



Australian Government

Australian Government response to the
Senate Education and Employment Legislation Committee report:

Inquiry into the Family Assistance Legislation Amendment (Jobs for Families Child Care
Package) Bill 2015 [Provisions]

February 2017

Introduction

The Australian Government welcomes the report by the Senate Education and Employment Legislation Committee in relation to the inquiry into the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015 (the 2015 Child Care Bill) and thanks those individuals and organisations who contributed to this inquiry by preparing written submissions or appearing at the public hearings.

The *Jobs for Families* Child Care Package (the Package) will provide genuine and necessary reform for a simpler, more affordable, accessible and flexible child care system. The Government's child care assistance package strikes the right balance between targeted child care support for hard working families who depend upon it, a generous safety net to protect those most vulnerable in our community and ongoing support for high quality early learning. This is why the passage of the Child Care Bill, as well as the savings required to fund it, is amongst the Government's top priorities for 2017.

Since the Committee tabled its report, the Bill lapsed due to the prorogation of Parliament on 15 April 2016. The Bill was re-introduced to Parliament, with minor technical and corrective amendments, as the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016 (the 2016 Child Care Bill) on 1 September 2016.

This Government response relates to the 2015 Child Care Bill, noting that some similar issues were raised, and responded to, through the Committee's Inquiry into the 2016 Child Care Bill and the Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2016.

Majority report

The Government welcomes and accepts the recommendation from the Majority Report that the Bill be passed, noting that this Bill has since been replaced by other legislation to give effect to the Package. The Government notes the Committee's view that the Package will target support to those who depend upon it in order to work or work more, as well as recognise the importance of access to high quality early childhood education and care for children.

Dissenting reports

The Government's response to each recommendation made in the Senate Committee's report is provided below, including those contained in the dissenting reports of Labor and the Australian Greens Senators respectively.

The Government has considered the views of the sector in developing this Bill, as well as the 2016 Bill, and will continue to consult with the sector and with the Senate cross-bench on the Package to ensure these reforms achieve the objectives of increasing affordability, flexibility and accessibility of the child care system for families.

Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015

Recommendation contained in the Committee's Report

1. The committee recommends that the Senate pass the Bill.

The Government accepts the Committee's recommendation and urges Members of the House of Representatives and Senators to vote in favour of the Package in the Parliament to ensure the Government can deliver on its long term reform plan which delivers support to children and families, and a sustainable system for taxpayers and the sector.

Recommendations contained in Labor Senators' Dissenting Report

Considering the evidence presented to the Committee, Labor Senators recommend the following amendments to the Bill:

1. Ensure that vulnerable children, or children at risk of abuse, not be worse off under the reforms;

The new Child Care Safety Net will assist disadvantaged communities and vulnerable and at-risk children and their families by addressing barriers in accessing child care, while encouraging parents to enter or re-enter the workforce. In particular, the Additional Child Care Subsidy component of the Child Care Safety Net will provide targeted additional fee assistance to families and children facing barriers in accessing affordable child care, including:

- children at risk of serious abuse or neglect
- grandparents on income support who are the primary caregivers of their grandchildren
- families experiencing temporary financial hardship
- low income families transitioning to work from income support
- families with an income below around \$65,000 (in 2017 terms) where the family does not meet the activity test.

Prior to the introduction of the 2015 Child Care Bill, the Government announced at the Mid-Year Economic and Fiscal Outlook 2015-16 the inclusion of Additional Child Care Subsidy (Grandparent). This was in response to sector feedback, to ensure grandparent primary carers on income support will have access to subsidised child care.

Since the time of the Committee's report, the Government has made further refinements to the Additional Child Care Subsidy to better support vulnerable children. For example, the name of the payment to support children at risk of serious abuse or neglect was changed from Additional Child Care Subsidy (At Risk) to Additional Child Care Subsidy (Child Wellbeing) in the 2016 Child Care Bill. This change was prompted by feedback from the sector that the original name could deter families from accessing this additional support. While the name has changed, the intent, design and application of the subsidy remains the same.

2. Ensure that families in Aboriginal and Torres Strait Islander communities not be worse off under the reforms by establishing an Aboriginal and Torres Strait Islander community based program within the new Child Care Safety Net;

The current funding model for Budget Based Funded (BBF) services is not working in a fair or transparent way, with some services receiving less than \$100 per child per year and other services receiving thousands of dollars per child per year. A major program review, an ANAO audit and several smaller projects highlighted a range of problems with the BBF Program, including:

- the program objective is unclear
- most BBF services operate outside the regulatory system and are excluded from the National Quality Framework so BBF services are not held to the same quality standards as approved services
- the program is capped and fully committed meaning no new services can be funded in areas of need
- there is no incentive for services to increase utilisation
- in some cases families pay high fees but are not eligible for any fee subsidy
- in some locations approved child care services have been established close to the BBF service so there may no longer be a real need for that service
- funding for BBF services has remained stagnant while funding for mainstream child care has increased steadily for many years.

The Government notes that some stakeholders have called for a separate grant fund for services providing care for Aboriginal and Torres Strait Islander children. To do this would create these same issues, whereby artificial limits would be set, and services would not be paid according to the numbers of children that attend.

The new funding arrangements through the Child Care Subsidy will be demand driven, encouraging new services to open or expand their service delivery where there is need. This will mean former BBF services can be funded equitably based on the number of children they support and the services they deliver.

The new system has been designed to support a diverse range of services that have the flexibility to adapt to the needs of local families. The current arrangements do not allow this flexibility and have effectively limited services that would have benefited from a fairer funding model, such as the one proposed as part of this legislation.

Additional funding will be provided to eligible services through the Community Child Care Fund which will provide grants to child care services to reduce barriers to accessing child care, provide sustainability support for child care services experiencing viability issues and provide capital support to increase the supply of child care places in areas of high unmet demand, particularly in disadvantaged, regional or remote communities.

Further, the Additional Child Care Subsidy will provide extra subsidies to families who are eligible under the child-wellbeing component, those experiencing temporary financial hardship, and people moving from income support into work.

The Department of Education and Training has engaged consultants to provide face-to-face support to BBF funding recipients in their transition to the new child care system or, where appropriate, to move to alternative funding arrangements. This support commenced in May 2016.

Support will be provided in two phases. Phase 1, which will largely be completed by February 2017, is the development of a comprehensive report and transition plan for each BBF funding recipient including mobile BBF services. The analysis undertaken in Phase 1 will inform the ongoing tailored support provided to BBF funding recipients through Phase 2. This face-to-face support is expected to begin in February 2017 and will continue as long as necessary, beyond July 2018 if required.

3. Ensure volunteering is treated similarly to paid work or study under the activity test;

A broad range of activities will meet activity test requirements, including paid work, being self-employed, unpaid work in a family business, looking for work, undertaking unpaid voluntary work or studying. There will also be exemptions to the activity test for parents who legitimately cannot meet the requirements.

Through the Regulation Impact Statement for the Package, the Department of Education and Training's submission to the Senate Inquiry and sector consultation on Minister's and Secretary's Rules, the Government has consistently made it clear that a broad definition of voluntary work will be adopted for the purposes of the activity test.

The proposed definition which was provided to the Senate Committee during the hearing and which was the subject of sector consultation is: an individual undertakes unpaid voluntary work to improve work skills or employment prospects, or for community engagement. To be recognised, voluntary work can be undertaken at a registered or recognised voluntary organisation or other charitable or community organisation, and this may include churches, sporting clubs or schools. Since that time, and in response to further consultation from the sector, the proposed definition of unpaid voluntary work has been expanded to include volunteering in a centre-based service undertaking activities that directly support children's learning and development. The proposed inclusion of this activity will assist in encouraging parental engagement and supports children's learning and development.

It is also proposed that individuals undertaking unpaid voluntary work would be entitled to 36 hours per fortnight (step 1 of the activity test) of subsidised child care. Voluntary work can be combined with other recognised activities to increase hours of subsidised child care.

4. Ensure provisions are made to ensure casual and seasonal workers are not disadvantaged by the activity test by including appropriate averaging and transitional arrangements, and including a six week 'exceptional circumstances' exemption; and

To ensure families with casual or irregular work are not disadvantaged by the activity test and to ensure their children receive continuity of care, parents in this circumstance will be able to estimate their hours of activity over a three month period.

Current provisions in the Bill ensure continuity of care when parents experience a sudden change in circumstance that affects their entitlement without the need for a six week exemption period.

These provisions include:

- The Additional Child Care Subsidy (Temporary Financial Hardship) that will provide short-term increased child care fee assistance to families who are experiencing significant financial stress due to exceptional circumstances. Families experiencing temporary financial hardship will be eligible to receive a subsidy equal to the actual fee charged, up to 120 per cent of the Child Care Subsidy hourly fee cap, for up to 100

hours per fortnight, for a maximum of 13 weeks per event. Families will not be required to meet the activity test during this period.

Individuals' eligibility for this payment can be backdated up to 28 days (from the date of application), in recognition that family circumstances may change with little or no notice.

- The capacity for the Secretary of the Department of Education and Training to make a case-by-case determination of an individual's activity test result based on exceptional circumstances, which could be more than 100 hours of subsidy per fortnight. Exceptional circumstances could include, but would not be limited to, families impacted by significant trauma, the short-term incapacity of the individual or a member of their family, or where the individual, their partner or their child is affected by domestic violence.
- An activity test which recognises a broad range of activities (including actively looking for work and volunteering) to help families maintain access to subsidised care where their usual activity ceases unexpectedly.

5. The Government should provide modelling showing the longer term impact of the proposed benchmark price on the proportion of ECEC costs borne by parents and its impact on out of pocket costs. The Government should structure the child care subsidy more effectively to limit out of pocket costs for parents.

The new Child Care Subsidy has been designed to place downwards pressure on child care fees to improve affordability for families, through an hourly fee cap.

Fee assistance payments under the Child Care Subsidy are based on a percentage of the actual fees charged, up to the relevant percentage of an hourly fee cap, with the level of the cap varying based on the service type used. The hourly fee caps effectively set a 'benchmark price' from which Australian families have a reference point to hold providers accountable and from which they can expect prices should not dramatically exceed. This measure is necessary to ensure that the increased level of fee assistance offered by the Package does not accelerate fee increases, as we saw when the previous government increased the Child Care Rebate from 30 per cent of fees charged to 50 per cent of fees charged, with no constraints on the fees charged by centres. In addition, as part of simplifying the child care system and ensuring services can operate in a manner that best suits the families who use them, the Bill will reduce regulatory requirements currently applying to child care services, including the hours per day and days per week a service must open. This will mean that services and providers will be able to consider flexible options that better suit their children and families, as well as their business models, which will contribute to affordable and flexible child care options.

Further, Labor Senators recommend that the government:

6. Expand the Explanatory Memorandum to address key definitions (particularly with regard to abuse and neglect) pertaining to subsidies and payments;

The ability to define key terms (such as those related to "abuse and neglect" and "risk" for Additional Child Care Subsidy (at risk / child wellbeing)) in subordinate legislation was to allow for further consultation with the sector and other key stakeholders. Rather than pre-

empt the outcome of ongoing consultation, the Government will table the Rules following the passage of legislation, in line with legislative process.

During 2016, the Department of Education and Training consulted the sector on all Minister's and Secretary's Rules which are proposed to be made at this time. The Government will continue to take sector feedback into consideration as the Rules are finalised. This is further elaborated in the Government's response to the more recent Senate Inquiry.

7. Extend the Ministerial Advisory Council on Child Care and Early Learning to include key stakeholders and peak bodies in the industry;

The Ministerial Advisory Council (MAC) on Child Care and Early Learning already consists of representatives of national peak bodies as well as experts in early childhood development and pedagogy, and the child care and early learning sector. MAC members' appointments were recently extended to the middle of 2017.

Given the diverse membership on MAC, as well as the range of other consultations with the sector (see [Attachment A](#)), the Government is confident it has received comprehensive feedback on all elements of the Package.

8. Review internationally recognised research on the returns on investment that public expenditure on early learning brings, ensure ECEC in Australia is in line with OECD best practice, and make sure levels of investment in early childhood are consistent with the best outcomes for children and the community; and

Australia performs well in its funding and delivery of early childhood education and care compared to other OECD countries, noting that the extent of public funding for early childhood education and care in Australia is not well represented in OECD data. This is because funding delivered to parents through fee subsidies is often reported as a 'private expense' in OECD data when in fact the Government provides generous subsidies that are targeted to families who need it most.

The Package reflects extensive consultation and expert analysis over several years and has been developed taking into account the significant evidence base developed by the Productivity Commission through its Inquiry into Childcare and Early Childhood Learning, including consideration of workforce participation, early childhood educational outcomes and relevant international models. This is why the objective of the Government's significant investment in the Package is to provide parents with more choice and opportunity to work, and children with high quality early education.

In addition, to understand the impact of the Package over time, there will be ongoing monitoring and evaluation of the changes to the child care system. The Government's framework for evaluation of the Child Care Package includes a post-implementation review to commence in 2018-19 and a subsequent impact evaluation. The evaluation will build on the previously undertaken activities of monitoring, data collection, baseline data and the post implementation review to assess the effect of the changes on the community.

9. Immediately release to the public all data, research and evidence used in developing the legislation – including complete details of the impact the changes will have on families - so that the Senate can make a more informed assessment of its impact on all Australian families.

The Government has provided significant detail on the modelling and assumptions used to develop the Package and details of the impact the changes will have on families. This includes an impact analysis of the Package at Chapter 5 of the Regulatory Impact Statement. Section 5.3, in particular, analyses the impact on families, child care service providers, communities and governments, and an assessment of the Package’s effectiveness at achieving the objectives of the reform. A summary of that information, as it relates to families, is provided in the submission to the inquiry made by the Department of Education and Training at paragraphs 137 to 142.

Recommendations contained in the Dissenting Report by the Australian Greens

1. The Australian Greens recommend that the activity test be amended to include an additional amount of base level subsidised childcare for all families that fall within the 0-8 hours of activity, so that all children have access to a minimum of 24 hours of subsidised child care per week.

The entry point to the activity test is set at a very low base - at least 8 hours of activity a fortnight results in access to up to 36 hours of subsidised child care a fortnight; more than 16 hours of activity a fortnight results in access to up to 72 hours of subsidised care a fortnight; and that more than 48 hours of activity a fortnight results in access to up to 100 hours of subsidised care a fortnight.

A broad range of activities will meet the activity test requirements, including paid work, looking for work, volunteering or study. People on paid and unpaid parental leave who are returning to work would also meet the activity test. To ensure families with casual or irregular work are not disadvantaged by the activity test and to ensure their children receive continuity of care, parents in this circumstance will be able to estimate their hours of activity over a three month period.

We know children from disadvantaged backgrounds benefit most from quality early childhood education and care, and that’s why we’re providing additional support to those who need it most. Families with incomes below around \$65,000 (in 2017 terms) who do not meet the activity test will be able to access up to 24 hours per fortnight of subsidised care — equivalent to two weekly six-hour sessions—at the highest 85 per cent rate of subsidy (this is an increase on the current 72 per cent). The removal of minimum hours per day and days per week opening requirements will allow service providers’ to deliver these hours over two sessions per week.

The Government is also considering the sector’s proposal to increase the number of subsidised hours for families with low incomes (below around \$65,000 in 2017 terms) who do not meet the activity test from 24 to 30 hours per fortnight as part of its negotiations and deliberations in preparation for Parliamentary debate.

2. The Australian Greens recommend that an adequately flexible reporting grace period be adopted that allows all casual workers, part-time workers with irregular hours or people who lose their jobs to estimate their expected activity and childcare needs, so as not to be disadvantaged by the activity test.

Refer to the response provided to Labor Senator's Dissenting Report, Recommendation 4, above.

3. The Australian Greens recommend that further detailed clarification be provided as to how the Additional Child Care Subsidy will meet the needs of vulnerable children, in particular children in remote and regional Australia, and Aboriginal and Torres Strait Islander children.

The new Child Care Safety Net will assist disadvantaged communities and vulnerable and at-risk children, including children in remote and regional Australia and Aboriginal and Torres Strait Islander children, and their families to address barriers in accessing child care, while encouraging parents to enter or re-enter the workforce. In particular, the Additional Child Care Subsidy component of the Child Care Safety Net will provide targeted additional fee assistance to families and children facing barriers in accessing affordable child care, including:

- children at risk of serious abuse or neglect
- grandparents on income support who are the primary caregivers of their grandchildren
- families experiencing temporary financial hardship
- low income families transitioning to work from income support
- families with an income below around \$65,000 (in 2017 terms) where the family does not meet the activity test.

Since the time of the Committee's report, the Department of Education and Training has undertaken consultation with the sector on the proposed detail of all Additional Child Care Subsidy payments, and will continue to engage with the sector as policy settings for these payments are finalised.

For further detail on specific support available to services currently funded through the Budget Based Funded program, please refer to the response provided to Labor Senator's Dissenting Report, Recommendation 2, above.

4. The Australian Greens recommend an amendment to include mechanisms for increasing childcare places where vacancy rates are critically low, creating barriers to parents being able to find affordable care.

The Government does not intervene directly in the child care market. Elements of the Package are aimed at encouraging services to be more flexible in how they provide care and child care places to both encourage more providers and to free up potential places in current services.

Summary of consultation for the *Jobs for Families Child Care Package*

The *Jobs for Families Child Care Package* (the Package) reflects extensive consultation and expert analysis over several years. The Package is a response to the Productivity Commission's report *Childcare and Early Childhood Learning*, which was the largest review of child care since the 1990s. The Productivity Commission's inquiry was followed by a Regulation Impact Statement consultation process, two Senate Inquiry processes and ongoing consultation with the sector by the Department of Education and Training. An outline of these consultation processes is provided below.

- The Inquiry into Childcare and Early Childhood Learning by the Productivity Commission, which was commissioned in November 2013 and reported in October 2014. The inquiry drew together a wide range of input from families, service providers, early childhood education professionals, business and other experts. The Productivity Commission held public hearings around Australia and attracted more than 2000 submissions and comments.
- The Regulation Impact Statement consultations undertaken by the Department of Education and Training across Australia in July 2015 as part of the development of the Package.
- The inquiry into the Family Assistance Legislation Amendment (*Jobs for Families Child Care Package*) Bill 2015 by the Senate Standing Committee on Education and Employment which reported on 4 April 2016. The inquiry held a public hearing and received 143 submissions.
- The inquiry into the Family Assistance Legislation Amendment (*Jobs for Families Child Care Package*) Bill 2016 by the Senate Standing Committee on Education and Employment which reported on 10 October 2016. The inquiry held two public hearings and received 50 submissions.
- Consultation by the Department of Education and Training through the following forums:
 - The Ministerial Advisory Council for Child Care and Early Learning, which consisted of 11 members and met nine times since mid- 2014.
 - The Stakeholder Reference Group for Child Care and Early Learning, which consists of nine members and met five times since mid-2014.
 - The specially convened technical reference group of stakeholders, which included 22 participants and met nine times since April 2015.
 - Consultation on the development of the Minister's and Secretary's Rules to be made under the Family Assistance Legislation Amendment (*Jobs for Families Child Care Package*) Bill 2016 which occurred in April 2016, September/October 2016 and December 2016.
 - Consultations on the development of the Community Child Care Fund programmes and policy settings with the sector, state/territory agencies, and other relevant stakeholders.
 - Ongoing consultation with individual peak bodies and services throughout the development of the Package.

The Australian Government will continue to consult with the sector and with the Senate cross-bench on the Package in 2017 to ensure these reforms achieve the objectives of increasing affordability, flexibility and accessibility of the child care system for families.