

Early Years Quality Fund Special Account Bill 2013

Overview of the bill

- 1.1 The Early Years Quality Fund Special Account Bill 2013 (the Bill) establishes a Special Account¹ to administer the Early Years Quality Fund (the Fund).² The Bill provides for \$300 million to be credited to the Fund over two years.³
- 1.2 The Fund will provide financial assistance to approved early childcare services to be used exclusively for paying remuneration and other employment-related costs and expenses.⁴
- 1.3 The Department of Education, Employment and Workplace Relations (DEEWR) will administer the Fund in line with government practice in the administration of grants' programs.⁵
- 1.4 All long day care centres approved for Child Care Benefit under the *New Tax System (Family Assistance) Act 1999* will be eligible to apply for

1 A special account is an appropriation mechanism that allocates an amount within the Consolidated Revenue Fund to be expended for a specific purpose. Section 21 of the *Financial Management and Accountability Act 1997* provides that a special account may be established by legislation, with monies expended only for specified purposes as outlined in the originating legislation.

2 Early Years Quality Fund Special Account Bill 2013, clause 5.

3 Early Years Quality Fund Special Account Bill 2013, clause 6.

4 Early Years Quality Fund Special Account Bill 2013, clause 7.

5 Department of Education, Employment and Workplace Relations (DEEWR), *Submission 56*, p. 6.

funding.⁶ It appears that any person who operates or proposes to operate a long day care centre may apply for Child Care Benefit approval through DEEWR by meeting the published criteria including: the suitability of ownership and staff to operate a child care service; approval under local law to operate; at least 48 weeks operation a year; and minimum opening hours of at least 8 continuous hours each day of operation.⁷

- 1.5 As both for-profit and not-for-profit service providers are eligible to apply for Child Care Benefit, both are eligible to apply for funding.⁸ DEEWR advised that 7,000 centres are eligible under these criteria,⁹ and includes an estimated 78,647 workers.¹⁰

Policy objective

- 1.6 The policy objective of the Fund is to attract and retain qualified professionals working in the early childhood sector.¹¹ DEEWR reported concern amongst the sector regarding turnover rates, as well as the attraction and retention of early childhood educators. It is anticipated that high wages will have a positive impact on attracting and retaining qualified employees in the sector and increasing the professionalism overall.¹²
- 1.7 DEEWR submitted that decreasing the turnover rates of educators will assist with providing children with the opportunity for more consistent interactions.¹³ The link between higher retention rates and improved educational outcomes was also explained:

A key component of quality education is the opportunity for quality interaction between educator and child. Children develop attachments to their educators which enhances their education and care experience. This requires trust and consistent social interactions to be established between educator and child and recognises that each child is unique with nuanced relationship

6 The Hon, Peter Garrett MP, Minister for School Education, Early Childhood and Youth, *Second Reading Speech*, 30 May 2013, p. 3.

7 DEEWR, *Submission 56*, p. 6.

8 DEEWR, *Submission 56*, p. 2.

9 Mr David De Silva, Group Manager, Department of Education, Employment and Workplace Relations (DEEWR), *Proof Transcript*, Canberra, 6 June 2013, p. 7.

10 DEEWR, *Submission 56*, p. 4.

11 Early Years Quality Fund Special Account Bill 2013, *Explanatory Memorandum*, p. 2.

12 DEEWR, *Submission 56*, p. 4.

13 DEEWR, *Submission 56*, p. 4.

needs. This occurs when children have the opportunity to interact with the same educator on a regular basis.¹⁴

- 1.8 The Fund also seeks to support the objectives of the National Quality Framework for Early Childhood Services (NQF).¹⁵ DEEWR submitted that the policy objective of the Bill – increasing wages in order to improve retention rates of educators within the sector – supports the requirements of the NQF:

The Fund is a continuation of steps towards greater professionalisation in the early childhood education and care sector and providing a high-quality standard of education care for all Australian children.¹⁶

Operation of the fund

- 1.9 Eligible childcare centres will be able to apply for grants to fund remuneration of employees and other employment related costs and expenses, including:

- superannuation contributions;
- leave entitlements;
- payroll tax;
- workers compensation; and
- professional development activities.¹⁷

- 1.10 Applications made for funding employee remunerations and other related costs, will be assessed against the criteria in the Program Guidelines. Similarly, wage increases ‘will be paid in line with a wage schedule published in the Program Guidelines’.¹⁸ DEEWR advised that the Fund:

...will enable grants to be paid to approved long day care services to provide wage increases of \$3 an hour at the Certificate II qualified educator level, with proportional increases across the classification scale to ensure those with higher qualifications will receive a higher wage increase.¹⁹

- 1.11 DEEWR advised that after the two-year lifespan of the Fund, wage increases resulting from successful applications will lapse. Ms Jennifer Taylor, Deputy Secretary of DEEWR, explained that there are ‘a number of

14 DEEWR, *Submission 56*, p. 3.

15 DEEWR, *Submission 56*, pp. 2-3.

16 DEEWR, *Submission 56*, p. 3.

17 Early Years Quality Fund Special Account Bill 2013, *Explanatory Memorandum*, p. 2.

18 Early Years Quality Fund Special Account Bill 2013, *Explanatory Memorandum*, p. 2.

19 Ms Jennifer Taylor, Deputy Secretary, DEEWR, *Proof Transcript*, Canberra, 6 June 2013, p. 1.

other mechanisms' available to the sector within which wage increases might be pursued into the future. One such mechanism is the pay equity unit in the Fair Work Commission.²⁰

- 1.12 The Program Guidelines referred to in the Bill's Explanatory Memorandum are yet to be developed. The Government established the Early Years Quality Fund Advisory Board to provide advice to DEEWR on the content and operation of the Program Guidelines.²¹ The Advisory Board conducted its first meeting on 6 June 2013.
- 1.13 The Program Guidelines will be developed under the Commonwealth Grants Guidelines as administered by the Department of Finance and Deregulation and approved by the Minister for Finance.²² The Guidelines will be published on the DEEWR website.

Conduct of the inquiry

- 1.14 On 30 May 2013, the House of Representatives Selection Committee referred the Early Years Quality Fund Special Account Bill 2013 (the Bill) to this Committee for inquiry and report. The reason for the referral was:
- Serious concerns regarding the decision to only fund a pay rise for around one third of the long day care workforce. This is highly inequitable and will only seek to create a two-tiered system of childcare in this country. The panel responsible for determining the eligibility criteria fails to include representation from the peak body that represents 79% of the private sector, however, have included significant representation of the non-for-profit and community sectors, plus union representation. This bill needs serious consideration and consultation from the sector to determine whether this wage fund as designed will in fact be detrimental to the sector.²³
- 1.15 The Committee received 99 submissions and held a public hearing on Thursday 6 June 2013 in Canberra. The Committee also authorised for publication volumes of submissions that were received as part of political campaigns that supported and opposed the Bill.

20 Ms Taylor, DEEWR, *Proof Transcript*, Canberra, 6 June 2013, p. 2.

21 DEEWR, *Submission 56*, p. 6.

22 DEEWR, *Submission 56*, p. 6.

23 House of Representatives Selection Committee, *Report No. 82, Consideration of Bills*, 30 May 2013, p. 3.

Stakeholder involvement

- 1.16 The Committee received significant amounts of correspondence stating general support or opposition to the proposal without addressing the detail of the Bill. The great bulk of this correspondence was in the form of template letters where individuals were invited to insert paragraphs conveying their views or experiences.
- 1.17 Such expressions of support or opposition for a policy are not appropriate to an inquiry into a bill and would have been better directed by submitting a petition to the House or by lobbying local members or the Minister. An inquiry into a bill examines the efficacy of the proposed legislation in enacting a policy.
- 1.18 Mistaking of the character of a committee inquiry into a bill for a broader political debate is regrettable and contributed little to deliberations and the subsequent report.
- 1.19 The Committee urges organisations responsible for these campaigns, in this instance United Voice, Australian Childcare Alliance, Childcare NSW and similar organisations, to inform themselves of the purposes of committee inquiries and how to most productively engage with them.

Issues raised during inquiry

- 1.20 Submissions to the inquiry canvassed two issues. While no submissions raised concerns about the effectiveness of the Bill to enact the proposed policy, submissions pointed to concerns with the policy itself.

Support for the Bill

- 1.21 United Voice, the union responsible for the 'Big Steps' campaign advocating for professional wages in the early education sector, submitted that despite not all workers being eligible for the fund, it is an important first step towards achieving equitable wages across the sector. United Voice noted:
- Members wanted the Fund to be larger than \$300 million. They acknowledge that this is not adequate to fund professional wages for the entire workforce. However, they also acknowledge that this is the most that Labor could offer in this budget...²⁴
- 1.22 United Voice further noted:

24 United Voice, *Submission 46*, p. 3.

If Government is truly invested in the quality of education of young children then they will have to be equally invested in paying quality educators to do that work. The EYQF sets that principle in stone.²⁵

Opposition to the Bill

- 1.23 A number of submissions opposed the Bill based on concerns that the scheme would create inequalities within the early childhood workforce. The Australian Childcare Alliance, the peak national body for representing the long day education and care sector throughout Australia, noted:

This announcement has already caused outrage and division amongst educators in the early education and care sector. Educators are understandably angry as their colleagues in the long day care centre across the road may receive the grant whilst they receive nothing.²⁶

- 1.24 The Australian Childcare Centres Association, the representative organisation for the majority of the private sector of the children's services industry, noted:

The members of ACCA view the EYQF as being unfair and discriminatory in its nature by providing for pay increases for a minority of educators in the sector, whilst leaving more than 60% of dedicated educators in the long day care sector with no increase at all.²⁷

Claims relating to requisite union membership

- 1.25 A number of submissions raised concerns that United Voice has claimed that union membership is required in order to receive a pay increase under the scheme.
- 1.26 Under the *Fair Work Act 2009*, all employers, employees and independent contractors are free to become, or not to become, members of an industrial association, such as a trade union or employer association.²⁸

25 United Voice, *Submission 46*, p. 3.

26 Australian Childcare Alliance, *Submission 44*, p. 9.

27 Australian Childcare Centres Association, *Submission 58*, p. 2.

28 DEEWR, 'Early Years Quality Fund Frequently Asked Questions' <foi.deewr.gov.au/system/files/doc/other/frequently_asked_questions_on_the_early_years_quality_fund_0.pdf> accessed 12 June 2013.

- 1.27 Imposing an eligibility requirement of the kind asserted by United Voice would appear to be against the Fair Work Act's general protections provisions.
- 1.28 DEEWR advised that it had received queries from relevant stakeholders on this point, after which its 'Early Years Quality Fund Frequently Asked Questions' page had been updated.²⁹
- 1.29 DEEWR also wrote to the National Secretary of United Voice in April 2013, advising of concerns raised by stakeholders regarding required union membership, and providing correct information about the eligibility of the Fund's grants. Mr David De Silva, Group Manager, stated:
- In the letter I said I could not assess the veracity of the claims. We are a policy department. So I just said that these issues had been raised with the department and that I was making them aware that these issues had been raised. I said that the information that is on the website is the totality that is available in relation to the development of the fund. And I think I asked them to make sure that this information is made clear to anyone who is talking about this fund.³⁰
- 1.30 A copy of the letter dated 11 April 2013, was attached to the DEEWR submission provided and is available from the Committee's inquiry webpage.³¹
- 1.31 DEEWR emailed all eligible long day care centres on 19 April 2013 to clarify that the 'only source of definitive information regarding the Early Years Quality Fund was the Early Years Quality Fund page on the DEEWR website'. The email also encouraged services and their staff to 'consult the website in the case of any queries'.³² A copy of the email was also attached to the DEEWR submission and is available from the Committee's inquiry webpage.
- 1.32 As DEEWR is a policy department, and does not have enforcement powers, it would not have been appropriate for the Department to progress this matter any further. Mr De Silva stated:

29 Mr De Silva, DEEWR, *Proof Transcript*, Canberra, 6 June 2013, p. 6.

30 Mr De Silva, DEEWR, *Proof Transcript*, Canberra, 6 June 2013, p. 3.

31 See:

<www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ee/earlyyears/index.htm> accessed 12 June 2013.

32 DEEWR, *Submission 56*, pp. 7-8. See <<http://foi.deewr.gov.au/node/31795>> accessed 14 June 2013.

The department does not have an investigatory role in [industrial relations]. There is the Fair Work Ombudsman, who has been created to do that.³³

1.33 Similarly, Ms Taylor indicated that there may be issues of consumer law:

At the back of my head on that I was thinking about consumer law – that if there is false and misleading advertising.³⁴

1.34 The Committee notes the concerns that the Bill is being used as a recruitment tool for United Voice. Claims of pay rises being conditional on membership were a significant issue and propelled much stakeholder concern during the inquiry from both supporters of the Fund and its general opponents. Such claims, were they to be made, could not be substantiated and they have distracted from an otherwise important and worthy program for the sector.

Committee comment

1.35 The Bill builds upon previous investment by the Government in early childhood education and care services in Australia. Significantly, recent figures indicate that over 499,000 families and over 615,000 children are using long day care services.³⁵ Providing quality and affordable services in light of these record high numbers is particularly important for Australia's current and future labour markets as well as national productivity.

1.36 The Fund proposed in the Bill contributes to a stable, sustainable and professional workforce. The link between stable staff and achieving quality educational outcomes in early childhood is clear in the literature, including reports of the Organisation for Economic Co-operation and Development published in 2006.³⁶

1.37 The Committee acknowledges the concerns existing within the sector that the limited funds available in the scheme will lead to some pay disparity. However, the Fund is an important first step in working towards improved wages within the early childhood sector and it is the responsibility of all employers, including the Government and the private sector to work towards better pay in this important industry.

33 Mr De Silva, DEEWR, *Proof Transcript*, Canberra, 6 June 2013, p. 7.

34 Ms Taylor, DEEWR, *Proof Transcript*, Canberra, 6 June 2013, p. 6.

35 DEEWR, *Submission 56*, p. 8.

36 Organisation for Economic Co-operation and Development, *Starting Strong II: Early Childhood Education and Care*, Paris, 2006.

- 1.38 The Committee also acknowledges stakeholder concerns regarding the 2 year life span of the Fund and its associated remuneration benefits to workers in the sector. The Committee also notes the establishment of the pay equity unit in the Fair Work Commission as a forum where these concerns can be pursued at a future date.
- 1.39 Consequently, the Committee recommends that the House of Representatives pass the Bill.

Recommendation 1

The Committee recommends that the House of Representatives pass the Early Years Quality Fund Special Account Bill 2013.

Mike Symon
Chair
17 June 2013