

ACA Submission to Red Tape Committee 2018

Inquiry: Effect of red tape on childcare



Australian Childcare Alliance



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Introduction

This submission was put together in response to the Senate's call for submissions to the Red Tape Committee regarding the effect of red tape on Early Childhood Education and Care (ECEC) services.

The Australian Childcare Alliance (ACA) appreciates the Red Tape Committee's invitation to provide a submission. We are gratified that the ECEC sector was identified as an area of particular concern regarding the effect of restrictions and prohibitions on business (red tape) on the economy and community. ACA welcomes the opportunity to contribute our views and experiences to this discussion.

As the national peak body in the Australian Early Childhood Education and Care (ECEC) sector, the Australian Childcare Alliance (ACA) represents more than 2,500 members and approximately 360,000 families throughout Australia. We work on behalf of ECEC Approved Providers and operators, predominantly private, to ensure families have an opportunity to access affordable, quality ECEC throughout Australia.

The ACA has existed in various forms for more than 30 years. Our experience means that we understand the critical role a quality ECEC program plays in the life of families and the importance of a viable ECEC sector in preparing children for the best start in life and learning.

ACA's national and state bodies work collaboratively with all levels of government, regulatory bodies and other stakeholders to ensure that families are supported into the future with a sustainable, affordable and viable sector.

This submission paper reviews the existing ECEC services operating environment, as well as anticipating future changes to the sector, to identify the three main areas that we believe contribute to (or will contribute to) red tape in the ECEC sector; these are the new Child Care Subsidy (CCS), the National Quality Framework (NQF)/Standards (NQS) and the required business administration for the ECEC services sector.

We acknowledge that many of the administrative ('red tape') measures affecting our sector, particularly under the NQF, intention is to contribute to greater quality in ECEC services, increased uniformity, long term positive outcomes for children and families, and overall a stronger ECEC sector.

However, it is important to understand that sometimes regulatory requirements come at a cost that are inevitably passed onto families reducing affordability. Where it is possible to identify potential changes in burdensome processes or where expectations are excessive or not in line with the practical operating environment, ACA strongly supports all efforts to reduce these impacts and improve efficiencies.

ACA also stresses the need to revisit the impact of the new Child Care Subsidy (CCS) on the ECEC sector's operations in the immediate aftermath of implementation, to ensure that all repercussions have been identified and where possible improved.

Child Care Subsidy

On July 2, 2018 the new Child Care Subsidy (CCS) will be implemented across Australia with far reaching impact on the operation of Early Childhood Education and Care (ECEC) services.

Whilst it is acknowledged that such a significant change in funding arrangements for families will result in changes in operational and administrative practices for services during the transitional period, ACA has significant concern about the ongoing administrative burden of many of the changes required to comply with the new legislation.

The changes required to support the new subsidy model will significantly increase operating costs and in many cases will require the employment of additional administration staff and/or the need to implement technological solutions. Both outcomes carry a financial burden to services which will inevitably result in these costs being passed onto families.

Complying Written Arrangements (CWA)

The new legislation requires a formal Complying Written Arrangement (CWA) to be negotiated and agreed between service provider and families. It has been advised that the CWA is intended to make clear the financial agreement between service provider and parent in a contractual sense.

ACA disputes the need for such an arrangement in centre-based Long Day Care services where the session costs at a centre are clearly advertised, and a parent is certain as to the number of days they attend – documenting their agreement in the enrolment forms. It appears the introduction of such an arrangement aims to crackdown on rorting that has occurred in the Family Day Care sector. Unfortunately the result is the imposition of an administrative burden on **all ECEC services** receiving CCS on behalf of Australian families, regardless of service type.

For clarity, on enrolment at a centre based long day care service currently families sign a form acknowledging their responsibility to pay fees with a reference to the service's fee policy. This is a 'one time only' requirement which does not need modification if a parent changes the care arrangements of a child at a centre based long day care service.

Parents are acutely aware of their fees and attendance patterns and are quick to identify any incorrect charges via the regular statements that service providers are required to provide. The additional burden to a service provider and family having to adjust the CWA for every change in circumstances is unnecessary and will create additional administration for all stakeholders.

Enrolment Notices

Under the new CCS regime, the second part of enrolment within an ECEC service requires the service provider, using the information contained in the CWA, to create an enrolment notice in authorised third-party management software. This notice is then sent to families by Centrelink for them to confirm that the data matches that held within the CWA. If a family disputes this information or fails to respond to this request, the relevant service provider will not receive subsidy on behalf of the family until the issue is resolved.

This means that between the CWA and confirmation of Enrolment Notice a family must agree twice - once with service provider and once through Centrelink - before subsidies can be paid. This process is not only overly officious but will create a significant administrative burden for service providers and Nominated Supervisors in chasing families to complete the requisite tasks. These tasks are in addition to the initial application by families to determine eligibility for the CCS.

Statement of Entitlements – Reporting of Actual Attendance Data

Under current Family Assistance requirements service providers have always been obliged to provide statements of entitlement to families with specific information mandated to be reported. The Child Care Subsidy Secretary's Rules 2017 increase the amount of information that is mandated for reporting.

Of particular concern is the need for service providers to provide to families and government the actual attendance time of children on the statements. This increased administrative requirement is likely to cause significant difficulty in its implementation, along with increased costs to service providers and therefore increased costs to families. In order to comply with this requirement, service operations will have to adopt one of two following actions:

- 1) Implement a technological solution (ie. buy new hardware/software) to address the relevant data requirement
- 2) Manually enter the data on a weekly basis

Both solutions are problematic and will create an administrative burden.

The technological solution requires significant initial capital investment in hardware which is estimated to cost approximately \$1000 - \$1500 per hardware solution/terminal at inception. It is not unreasonable to suggest that for every 25 licensed places at a service an additional terminal would be required. For service providers with a capacity of 100 or more children being common place, this cost is significant. In addition to this cost, service providers will also need to pass on the cost of training staff in the new software, along with ongoing software subscription fees.

Furthermore, in a practical sense, service providers cannot enjoy the benefits of a free market as they are limited to choosing a solution that is compatible with their current childcare management software, unless they decide to move all their software across to a new software provider – a high involvement exercise which brings with it operational risks.

As the resources of ECEC service providers will already be significantly stretched by the transition to a new subsidy system and the need to guide their families through these changes, the task of implementing a new reporting system during this time is something that many service providers will seek to avoid. In this context, service providers that choose to use the product attached to their current software in order to ensure a seamless transition will be at the mercy of whatever their existing provider decides to charge.

Those service providers that choose to manually enter the data, will have to allow for a significant number of additional hours each and every week that would be much better served supporting Educators and children. In a service with 100 children this will mean that the centre will need to manually enter **1,000 attendance periods per week**. This will increase human resourcing costs for administration staff by **4 to 6 hours a week**.

In most services the Nominated Supervisor is the only person employed to undertake all administrative tasks and holding 'management responsibility' as defined under the new system, meaning there is no option to delegate the task onto somebody else. Considering a Nominated Supervisor is often the highest paid employee, the additional costs will be significant.

Inclusion Support Program

In 2016 the Inclusion Support Program (ISP) of the Jobs for Families legislation was introduced to the ECEC sector. The ISP replaced the Inclusion Support Subsidy by providing financial support for services to employ an additional educator for parts of the day when children with additional needs were attending an ECEC service.

This investment by government was an important step for supporting these children, as previous subsidies did not come anywhere near covering the cost for employing additional Educators. However, the onerous requirements to complete an application for funding, as well as the farcical requirement of the AUSkey for authentication purposes, has caused significant problems for services and thus affected the access to high quality ECEC for these children. Children who require quality inclusion the most

The need for an AUSKey caused significant difficulty for many service providers. Given the broad range of management structures in place for ECEC services, be they private entities, parent committees, not for profit organisations and local government, the challenge of determining who was the authorised contact on the Australian Business Register (ABR) was the initial problem.

Once this was determined the registered individual would then need to create an AUSKey for the personnel administering the Inclusion Support Portal at an ECEC service. The AUSKey could inadvertently allow these personnel to access other government websites and services using this authentication process.

If services successfully navigated their way through the tedious AUSKey process, the requirements for application were also excessively onerous. As it stands, each new application requires at least **6 hours to complete**. Again, this role is largely managed by a Nominated Supervisor.

Given the authentication required to access the portal, there is no possibility for this role to be completed by anybody else. The process requires consultation and information gathered by contact Educators as well as engagement with an Inclusion Professional to complete the process. Once all is completed the application can be sent to the Department of Education and Training (DET) for approval. The application has very specific data requirements and can often mean multiple requests for more information which not only require a service to complete but also for the Inclusion Professional to endorse.

The portal itself has also been problematic, with the server constantly crashing and services reporting that hours of work was lost in a single key stroke. The Help Desk has since acknowledged the problem and suggested that services complete the information in a Word document and then cut and paste the content into the portal. Many ACA members expressed their frustration with losing data after hours of attempted input, and many gave up on the process, resulting in no receipt of ISP funding.

Ultimately the onerous requirements both to set up and administer the ISP process has meant that many services do not apply for the available funds, and thus children who would benefit from this important funding are missing out on the opportunity for much needed additional support.

Activity Test - Impact on Payment of CCS

The Child Care Subsidy (CCS) was introduced with the intention of simplifying parent payments in relation to ECEC by combining the existing two payments, Child Care Benefit (CCB) and Child Care Rebate (CCR). In theory a single subsidy should make for a simpler system, but the Activity Test significantly contributes to making what is intended to be a simpler system far more complicated than the current process.

With a parent(s)'s work activities determining the number of hours of subsidised access and four different steps in the activity test, services providers will need to create a large number of different billing arrangements that tie in with this new assessment process.

The Activity Test allocates the number of subsidised hours over a **fortnight**. However, most services lodge session reports on a **weekly** basis. This may create a situation in which parents will have different out of pocket expenses from one week to another even when they have used the same number of sessions in each week.

An example is as follows:

- 1) Session reports are lodged weekly
- 2) Parent entitlement is based on fortnightly hours of subsidy e.g.: 36
- 3) Child attends 2 days/sessions per week
- 4) Service session is 10 hours

Assumptions: rs International Report: Child Care Australia's Burgeoning Real Estate Investment Class 2016

- 1) Parent receives 20 hours of CCS in week 1 of fortnight
- 2) Parent receives 16 hours of CCS in week 2 of fortnight

Outcome:

- Parent will have different out of pocket expenses each fortnight

This payment process is completely different to the current subsidy environment and will cause chaos for many Australian families as they will be unable to budget for a consistent payment amount. The problem has been raised directly with DET with the answer being that it is the responsibility of service providers to come up with a business solution to stop this from occurring. It seems ridiculous that this would be allowed to occur and impact the cashflow of Australian families in this way, and to create such confusion and administrative burden.

National Quality Framework/Standards

ACA remains supportive of the National Quality Framework (NQF) and its intent to deliver better educational outcomes for children. At its core the NQF was also intended to reduce problems that arose from a disparate set of regulations with each jurisdiction previously having its own regulatory environment for ECEC services.

It is a falsehood to suggest, however, that the NQF has truly delivered a consistent set of laws and regulations that is implemented in each state, as each jurisdiction applies different regulations in relation to educator to child ratio and qualification requirements.

In SA and Tasmania the National Law is also applied differently within the jurisdiction across different service types. Ultimately, if one of the important outcomes of the NQF was delivering a Nationally consistent set of regulations then by this assessment criteria it has failed.

With respect to the existing level of red tape involved in compliance, a lot of the red tape is involved in either meeting the onus of proof required to satisfy regulations and building up an evidence trail to demonstrate compliance to external authorities.

The burden of meeting these regulations via the recording and documentation of data, has decreased the amount of time early childhood Educators can dedicate to their primary task of implementing the early years education and care of the children.

This observation does not aim to undermine the importance and relevance of the NQF in raising quality but rather to estimate the associated documentation and administrative costs demanded of Educators in order to comply with the NQF.

This includes:

- Documenting programming, observations, communication of child's progress to parents on a daily basis
- Documenting reflections and the cycle of programming, detailing the links between activities and outcomes
- Documenting how activities and experiences reflect the outcomes of the Early Years Learning Framework
- Documenting accidents, incidents and any notifications
- Documenting children's illnesses
- Documenting children's immunisation status as it changes across time
- Documenting educators/ECTs qualifications and compliance with various legislated requirements

- Documenting Educators' ongoing professional development
- Documenting communications with parents
- Documenting all parent meetings
- Documenting feedback on policies and procedures which need to be reviewed and shared with parents annually
- Documenting all staff attendance and movements to prove compliance with ratios
- Documenting the responsible person onsite
- Documenting community involvement
- Documenting risk assessments
- Documenting QIP and progress reporting
- Documenting Education leader's activities
- Documenting staff meetings

At the core of working with young children is the important role of quality interactions with each child. The NQF and National Quality Standards (NQS) create an environment whereby significant focus must be made to comply with its administrative requirements. ACA believes that there are important compliance measures which need to be documented. However, the sheer breadth of requirements that both the NQF and NQS mandate are significant and it must be recognised that this comes at a cost to families by virtue of fees, and to the taxpayer by virtue of Government subsidies. Please refer to our case study for an in-practice understanding on the cost impact of compliance.

As ACECQA would no doubt point to within their own submissions, attempts have been made to reduce some of the complexities to the administrative burdensome components of the NQF however, it took almost five years from the inception of the NQF for those initial changes to be enacted into law.

Beyond some useful changes which were deemed to be excessive in their administration, it also leads to a reduction in the NQS standards reducing the total number of standards from 58 to 40 and elements from 18 to 15.

With changes to the NQF being introduced in October 2017 and the implementation of the new National Quality Standards in February 2018 services were provided with new guidance material to help implement these changes. The *'Guide to the National Quality Framework'*, a supporting document which we are told should be read in conjunction with the national law and regulations, was released in the form of approximately 600 pages. Considering the NQF and NQS changes were relatively minor amendments to the law it seemed incredulous that such a significant supporting document to the actual laws and regulations was required.

As is always the case, the devil is in the detail and the operational requirements of services had significantly increased throughout the guide to document. It is not our objective to determine the merit or otherwise of these changes but rather the significant demand on services to initially read and absorb the guide document, reflect on the areas for change within their own context and then rollout such changes and embed them within each service be they policy or procedural requirements.

The resultant additional training required to educate the workforce both in actual hours and the need to provide additional ongoing professional development results in both a financial and human resourcing impact on service providers. Coupled with changes faced by the introduction of the Child Care Subsidy, services are stretched to effectively manage and deliver both concurrently. This also comes out a time when professional development which had previously been supported by Government through various programs (LDCPDP), is no longer the case.

The assessment and rating process is also a time of increased administrative burden within a service. Whilst again this is not an argument on merit of this process, as the need for external validation and guidance is extremely important at ensuring ongoing improvement, it cannot be refuted that this process also stretches the resources of service providers. This process can also be frustrating to service providers with its subjective nature and resultant differing interpretations both between and within jurisdictions resulting in no clear guidance as to what may be expected from an assessing Authorised Officer. As mentioned previously, the current manner of Assessment and Rating (A&R) in some jurisdictions is more punitive than resourceful.

The value of National Regulations may then be brought into question? When the National overseeing body ACECQA has been questioned on this previously, they have stated that each jurisdiction can interpret and enforce according to their own determinations.

The paperwork that is required as evidence to meet the Assessment and Ratings (A&R) process is growing exponentially. The increased demand on providing evidence of reflective process across all seven Quality Areas is new and if the process is applied as written, the requirements for ongoing written evidence of such practice is particularly onerous.

When a change to documentation is made, it follows that these changes must be explained through discussion and more intensive training to Educators in the sector, families and in other instances, the children. With every policy that has to be reviewed there is a paper trail of other documentation that needs to fall behind that, created and implemented with training to support the Educators. This also increases the paperwork regime of the Educators and administrators, Nominated Supervisors and Approved Providers.

The government must acknowledge the increase of paperwork and stress that has been introduced to the sector over the past 10 years. It is disappointing when our governing body minimises this by stating that paperwork has reduced. We do not disagree that the sector must be regulated however, the intense scrutiny of documentation by the Assessment and Rating (A&R) process is causing Educators, Nominated Supervisors, Approved Providers and therefore the children, significant stress.

The different approaches within Australia are significant with some jurisdictions taking a strengths-based approach rather than a punitive approach by others. The different approaches can cause impact on red tape within the Australian context.

Case Study

The following example is actual data from an operator who owns two ECEC services having capacities of 95 and 45 places. Both services have been rated as 'Exceeding' the NQS.

The owners have been operating the larger service for over 20 years, and the smaller one (re opened after the Department of Education closed in 2013) since 2014. They have long staff tenure (vital for quality relationships with children and families) with around 40% of the Educators being employed for 10 years or more.

The services are located in the suburbs of Adelaide, around 10kms from the CBD. With around 200 families across the two centres, there is a mix of cultural backgrounds – including Asian, European, Russian, new immigrants with refugee status and three children with additional needs.

This service has found that the difficulty with the NQF red tape elements is unravelling the records/ reports and activities from the essential core activities that deliver the intended NQF quality outcomes. The Approved Provider estimates the following percentage of time is spent on developing, recording storing and sharing evidence of compliance to demonstrate to 3rd parties such as ACECQA, the local council, CCMS, state government bodies, universal access funds etc:

- Approved provider 30%
- Admin officer 70%
- Director 60%
- Education leader 40%
- Team leaders 40%
- Educators 20%
- ECTs 40%
- Average 35%

In an annual payroll of \$1,614,525, the recording of evidence to satisfy compliance to third parties is therefore estimated at 35%, or a total of \$565,084 pa. The approved providers expects this administrative burden to increase with the Child Care Subsidy and other coming legislation mentioned above and anticipates the estimate will increase up to 40% after they become operative which will increase the compliance cost to \$645,810 per annum. These administrative costs are passed onto families and subsidised by tax payers.

Non Sector-Specific Red Tape

The ECEC sector is of course not immune to administrative red tape through the provision of normal business requirements.

These areas include but are not limited to:

- GST Reporting Obligations
- Payroll Tax Reporting Obligations
- PAYG Reporting Obligations
- Land Tax Reporting Obligations
- Privacy Law Changes
- Single Touch Payroll Transition Requirements
- Food Safety Reporting Requirements
- Employment Record Keeping
- Local council reporting
- Fire Safety reporting
- ASIC reporting requirements

Privacy Law Changes

On 22 February 2018, significant changes to the Australian Privacy Act came into effect. These new laws have a considerable impact on ECEC service providers and how they manage personal information and react to data breaches. Prior to the new laws, it was not compulsory for a service provider to notify individuals (or others) where a data breach occurred. However, with the implementation of the new laws, services are now obliged to make certain mandatory notifications in the event of a sufficiently serious data breach.

A failure to notify that is found to constitute a serious interference with privacy under the Privacy Act may result in a fine of up to \$360,000 for individuals or \$1.8 million for organisations.

In order to be compliant with the law service will need to complete the following audits:

- 1) Conduct a privacy audit
- 2) Update (or prepare) your privacy policy
- 3) Update (or prepare) your collection statement
- 4) Prepare a data breach response plan
- 5) Ensure that personnel are assigned to manage data breaches in accordance with the new laws, including assessing the likelihood of “serious harm” occurring
- 6) Review all contracts with IT service providers (including cloud services) to ensure that they adequately address your new obligations

Single Touch Payroll

With the mandated transition to Single Touch Payroll beginning its implementation from July 2018. Whilst it is hoped that these changes can be managed by the range of payroll software currently in use by employers, it is yet another change to the ECEC sector which is already being compelled to undertake significant review of its operations at every level of its operation.

When adding to sector specific compliance requirements these ongoing obligations mean that the broad range of legislative reporting and compliance mechanisms provide significant burden to approved providers.



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