



## Submission to the Senate Education and Employment Committee

### Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019

September 2019



## BACKGROUND

Leor In Home Early Learning ('Leor') was originally established to provide an alternative childcare solution to families offering tailored learning programs and quality care in the family home. In early 2019 Leor became an approved provider of In Home Care ('IHC') under the Child Care Subsidy ('CCS'). As part of the IHC scheme, Leor now supports a vast number of vulnerable and disadvantaged families across Australia, who are left with no other option for accessing CCS other than through IHC.

Leor Founder and Managing Director, Andrea Christie-David, is a human rights lawyer with significant experience in the not for profit sector. She has spent many years working with individuals and Government to ensure that vulnerable members of our society had their voices heard.

It is with the knowledge and experience that we have gained since becoming a provider of IHC, as well as the previous experience our Managing Director holds working with vulnerable families, that we make this submission in regards to the *Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019* ('Bill').

## SUPPORTED AMENDMENTS

The following amendments proposed under the Bill are supported by Leor.

### 1. Removal of the ACCS cap

We support the removal of this cap as the vast majority of families that we support under the IHC scheme are vulnerable and need to access the Additional Child Care Subsidy (child wellbeing) ('ACCS').

### 2. 14 week extension to enrolment period

We have a number of families who only access our service during school holidays. The extension of the enrolment period would therefore remove the administrative burden of re-enrolment for these families.

### 3. Third party payments

We have found that children in the care of a State or Territory child protection Minister often have their fees supported by a third party agency. This, however, is not always guaranteed. Therefore, removal of consideration of any third party payments in the calculation of CCS will ensure that these children are still able to access quality care and Providers are not left carrying the burden of costs associated with care for these children.

## HUMAN RIGHTS IMPLICATIONS

Assessment of the Bill's human rights implications fails to take into account the unique circumstances of families accessing IHC, for the reasons outlined below.

### 1. Right to Work

Article 6 of the International Covenant on Economic, Social and Cultural Rights recognises an individual's right to work. One of the reasons that families are able to access IHC is where a primary carer works non-standard or variable hours where other forms of approved childcare are not available. For example, we regularly speak to families who live and work on remote cattle stations, and parents who work in emergency



services or hospitals on rotating rosters such as police officers and nurses. From speaking to these families and calculating their benefits under CCS, the out of pocket expenses are cost prohibitive to them accessing the scheme. In other words the IHC scheme is not supporting these families who are exercising their right to work.

These individuals have a right to work and to have a family. However, under the current scheme the hourly rate allocated to IHC, and the fortnightly cap on care, penalise these families for exercising this right outside standard hours of care.

### Hourly Cap

We welcome inclusion of the hourly cap for IHC within *A New Tax System (Family Assistance) Act 1999*. However, in light of the fact that the IHC scheme has now been operating for just over a year, it would be a missed opportunity with dire consequences to ignore the fact that the hourly cap applicable to IHC is failing to meet the needs of a large cohort of families that it was designed to support.

The fixed hourly cap currently reflects the ordinary hours' rate that would be paid to an Educator for the delivery of IHC. Under the *Children's Services Award 2010* ('Award') the ordinary hourly rate applies to standard daycare hours. For families accessing IHC due to working non-standard hours, they will most often be accessing care outside daycare hours, namely early mornings, evenings, overnight, on weekends and on public holidays. The hourly rate does not consider the appropriate rate to be paid to an Educator when they work outside standard hours to support the needs of these families.

We recommend that in order to appropriately remunerate the individuals delivering this care, who are also exercising their right to work, the hourly cap be amended and broken down by the session of care accessed in accordance with the Award.

We propose that the hourly rate cap be amended as follows to reflect penalty rates under the Award.

In Home Care Services	
IHC Ordinary Hours Rate	\$32.58
Overtime / Saturday hours first two hours	1.5 times IHC Ordinary Hours Rate for first two hours
Overtime / Saturday after first two hours / Sundays	2 times IHC Ordinary Hours Rate after the first two hours
Early morning shift as defined under the Award	10% loading on IHC Ordinary Hours Rate
Afternoon shift as defined under the Award	15% loading on IHC Ordinary Hours Rate
Night shift, rotating with day or afternoon	17.5% loading on IHC Ordinary Hours Rate
Night shift, non-rotating	30% loading on IHC Ordinary Hours Rate
Public Holidays	2.5 times the IHC Ordinary Hours Rate



### Fortnightly Cap

Families are currently not able to access CCS towards more than 100 hours of care per fortnight. Remote workers and those working rotating rosters often require care for more than 50 hours per week, as they may need to be on the farm at the break of dawn, or commence their shift at a hospital before their children wake up. Many nurses, for example, contact us explaining that they work a 12 hour shift, and therefore require at least 13 hours of care. Where a family is accessing other forms of approved care in addition to IHC outside daycare hours, they very quickly exceed the 50 hours of approved care in a single week.

For this reason, we recommend that consideration be given to lifting the fortnightly cap based on a family's individual circumstances to ensure that parents can exercise their right to work.

### 2. Rights of parents and children

Article 3 of the Convention on the Rights of the Child ('CRC') provides that the interests of the rights of the child are to be a primary consideration, and in this case, should be a primary focus for legislators. Children accessing IHC often have complex needs, live in remote locations, and are unable to access other forms of approved childcare. Accordingly, it is of crucial importance that consideration be given to the qualifications that should be held by individuals delivering IHC in order to meet the needs of these children.

Many children who are currently accessing IHC are of school age, with complex needs that have meant other approved childcare services have been unable to meet their needs. It is therefore appropriate to consider expanding approved qualifications for IHC Educators. We are of the view that individuals who are studying primary teaching qualifications or have held learning support or assistant education roles may be appropriately skilled to work with children who are of school age and/or have complex needs.

We therefore recommend that the qualifications held by individuals approved to deliver care under the IHC scheme be expanded to include the following:

- a) Working towards a university qualification in primary teaching; and
- b) Working towards or holds a Certificate III or higher qualification in disability support, education support, special education or a similar field.

### 3. Right to adequate standard of living

Article 27 of the CRC recognises the right of every child to an adequate standard of living. As noted above, the CCS cap of 50 hours per week does not consider the needs of children whose parents work in remote locations, work rotating rosters, or access more than one form of approved childcare.

We recommend that the fortnightly cap be raised for families in these circumstances in order to ensure that these children are able to access an adequate standard of living to support their physical, mental and social development.

## SECOND READING SPEECH

In the Minister's second reading speech, the Honourable Dan Tehan MP states that CCS "*provides the most hours of support to the families who work the longest hours*". As outlined above, the fortnightly cap prevents families who work the longest hours from making use of the CCS scheme in order to support their right to work. In relation to our valued Educators, the current hourly cap on IHC does not take into account



appropriate remuneration for Educators who support families working extended hours or non-standard hours.

The recommendations outlined above in relation to the hourly and fortnightly caps would ensure that the scheme does in fact support families who work the longest hours.

The Minister also states that the Government has listened to feedback from the childcare sector on what aspects of the childcare package have worked well. We recommend that the matters outlined in this submission be considered by the Committee in order to ensure that families accessing IHC are not left behind and are able to access the scheme that was set up to support them.

### FURTHER AMENDMENTS REQUIRED

#### 1. Absence Provisions

We welcome the recommendation that the Minister be authorised to approve prescribed circumstances in which an individual can access CCS for an absence that occurs before the first, or after the last, day a child physically accesses care. However it is crucial to understand the circumstances that apply to families accessing IHC when prescribing these circumstances.

Many children accessing IHC may be in a situation where they, or their guardian, may have to access emergency medical treatment, therefore making them unable to access their first or last day of care. We have had situations in which this has occurred and in order to ensure that the allocated Educator remains available to the family we have had to bear the cost of that session of care. Due to the vulnerable circumstances in which the family finds themselves, we have been unable to pass those costs onto the family.

We therefore recommend that the Minister's prescribed circumstances include those that were beyond the family's control such as medical treatment, hospitalisation or a contagious illness.

#### 2. Reporting Requirements

We support Provider obligations to report sessions, however in order to ensure that they are not overly burdensome for IHC we recommend that the prescribed circumstances include submission of these reports in bulk in a single file directly to the Department.

#### 3. 28 Day Rule

We do not support the requirement that families provide their bank account details or tax file number before accessing CCS. We see many families who fall into vulnerable circumstances very quickly, for example due to an accident that causes a primary carer to become incapacitated to provide care. This requirement would therefore mean that a provider of IHC would have to bear the cost of delivering care in order to prevent children from becoming at risk of neglect or abuse. Leaving this requirement as it currently stands will provide these families with a grace period to provide this information to the Department whilst also ensuring that children are not placed at risk during that period of time.

#### 4. In Home Care Amendments

As outlined above, the amendments to incorporate IHC into this legislation do not go far enough so as to account for the circumstances in which families access IHC. Families that access IHC need to do so 24



hours a day, seven days a week, and the hourly cap currently only reflects care that is delivered during ordinary daycare hours.

### SUBMISSIONS BY OTHER PARTIES

Leor supports the following submissions made by other organisations.

#### 1. Isolated Children's Parents' Association of Australia

Leor supports the following recommendations by the Association:

- a) an extension of the transitional provisions; and
- b) Supervision of distance education within IHC.

#### 2. Early Learning and Care Council of Australia

Leor supports the following recommendations by the Council:

- a) Inclusion of charitable organisations in third party payments;
- b) Extending ACCS certificates to 13 weeks;
- c) Increasing the period for claiming back payments of ACCS from 28 days to 3 months for vulnerable families; and
- d) Granting the Minister discretion to designate a disaster area for the purposes of ACCS.

#### 3. Goodstart

Leor supports the following submissions made by Goodstart:

- a) Absences be extended to include public holidays where the last day of scheduled attendance falls on a public holiday; and
- b) Applying for CRNs and CCS is overly burdensome for our vulnerable families.

### HEARING

If this legislation is considered at a public hearing, we welcome the opportunity to be involved and provide a voice to many of the vulnerable and disadvantaged families that access IHC.

### Contact

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