



Red Tape Committee
Department of the Senate
PO Box 6100
Canberra ACT 2600

Dear Senator Leyonhjelm,

Response to the Senate Red Tape Committee Inquiry into the effect of red tape on childcare

The Early Learning and Care Council of Australia (ELACCA) is pleased to provide the following response on the effect of red tape on childcare. We would also like to acknowledge the additional two-week extension to prepare our submission.

ELACCA is a national association of large providers of early learning and care, with members operating close to 2000 services across metropolitan, regional, rural and remote environments. Our members are committed to building sector capacity and capability to enable delivery of quality, accessible and affordable early learning and care to every child.

As detailed in our request for a deferral of this response, our primary red tape concern is the increasing cost and administrative burden associated with the implementation of the Family Assistance Law legislation and accompanying Minister's and Secretary's Rules.

Please also note that underpinning our response is a commitment to regulation through the National Quality Framework (NQF) as an international first, and as a significant investment in the future of Australia's children.ⁱ

This submission will:

- (1) identify anticipated regulatory burden and make recommendations associated with the Family Assistance Law Act and introduction of the new Child Care Subsidy (CCS) on 2 July 2018, and
- (2) acknowledge previous and current regulatory burdens and make recommendations associated with the National Quality Framework and associated systems.

1. Family Assistance Law Act - Child Care Subsidy (CCS)

On 2 July 2018, the new CCS commences. ELACCA supports the Australian Government's streamlining of, and additional investment into, the Child Care Benefit and Child Care Rebate (CCB & CCR) rolling two payments into one Child Care Subsidy (CCS). This initiative is in response to the Productivity Commission's [report](#)ⁱⁱ into Child Care and Early Childhood Learning recommendations released 20th Feb 2015 and associated Regulatory Impact Statements (RIS) and Senate Inquiries.

The implementation of this legislation requires major system reform for Government, providers and families prior to and post 2 July 2018 and involves lengthy, complex and costly change management. Of note, in February 2016, the Office of Best Practice Regulations (OBPR) noted on review of the RIS that there will be **significant impacts on the early childhood education and care market** and recommended a more in-depth analysis of the expected net benefits.ⁱⁱⁱ

Noting that it is premature to quantify the full costs and red tape burden, please the following concerns and recommendations.

- **Child Care Subsidy System (CCSS)**

One significant element of the implementation of the Child Care Package is the build and rollout of a new national IT system (CCSS). This system will be utilised by thousands of families, providers and multiple government departments to streamline, and enable appropriate distribution of, CCS.

As at 4 April 2018, the technical specifications for the CCSS remain in draft and the scope continues to expand. Many issues that have already begun to impact providers, employees and families are over and above the RIS and were not foreshadowed during prior consultations.

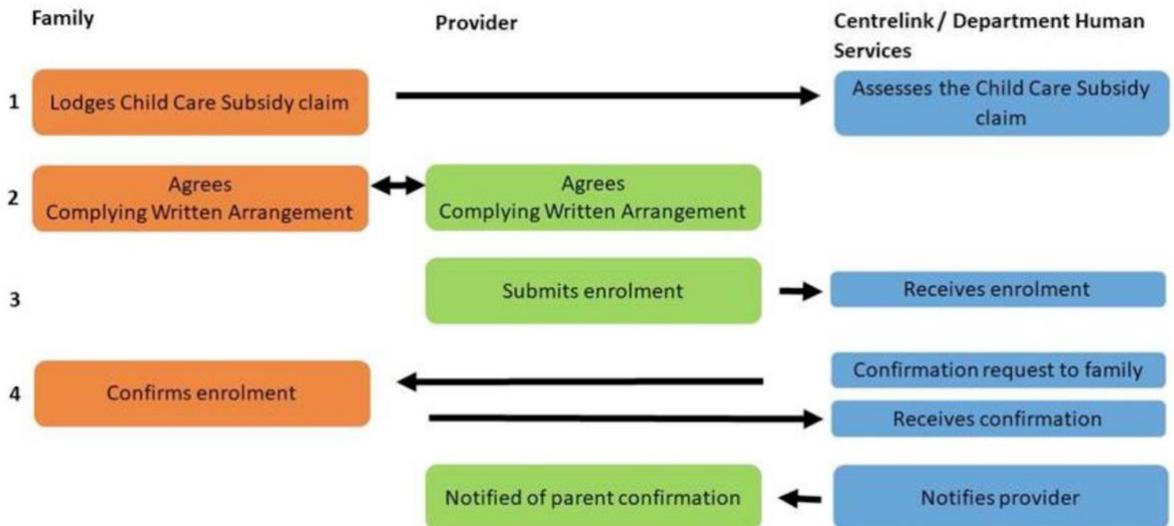
It is recommended that CCSS requirements be limited to the scope of the RIS consultations, and that the system be subject to ongoing review and improvement in consultation with users.

- **Complying Written Arrangements (CWA) and Enrolment Notices (EN)**

ELACCA acknowledges the importance of clear and formal agreements between families and providers to establish child attendance and fee liability. However, the complex and duplicate process of confirming enrolment and fee liability with families, government and providers is over and above the RIS and will create considerable monitoring costs and regulatory burden.

The process requires families to navigate a complex and confusing online system and repeatedly agree to attendance and fees (as demonstrated in the diagram below). With the understanding that recent Family Day Care fraudulent behaviour requires a strong and targeted response, it is however, unnecessary to penalise the whole sector who manage their business responsibilities honestly, diligently and cost-effectively. Previously a direct formal attendance and fee agreement, respectfully maintained between the early learning and care provider and family, enabled timely, sensitive and appropriate management of child attendance and fee agreements. Under the new system, this has been replaced by a considerably more onerous process at the point of enrolment with **any changes or variations** to attendance or fees triggering a repeat of the entire process.

It is recommended that this process be promptly reviewed and streamlined.



Source: Department of Education and Training Provider-Service Information sessions

- **Reporting actual attendance**

The mandatory requirement to report every child’s arrival and departure time is also over and above the RIS and will create considerable monitoring costs and regulatory burden for providers from 2 July 2018. This requirement is unnecessary for the implementation of the CCS and can only be met through costly manual data entry (approximately 4 hours per week) or, automated attendance software such as QK Kiosk (at a cost of approximately \$1 000 to \$1 500 per site).

It is recommended that implementation be deferred and only reconsidered following a new RIS.

- **Activity Test**

One single payment under the new CCS is welcomed, however, the anticipated positive red tape reduction has been lost under the new more complex and onerous approach to the Activity Test.

The need for documentation of activity, a random audit process and the associated risk of accumulating a debt will likely result in families choosing to withdraw their child from, or not enrol their child in, early learning. As a result, the policy intent of workforce participation and/or early learning outcomes of the CCS in all likelihood will not to be achieved.

In particular, Australia's children experiencing vulnerability and disadvantage, who in the absence of early intervention will potentially require more costly interventions in the future, are most likely to be denied access. The cost of administering the activity test far out ways the benefits received, and future costs incurred.

It is recommended that the Activity Test be removed making every family eligible for a minimum of 36 hours per fortnight, and families engaged in work, training or study be eligible for 100 hours.

- **Consistency of 'persons with management or control'**

All jurisdictions require that 'persons with management or control' be fit and proper prior to granting provider and service approvals and access to subsidies. However, the definitions and processes vary significantly between jurisdictions – federal, state and territory. This creates unnecessary duplication, red tape burden and cost for both governments and providers.

It is recommended that a single, nationally consistent, definition of 'persons with management or control' and associated application processes be established to meet the requirements of both CCS and NQF.

2. National Quality Framework Law and Regulations

Prior to December 2011, Australia's early learning and care providers were required to navigate a complex, hybrid system of national accreditation and jurisdiction specific regulation. The system created heightened regulatory burden and inconsistency across Australia. It also created the potential for early learning and care services to achieve high quality national accreditation whilst being prosecuted at a jurisdiction level for not meeting basic health, safety and wellbeing regulations.

In January 2012 accreditation and regulation were streamlined into the current National Law and Regulations incorporating the National Quality Framework (NQF) and the establishment of the Australian Children's Education and Care Quality Authority (ACECQA).

Of note, ACECQA has consistently engaged with ELACCA and considered feedback for improvement and streamlining of regulation and burden. This is a valuable relationship which serves to support quality delivery of early learning and care for each child.

In regard to regulatory burden, ELACCA refers the committee to ACECQA's four regulatory burden [surveys](#), undertaken to measure provider's perception of regulatory burdens associated with costly compliance in adhering to the NQF. This ongoing research identifies regulatory aspects that are onerous, and guides system improvements. For example, in response to provider feedback, duplication between some national quality standards were removed as part of the 2015 review of the NQF.^{iv}

The regulatory burden survey was administered annually between 2013 and 2015 and again in 2017, with a further survey to be undertaken in 2018. Support for the NQS amongst families and the sector has been high, with consistent ratings of 95% approval, and is evidence of providers willingness to engage in a quality improvement system.

As ELACCA members have developed their understanding of NQF requirements and participated in the Assessment and Rating (A&R) process, they have reported an easing of regulatory burden. The NQF is seen as supporting provision of quality early learning and care. ELACCA acknowledges that

aspects of the NQF, such as the Quality Improvement Plan, require ongoing resources, however, members report finding the document highly useful to demonstrate strengths and track goals and progress to improve quality. This is in keeping with the recently released, inaugural ACECQA Annual Performance Report 2017⁹, that evidenced continuous quality improvement from 2012 to 2017 for the majority of services.

It is recommended that the NQF and associated National Law and Regulations be retained for continuous improvement in the delivery or quality early learning and care.

Please find below other specific examples of red tape members have identified as cumbersome, complex and duplicated. The examples have cost and efficiency implications that impact the core business of delivering quality programs for children:

- **Improving data management systems**

The National Quality Agenda Information Technology System (NQAITS) is the central data storage for all elements of the NQF. This system has continuously improved, however, it remains cumbersome to learn and use, and ongoing functionality is limited. Specifically, large service providers cannot access their own accumulated data for all their services or make simple changes to update details for Nominated Supervisors.

It is recommended that:

- investment in improving the system and simplified interface between the NQAITS and new Child Care Subsidy System (CCSS) would reduce unnecessary red tape for government, providers and families, and
- a provider dashboard be established to enable large providers to monitor and improve quality across their services.

- **Consistency of assessment and rating (A&R) and compliance**

A&R processes and overall ratings vary across jurisdictions, including the frequency of, and triggers for, reassessment and what/how information is collected.

Large providers report receiving inconsistent ratings for services who have parallel organisational systems (policies, staffing, infrastructure). There is also inconsistency in the application of an informed risk-based approach to A&R.

There remains inconsistency across jurisdictions in compliance policy implementation. For example, notification requirements, processing waivers for facilities including space, light, ventilation and staffing, information required to deem an application complete and new service approvals processes. Jurisdictions also provide inconsistent advice to providers regarding breaches or required compliance actions / improvements. For example, in one situation a complete replacement of a playground surface is required, yet a similar situation a minor repair is permitted.

It is recommended that there is:

- greater use of electronic forms and public portal through NQAITS to assist in consistency of information collection and reduced administrative burden;
- ongoing professional development and support for the A&R process and the development of Quality Improvement Plans (QIPs);
- improved frequency and consistency of A&R visits and implementation of a transparent, risk-based model of reassessment. For example:
 - **5 years for Exceeding** National Quality Standard;
 - **2 years for Meeting** National Quality Standard; and,
 - **1 year for Working Towards** National Quality Standard.
- a more consistency national approach to compliance and resultant compliance actions.

- **National child safety legislation & reporting**

Currently, each jurisdiction has unique child safety legislation, background check systems and mandatory reporting of child abuse procedures.^{vi} This creates unnecessary cost and administrative burden for providers operating nationally.

It is recommended that a consistent approach to child safety legislation and reporting, as detailed in the Final Report from the Royal Commission into Institutional Responses to Child Sexual Abuse^{vii}, be adopted.

Thank you for consideration of this response. In conclusion, ELACCA seeks **effective and consistent national regulation** where every child's educational and developmental achievement is prioritised within an environment of safety, health and wellbeing.

Kind regards,

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About the Early Learning and Care Council of Australia:

The Early Learning and Care Council of Australia Inc (ELACCA) is an association of large providers of early learning and care services (preschool, long day, outside school hours and family day care). Our CEO members represent a cross section of not-for-profit and private organisations operating more than 2000 services across Australia.

ELACCA has a national presence with members providing services across metropolitan, regional, rural and remote environments. Members are committed to building sector capacity and capability to enable delivery of quality, accessible and affordable early learning and care to every child.

As a peak body, we bring a significant national voice and are well placed to provide strategic evidence-based advice on early learning and care to government.

Endnotes:

ⁱ Pascoe, S and Brennan, D. (2017) Lifting Our Game: Report of the Review to Achieve excellence in Australian Schools through Early Childhood Interventions. Vic Gov: Melbourne Retrieved from <https://education.nsw.gov.au/early-childhood-education/whats-happening-in-the-early-childhood-education-sector/lifting-our-game-report/Lifting-Our-Game-Final-Report.pdf>

ⁱⁱ <https://www.pc.gov.au/inquiries/completed/childcare/report>

ⁱⁱⁱ <https://ris.pmc.gov.au/2016/02/22/child-care-assistance-package>

^{iv} The most recent report can be found here: <https://www.acecqa.gov.au/resources/research/apr>

^v ACECQA, 2017, National partnership Annual Performance report – National Quality Agenda.

^{vi} Working with Children Checks Report: https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_working_with_children_checks_report.pdf

^{vii} <https://www.childabuseroyalcommission.gov.au/final-report>