



Australian Government
Department of Education and Training

Deputy Secretary
Jackie Wilson

Mr Stephen Palethorpe
Secretary
Senate Education and Employment Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Palethorpe

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

I am writing in relation to the Senate Education and Employment Legislation Committee's inquiry into the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016 (the 2016 Jobs for Families Child Care Bill), and the Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2016 (the 2016 Family Payments Reform Bill).

Thank you for the opportunity to make a submission to the Committee's inquiry. I note that the 2016 Jobs for Families Child Care Bill replicates the provisions of the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015 (the 2015 Jobs for Families Child Care Bill), on which the Committee reported in April 2016 and which lapsed on prorogation of Parliament, also in April 2016. In this context, I refer the Committee to the Department of Education and Training's submission to the previous inquiry into the lapsed Bill, which I have attached for reference at Attachment A, noting that at the time this was prepared, it reflected an implementation date of July 2017. The purpose of this letter is to address matters specific to the 2016 Jobs for Families Child Care Bill and to update the Committee on the department's continued engagement with the sector in relation to the implementation of the Australian Government's *Jobs for Families Child Care Package* (the Package).

I also note that the Committee is considering the 2016 Family Payments Reform Bill as part of this inquiry. As the Minister for Education and Training, Senator the Hon Simon Birmingham, has stated, savings from family payment reforms contained within that Bill are required to fund the additional investment of more than \$3 billion that the Australian Government is making in child care and early childhood education through the Package. However, as policy responsibility for the 2016 Family Payments Reform Bill falls with the Department of Social Services, this submission will only focus on the policy content of the 2016 Jobs for Families Child Care Bill.

2016 Jobs for Families Child Care Bill

The 2016 Jobs for Families Child Care Bill replicates the provisions of the 2015 Jobs for Families Child Care Bill, with minor corrective amendments to address technical issues identified since the Bill was originally introduced, to give best effect to agreed policy and to bring forward two compliance provisions to commence on Royal Assent. A summary of some key amendments is below, while Attachment B outlines the amendments made and the reasons they were required.

In the 2016-17 Budget, the Government announced that the legislated elements of the Package would be delayed until July 2018 as the 2015 Jobs for Families Child Care Bill was not passed. As a result of delayed implementation, it was necessary to update the commencement dates contained in the Bill. Provision has also been made for indexation of the lower income threshold, hourly fee caps and annual cap to reflect the July 2018 implementation date. The relevant dollar amounts provided in the Bill (which are the amounts that would have applied if the Package commenced in July 2017) will be indexed in line with the Consumer Price Index for commencement of the new subsidies on 2 July 2018.

Minor corrective amendments were also made in response to feedback from the sector and the community. The name of the subsidy for children at risk of serious abuse or neglect has been changed from Additional Child Care Subsidy (At Risk) to Additional Child Care Subsidy (Child Wellbeing). This change was prompted by feedback from the sector that the original name of the payment could deter families from accessing this additional support, which is at odds with the policy intent. While the name has changed, the intent, design and application of the subsidy remain the same.

A new rule making power has been added to the Child Care Subsidy eligibility provisions to enable the Minister to make rules in relation to the eligibility of certain prescribed children who are over 13 or at secondary school. This new rule making power was included in response to concerns from stakeholders about the impact of tightening the age limit for CCS for older children with disability, and their families, who may have a legitimate need to access child care, particularly outside of school hours care.

The department also considered matters raised by the Senate Standing Committee for the Scrutiny of Bills in relation to the 2015 Jobs for Families Child Care Bill and has provided additional information in the Explanatory Memorandum to the 2016 Jobs for Families Child Care Bill explaining the rationale for the following: review rights in relation to deemed refusals under subsections 4 and 85CH(5); delegation of legislative powers under Schedule 1, item 205, proposed section 199G and Schedule 4, item 12 (transitional rules); and the imposition of strict liability offences.

I note that all amendments made for introduction of the 2016 Jobs for Families Child Care Bill are deemed minor and within the scope of the Government's agreed policy parameters and costings.

Ongoing consultation and engagement with the child care sector and state/territory governments

The department is committed to ongoing engagement with the child care sector in relation to the implementation of the Package and, in particular, reforms contained within the 2016 Jobs for Families Child Care Bill. In April 2016, the department undertook consultation on a range of Minister's and Secretary's Rules to be made under the Bill and further consultation will take place in late September 2016. The sector has welcomed the department's engagement and has provided positive feedback in relation to the Rules on which consultation has occurred to date. The department will continue to engage to ensure that subordinate legislation is effective, accessible and does not impose undue regulatory burden.

The department is also working closely with the sector to ensure that Budget Based Funded (BBF) child care services are well supported in their transition to the new system. A key element of this has been the engagement of consultants since mid-2016 to provide face-to-face support to centre-based, outside school hours care, and mobile services. In Phase One of this process, to be completed by December 2016, the

consultants will prepare an assessment of the capacity of each BBF service to become approved to administer the Child Care Subsidy as well as develop transition plans.

Following this initial phase, the consultants will work closely with those BBF funding recipients that deliver child care to help them implement their transition plans. The plans will recognise the individual needs and capacities of each service and may include support to develop a community engagement plan, as well as establish a viable operational structure.

Based on feedback received from key stakeholders, the department is also investigating the best way to ensure the Package supports the specific needs of disadvantaged and vulnerable communities, including Aboriginal and Torres Strait Islander services. The changes being considered include introducing more flexibility into the Community Child Care Fund (CCCF) to support a longer transition period for those BBF services that require it. As part of this process, there would be capacity for services to enter into longer term funding agreements and access grant funding through a discretionary round as an alternative to a full competitive grant process. Implementation in July 2018 would provide the department with more time to carefully undertake this important work, to support the delivery of child care to children in vulnerable and disadvantaged communities.

The department has also been engaging with state and territory governments in relation to areas of shared interest including compliance activity and the Additional Child Care Subsidy (Child Wellbeing) which provides additional support to children who are at risk of serious abuse or neglect. Recent consultation with these representatives focused on the requirement to provide notice to an appropriate state/territory body when a child is certified as at risk of serious abuse or neglect under family assistance law. The Australian Government will continue to consult closely with jurisdictions to ensure that this process is consistent with existing state and territory mandatory reporting processes and that child care providers are appropriately supported to meet this requirement.

Implementation of elements of the Package that can be progressed without legislation

Prior to passage of the 2016 Jobs for Families Child Care Bill, the Government is proceeding with those elements of the Package that can be progressed without legislation, including the Inclusion Support Programme (ISP), the Nanny Pilot Programme and the Connected Beginnings program.

The Inclusion Support Programme (ISP) commenced on 1 July 2016, following the closure of the Inclusion and Professional Support Program on 30 June 2016. The ISP – a key element of the Package – aims to increase access and participation in child care for children with additional needs through developing and embedding services' skills to include children with additional needs alongside their typically developing peers. Contracted ISP providers – one Inclusion Development Fund Manager and seven Inclusion Agencies – have been established and are implementing the program across Australia including assisting services to access funding from the Inclusion Development Fund.

The Nanny Pilot Programme commenced in January 2016 and will continue until June 2018 in line with the implementation of the full Package in July 2018. The maximum per child subsidy increased from \$5.95 to \$8.50 per hour from 1 June 2016 following feedback about the affordability of the program. An independent evaluation is taking place throughout the pilot to help the Government develop future policy for care provided in the family home.

The Connected Beginnings Program also commenced on 1 July 2016. Connected Beginnings is an element of the CCCF which will support the integration of child care, maternal and child health and family support services with schools in selected Indigenous communities experiencing disadvantage. The program aims to ensure that Indigenous children in identified areas of high need achieve the learning and development outcomes necessary for a positive transition to school.

Initial communities were selected in collaboration with Commonwealth agencies as well as state and territory governments. A range of sources such as the Australian Early Development Census and ABS population data was also used to identify high need and levels of vulnerability. Local Indigenous organisations and service providers in each of the initial locations have been consulted in order to identify a suitable lead agency to receive funding through a direct selection process.

Minister Birmingham announced Alice Springs as the first Connected Beginnings community on 21 June 2016 and the project will commence soon. A small number of other selected communities nationally are expected to commence later in the year and early 2017. The program will be progressively evaluated in partnership with the Department of Health.

Strengthened compliance measures in preparation for commencement of the Bill

The 2016 Jobs for Families Child Care Bill also strengthens and brings forward compliance provisions to reinforce the Government's commitment to addressing non-compliance in the sector. The Bill brings forward two compliance provisions (the 'pause provision' and provider/service 'reassessment provision') to commence on Royal Assent rather than 12 months before the Child Care Subsidy commences.

The 'pause provision' will allow the Minister to prescribe circumstances in which applications for approval of a child care service are taken to not have been made. This rule making power could be used to limit applications to address excessive growth within a particular child care service type, specifically where there are concerns about proven or alleged non-compliance with family assistance law. The 'reassessment provision' enables the Secretary of the department to reassess a service provider's eligibility at any time and, in cases of non-compliance, to cancel approval. Together, these provisions will enhance the department's ability to deal with non-compliant behaviours in a timely and effective way.

In addition, in advance of full implementation of the Package, the Government is also strengthening compliance arrangements to ensure the integrity of taxpayer funding for child care fee assistance. On 14 September 2016 the Minister for Education and Training tabled disallowable instruments in both Houses of Parliament to ensure that from 10 October 2016:

- new suitability criteria will apply to services and their key personnel, including key criteria from 2016 Jobs for Families Child Care Bill
- child care fee assistance is not payable in a range of circumstances, including where there is not a genuine liability; where Family Day Care is provided in the child's own home, or where the parent is present; where Family Day Care or In-Home Care is provided by a parent or sibling; or care that is predominately transport, and
- a minimum benchmark for existing notifiable events obligations is also established, and these are extended to key personnel.

Representatives from relevant state and territory departments are working closely with the department to respond to serious concerns in relation to non-compliance in the child care sector (mainly but not solely focussed on Family Day Care). This will improve the regulation of the family day care sector and manage risk to payment integrity and the safety and wellbeing of children ahead of full implementation of the Package.

These measures lay the groundwork for reforms to child care that will be delivered by the 2016 Jobs for Families Child Care Bill.

Officers from the department will be available to attend hearings if the Committee determines that this would assist its considerations.

Yours sincerely



Jackie Wilson

23 September 2016