.

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

Recommendation 11

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

Recommendation 12

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

Recommendation 13

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

Recommendation 14

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



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