

The Senate

Education and Employment
Legislation Committee

Family Assistance Legislation Amendment
(Child Care Measures) Bill (No. 2) 2014
[Provisions]

August 2014

© Commonwealth of Australia

ISBN: 978-1-76010-071-1

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website: <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

This document was produced by the Senate Standing Committee on Education and Employment and printed by the Senate Printing Unit, Parliament House, Canberra.

MEMBERSHIP OF THE COMMITTEE

Members

Senator Bridget McKenzie, Chair, Nats, VIC

Senator Sue Lines, Deputy Chair, ALP, WA

Senator Deborah O'Neill, ALP, NSW (from 7 July 2014)

Senator Barry O'Sullivan, Nats, QLD (from 1 July 2014)

Senator Lee Rhiannon, AG, NSW

Senator Anne Ruston, LP, SA (from 1 July 2014)

Senator Helen Kroger, LP, VIC (until 30 June 2014)

Senator Mehmet Tillem, ALP, VIC (until 30 June 2014)

Substitute Members

Senator Sarah Hanson-Young, AG, SA

Secretariat

Ms Julia Agostino, Secretary

Ms Natasha Rusjakovski, Principal Research Officer

Ms Jessica Strout, Senior Research Officer

Ms Elise Williamson, Research Officer

Ms Sarah Bainbridge, Administrative Officer

TABLE OF CONTENTS

MEMBERSHIP OF THE COMMITTEE	iii
CHAPTER 1	1
Reference	1
Conduct of inquiry.....	1
Background.....	1
Overview of the Bill	2
Human Rights Implications	3
Financial Impact Statement	4
Acknowledgement.....	4
Notes on References	4
CHAPTER 2	7
Key issues	7
Affordability and accessibility of childcare	8
Childcare modelling	11
Retrospectivity.....	12
Productivity Commission Inquiry	14
LABOR SENATORS' DISSENTING REPORT	17
Key issues	17
AUSTRALIAN GREENS' DISSENTING REPORT	25
APPENDIX 1	27
Submissions received	27
Response to questions on notice	27
APPENDIX 2	29
Public Hearing	29

APPENDIX 331
Submissions received from Family Assistance Legislation Amendment (Child Care Measures) Bill 2014.....31

CHAPTER 1

Reference

1.1 On 26 June 2014 the Senate referred the provisions of the Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2) 2014 (the bill) to the Senate Education and Employment Legislation Committee (committee) for inquiry and report by 28 August 2014.¹

Conduct of inquiry

1.2 Details of the inquiry were made available on the committee's website.² The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from nine organisations, as detailed in Appendix 1.

1.3 A public hearing was held in Canberra on 25 August 2014. The witness list for the hearing is available in Appendix 2.

Background

1.4 The bill proposes to amend the *A New Tax System (Family Assistance) Act 1999* (Cth) (New Tax Act) to give effect to the government's budget measure that would deliver net savings of \$230.4 million over four years.³ The bill would achieve this goal by extending the Child Care Benefit (CCB) income thresholds for those using approved childcare services, for a further three years.⁴

1.5 The bill follows the Family Assistance Legislation Amendment (Child Care Measures) Bill 2014 (the former bill) that proposed changes to both the Child Care Rebate (CCR) and the CCB. The committee inquired into the former bill and tabled its report on 16 June 2014.⁵ Submissions were received from 16 organisations in this former bill inquiry, as detailed in Appendix 3.

1 *Journals of the Senate*, No. 37, 26 June 2014, pp 1013–1017.

2 Parliament of Australia, Senate Committees, Senate Standing Committee on Education and Employment, Family Assistance Legislations Amendment (Child Care Measures) Bill (No. 2) 2014. http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Family_Bill_2 (accessed 28 July 2014).

3 Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2) 2014, *Explanatory Memorandum*, p. 2.

4 Approved childcare services must meet the requirements set out in *A New Tax System (Family Assistance) (Administration) Act 1999* and other relevant family assistance laws and instruments. Most long day care, family day care and outside school-hours care services offer approved care. See Department of Parliamentary Services, *Bills Digest No. 92, 2013–14*, Family Assistance Legislation Amendment (Child Care Measures) Bill 2014, p. 2.

5 Senate Education and Employment Legislation Committee, *Family Assistance Legislation Amendment (Child Care Measures) Bill 2014*, June 2014.

1.6 On 23 June 2014 the Senate amended the former bill to exclude those provisions which sought to extend the CCB income thresholds for a further three years⁶ and the House of Representatives agreed to this amendment.⁷

1.7 On 26 June 2014 the bill was introduced in the House of Representatives, effectively, 'reintroducing the child care benefit measure contained in the former bill.'⁸

1.8 The proposed changes to the CCB income thresholds are a part of a broader 2014–15 Budget measure to maintain eligibility thresholds for major government payments for three years from 1 July 2014.⁹

Overview of the Bill

1.9 The bill would maintain the current CCB income test thresholds for approved childcare services at their current level for three years from 1 July 2014.

1.10 Currently the CCB income test thresholds are indexed at the beginning of each financial year and adjusted pursuant to the movement in the Consumer Price Index (CPI) over the year to the preceding December quarter.¹⁰

1.11 Presently under the New Tax Act and relevant instruments, CCB is payable for approved care to eligible parents/carers for between 24–50 hours of care per child per week providing the following requirements are satisfied:¹¹

- parents/carers are responsible for paying the relevant child care fees;
- the child receiving the care is immunised or is exempt from the immunisation requirements;
- parents/carers meet the residency requirements; and
- parents/carers meet the income test.¹²

1.12 Under the current income test, the maximum CCB rate is payable for parents/carers with an annual adjusted taxable income under \$42 997.¹³ The current

6 *Senate Hansard*, 23 June 2014, p. 25.

7 *House of Representatives Hansard*, 23 June 2014, p. 93.

8 The Hon. Sussan Ley, Assistant Minister for Education, *House of Representatives Hansard*, 25 June 2014, p. 10.

9 Australian Government, *Budget Measures: Budget Paper No. 2 2014–15*, p. 204.

10 *A New Tax System (Family Assistance) Act 1999*, Schedule 4.

11 Department of Human Services, *Child Care Benefit*, 1 July 2014, <http://www.humanservices.gov.au/customer/services/centrelink/child-care-benefit> (accessed 9 July 2014).

12 Department of Human Services, *Child Care Benefit*, 1 July 2014, <http://www.humanservices.gov.au/customer/services/centrelink/child-care-benefit> (accessed 9 July 2014).

13 Department of Human Services, *Child Care Benefit*, 1 July 2014, <http://www.humanservices.gov.au/customer/services/centrelink/child-care-benefit> (accessed 9 July 2014).

maximum CCB rate for approved care for a non-school aged child is \$4.10 per hour, or \$205 for a 50 hour week.¹⁴

1.13 Currently CCB is not payable to parents/carers with income above the income limit. The current income limit for one child in care is \$149 597; for two children in care it is \$155 013; and for three or more children in care it is \$175 041 plus \$33 106 for each child after the third.¹⁵

Human Rights Implications

1.14 The explanatory memorandum details the bill's engagement of the following human rights instruments:

- the rights of the child, under Article 3 of the *Convention of the Rights of the Child* (CRC); and
- the right to social security, under Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Article 26 of the CRC.¹⁶

1.15 The explanatory memorandum states that the bill is compatible with human rights because:

To the extent that the Bill engages the rights of the child and to the extent it engages and places any limitation on the right to social security, such limitation is reasonable, necessary and proportionate to achieving a legitimate aim.¹⁷

1.16 The Parliamentary Joint Committee on Human Rights (Human Rights committee) examined the bill in its Ninth report, tabled in the Senate on 15 July 2014.¹⁸

1.17 The Human Rights committee expressed concerns that the statement of compatibility included in the explanatory memorandum:

- addressed the bill's 'impact on the amount of the benefit rather than its impact on the entitlement to the benefit based on family income'¹⁹ in the context of

14 Department of Human Services, *Child Care Benefit*, 1 July 2014, <http://www.humanservices.gov.au/customer/services/centrelink/child-care-benefit> (accessed 9 July 2014).

15 Department of Human Services, *Child Care Benefit*, 1 July 2014, <http://www.humanservices.gov.au/customer/services/centrelink/child-care-benefit> (accessed 9 July 2014).

16 Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2), *Explanatory Memorandum*, p. 3–4.

17 Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2), *Explanatory Memorandum*, p. 4.

18 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament; Bills introduced 23 – 26 June 2014; Legislative Instruments received 7 June – 20 June 2014*.

19 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament; Bills introduced 23 – 26 June 2014; Legislative Instruments received 7 June – 20 June 2014*, p. 31.

the right to social security under ICESCR and CRC and the right to an adequate standard of living;²⁰ and

- did not provide an assessment of the impact of the measures on the right to work under Article 2(1) of ICESCR and the Convention on the Elimination of All Forms of Discrimination against Women.²¹

1.18 The Human Rights committee sought clarification from the Minister for Education as to whether:

- pausing the indexation of the income thresholds for entitlement to CCB is compatible with the right to social security and the right to an adequate standard of living;²² and
- the bill is compatible with the right to work.²³

1.19 The Minister is yet to provide a response.

Financial Impact Statement

1.20 The explanatory memorandum submits that the bill would have a financial impact, resulting in net savings of \$230.4 million over four years.²⁴

Acknowledgement

1.21 The committee thanks those individuals and organisations who contributed to the inquiry by preparing written submissions and giving evidence at the hearing.

Notes on References

1.22 In this report the committee references submissions made to the inquiry into the Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2) 2014, as detailed in Appendix 1; as well as submissions made to the inquiry into the Family Assistance Legislation Amendment (Child Care Measures) Bill 2014 (former bill), as detailed in Appendix 3.

20 The right to an adequate standard of living requires that the state take steps to ensure the availability, adequacy and accessibility of food, clothing, water and housing for all people in Australia. See Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament; Bills introduced 23 – 26 June 2014; Legislative Instruments received 7 June – 20 June 2014*, p. 30.

21 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament; Bills introduced 23 – 26 June 2014; Legislative Instruments received 7 June – 20 June 2014*, pp. 31–32. The Convention on the Elimination of All Forms of Discrimination Against Women recognises that the availability of child care is a critical component of the right to work.

22 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament; Bills introduced 23 – 26 June 2014; Legislative Instruments received 7 June – 20 June 2014*, p. 31.

23 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament; Bills introduced 23 – 26 June 2014; Legislative Instruments received 7 June – 20 June 2014*, p. 33.

24 Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2), *Explanatory Memorandum*, p. 2.

1.23 References in this report to the Hansard for the public hearing are to the Proof Hansard. Please note that page number may vary between the Proof Hansard and the official transcripts.

CHAPTER 2

Key issues

2.1 The Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2) 2014 (the bill) provides for the paused indexation of the Child Care Benefit (CCB) income thresholds for a further three years from 1 July 2014.¹ The bill sought to maintain the CCB income thresholds at the amounts applicable as at 30 June 2014. As the bill was not passed by the Parliament before 1 July 2014, the current figures reflect the CCB indexed from 7 July 2014.

2.2 Broadly speaking, concerns brought to the committee's attention centred on the bill's potential impact on the affordability and accessibility to child care for low to middle income families.² Some submitters also questioned the modelling used by the government with respect to the proposed measures and emphasised the need for the bill to be considered in the context of the Productivity Commission's (PC) *Inquiry into Child Care and Early Childhood Learning (Inquiry into Childcare)* Report.³ The PC released the draft report of the *Inquiry into Childcare* on 22 July 2014.⁴

2.3 While some concerns were raised about the proposed measures,⁵ others acknowledged the difficult fiscal environment and welcomed the government's investment of \$28.5 billion over four years in child care fee assistance.⁶

1 Department of Education, *Submission 6*, p. 1 and p. 4.

2 *Submission 2*, p. 3; *Submission 4*, p. 11; Australian Services Union, *Submission 7*, p. 3; Australian Council of Social Service, *Submission 9*, p. 2; Municipal Association of Victoria, *Submission 1*, former bill inquiry; National Welfare Rights Network, *Submission 2*, former bill inquiry; Police Federation of Australia, *Submission 7*, former bill inquiry.

3 *Submission 2*, p. 5; *Submission 4*, p. 3; *Submission 5*, p. 3; *Submission 9*, p. 2; Australian Community Children's Services, *Submission 3*, p. 1, former bill inquiry; SDN Children's Services, *Submission 8*, p. 6, former bill inquiry; United Voice, *Submission 10*, p. 2, former bill inquiry; Community Child Care Co-operative (NSW), *Submission 11*, p. 5, former bill inquiry; Early Learning Association Australia, *Submission 14*, p. 1, former bill inquiry.

4 Productivity Commission, *Childcare and Early Childhood Learning*, <http://pc.gov.au/projects/inquiry/childcare/draft> (accessed 28 July 2014).

5 Social Policy Research Centre (UNSW), *Submission 1*; SDN Children's Services, *Submission 2*; *Submission 4*; The Creche and Kindergarten Association Limited, *Submission 5*; Australian Community Children's Services, *Submission 3*, p. 1, former bill inquiry; Australian Childcare Alliance, *Submission 9*, p. 5, former bill inquiry.

6 Early Childhood Australia, *Submission 4*, p. 3; Department of Education, *Submission 6*; AiGroup, *Submission 8*, p. 2; Department of Education, *Submission 4*, former bill inquiry; Early Childhood Australia, *Submission 5*, p. 3, former bill inquiry; Ai Group, *Submission 16*, p. 2 former bill inquiry.

Affordability and accessibility of childcare

2.4 Under the proposed amendment the CCB income test threshold will remain the same.⁷ As such, CCB rates would be unaffected by the measures proposed in the bill as they would continue to be indexed annually in line with movement in the Consumer Price Index (CPI). However, under the proposed amendments the indexation of the CCB income test would remain the same for three income years.⁸

2.5 Some submitters questioned the ability of the proposed measures to keep pace with the cost of education and care, arguing that CCB thresholds should receive at least a CPI increase annually, so that CCB rates adjust in accordance with the cost of education and care.⁹

2.6 The Municipal Association of Victoria (MAV) expressed concerns about the proposed CCB amendment to the *A New Tax System (Family Assistance) Act 1999* (Cth) (New Tax Act), arguing that the budget reform will:

...dramatically affect Victoria's Family Day Care operators and could cause families to miss out on affordable accessible child care from next year.¹⁰

2.7 Further, Early Childhood Australia (ECA) submitted that:

[T]he proposed measures [that]... freeze Child Care Benefit thresholds will exacerbate the decline in real value of the subsidies. This will affect the affordability of ECEC [early childhood education and care] for families, and particularly low and middle income families.¹¹

2.8 ECA contended that the proposed changes to CCB will have a 'bracket creep' effect.¹² That is, 'as house hold income increases, and the thresholds are not increased commensurate with inflation, families will move along the CCB taper rate receiving less CCB every year.'¹³ In line with this argument, some submitters argued that unless the income thresholds increase in line with increases in income, those with lower

7 Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2), Explanatory Memorandum, p. 2.

8 Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2), subclause 3(5B) of Schedule 4.

9 *Submission 2; Submission 4; Submission 7; Submission 9*; Australian Community Children's Services, *Submission 3*, p. 2, former bill inquiry.

10 Municipal Association of Victoria, *Submission 1*, p. 1–2, former bill inquiry.

11 Early Childhood Australia, *Submission 4*, p. 3; Early Childhood Australia, *Submission 5*, p. 3, former bill inquiry.

12 Early Childhood Australia, *Submission 4*, p. 10; Early Childhood Australia, *Submission 5*, p. 10, former bill inquiry.

13 Early Childhood Australia, *Submission 4*, p. 10; Early Childhood Australia, *Submission 5*, p. 10, former bill inquiry.

incomes will receive less benefits making early education and care less affordable for those on low incomes.¹⁴ In support of this position, Goodstart Early Learning noted:

CPI is inadequate to keep up with both the cost of ECEC... or average wages... This impacts both the income thresholds and the rates for CCB. This means fewer and fewer families are eligible for CCB, and those that are eligible are receiving proportionally less assistance, leading to higher out-of-pocket costs.¹⁵

2.9 The Australian Council of Social Services also submitted that 'affected families will receive reduced assistance and face higher out of pocket costs as family incomes increase despite the likelihood that child care fees will continue to rise.'¹⁶

2.10 National Welfare Rights Network (NWRN) also raised concerns consistent with other submissions received by the committee¹⁷ when it stated that:

Freezing the income thresholds for CCB until 30 June 2017 will mean that more families will receive less CCB or will lose it entirely. As their CCB payments reduce, their out of pocket costs increase and they will hit the \$7,500 cap for CCR sooner.¹⁸

2.11 In contrast to the above submissions, the committee also received evidence from submitters in support of the bill.¹⁹ These submitters argued that the proposed measures would have no impact on families with income below the lower income threshold for CCB, and minimal impact on those above the threshold.²⁰ The current lower and upper CCB income thresholds are \$42 997 and \$100 268.²¹

2.12 Ai Group argued that the proposed amendment would not have a significant impact on affordable accessible childcare.

The suspension of indexation of the eligibility threshold will reduce by a small amount the quantity of CCB that families with incomes above the threshold would receive relative to the amount they would have been eligible to receive were indexation not suspended.²²

2.13 The Department of Education (department) explained that:

14 *Submission 2; Submission 4; Submission 7; Submission 9; Community Child Care Co-operative (NSW), Submission 11*, p. 5, former bill inquiry; Goodstart Early Learning, *Submission 13*, p. 4, former bill inquiry.

15 Goodstart Early Learning, *Submission 13*, p. 4, former bill inquiry.

16 *Submission 9*, p. 3.

17 *Submission 7*; Police Federation of Australia, *Submission 7*, p. 1, former bill inquiry.

18 National Welfare Rights Network, *Submission 2*, p. 2, former bill inquiry.

19 *Submission 6; Submission 8*; The Department of Education, *Submission 4*, former bill inquiry; Ai Group, *Submission 16*, former bill inquiry.

20 *Submission 6; Submission 8*; The Department of Education, *Submission 4*, former bill inquiry; Ai Group, *Submission 16*, former bill inquiry.

21 *Submission 6*, p. 1.

22 *Submission 8*; Ai Group, *Submission 16*, p. 2, former bill inquiry.

Families that receive less Child Care Benefit as a result of this measure may be able to claim Child Care Rebate that covers up to fifty per cent of out-of-pocket child care costs for working families.²³

2.14 In evidence before the committee the department highlighted that as CCB hourly and weekly rates would continue to be indexed under the bill, 'some people because of... the possibility of offset for CCR, if they are eligible... can actually get more CCB, more childcare as a whole.'²⁴

Pausing indexation does not constitute a 'cut'

2.15 Upon introduction of the bill into Parliament, the Hon Sussan Ley MP, Deputy Assistant Minister for Employment (Minister), emphasised that the CCB, as with all means tested payments, changes according to your circumstances.²⁵ Further, the Minister explained that the proposed amendment to pause the CCB income threshold does not constitute a 'cut'.²⁶

If a family's income and circumstances do not change from one financial year to the next there should be no negative impact on their assistance. In fact, since the government is increasing the child care benefit hourly rate, many families will see an increase in their child care benefit payment. As with all means tested payments, a change to your circumstances – for example, a pay rise – can change what you are able to receive.²⁷

2.16 Early Childhood Australia (ECA), Social Policy Research Centre (NSW) and United Voice (UV) acknowledged that the costs of child care over the last decade have increased at rates above inflation and that a significant percentage of these costs have been borne by the government.²⁸

2.17 The government is committed to providing affordable and accessible child care options for Australian working families, through the provision of financial assistance under the CCB.

Child care subsidies are one of the fastest growing areas of Australian Government outlay, driven principally by increased numbers of children in care, increased hours in care and rises in fees. Overall the Government will increase child care fee assistance to \$28.5 billion over the next four years. This includes \$13.6 billion to reduce child care fees under the Child Care

23 *Submission 6*, p. 4; The Department of Education, *Submission 4*, p. 4, former bill inquiry.

24 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Committee Hansard*, 25 August 2014, p. 6.

25 The Hon. Sussan Ley, Assistant Minister for Education, *House of Representatives Hansard*, 25 June 2014, p. 10.

26 The Hon. Sussan Ley, Assistant Minister for Education, *House of Representatives Hansard*, 25 June 2014, p. 10.

27 The Hon. Sussan Ley, Assistant Minister for Education, *House of Representatives Hansard*, 25 June 2014, p. 10.

28 *Submission 1*; *Submission 4*; United Voice, *Submission 10*, p. 2, former bill inquiry.

Benefit, and \$14.9 billion to assist working families with out-of-pocket child care expenses under the Child Care Rebate.²⁹

2.18 Further, when the former bill was introduced into the Senate on 19 June 2014, the Hon Simon Birmingham, Parliamentary Secretary to the Minister for the Environment, noted during the second reading speech that many families will not be affected by the proposed changes to the CCB.³⁰

Childcare modelling

2.19 Questions were raised at the hearing about the modelling used by the government with respect to the proposed measure. The department explained that 'the methodology and the modelling outcomes for budget measures are agreed with the Department of Finance to confirm that they are accurate.'³¹ With specific reference to the modelling used for this measure, the department stated:

The model is usually updated at least twice a year in relation to the factors that are put into it. The main ones that change... include the estimated growth in fees over the out years. If there is a history of changes and our data changes, that gets modified. The other one that move[s]... with an agreement between Finance and Treasury... is growth in children and families in care.³²

2.20 As the modelling is done as required and changes to the modelling parameters are usually implemented in conjunction with the Budget, the modelling for this measure 'is based on the data of 700,000-odd families and 1.1 million children that is provided by the child care management system.... from November 2012.'³³ The department indicated that they are looking to update the reference using data from 2013 but emphasised that modelling is used to extrapolate out 'conservative estimates' for future years.³⁴

2.21 The department also explained that the modelling undertaken has been the modelling in use for a number of years and that under the current government there have been no changes to the form of modelling used.

The modelling that we have done to date is a full-year effect; it has not broken it down by periods, although logically there will be people throughout the year who do or don't use or who drop off or drop on to CCB.

29 *Submission 6*, p. 3; Department of Education, *Submission 4*, p. 4, former bill inquiry.

30 Senator the Hon. Simon Birmingham, Parliamentary Secretary to the Minister for the Environment, *Senate Hansard*, 19 June 2014, p. 80.

31 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Committee Hansard*, 25 August 2014, p. 5.

32 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Committee Hansard*, 25 August 2014, p. 5.

33 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Committee Hansard*, 25 August 2014, p. 5.

34 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Committee Hansard*, 25 August 2014, p. 5.

The department has not done any modelling in relation to the measures since it was prepared for the budget.³⁵

2.22 The department provided evidence that this type of methodology and modelling had been conducted and utilised historically, including under the former government. Further, the department explained that the modelling used has been approved by Treasury.³⁶

2.23 In its submission to the committee, ECA provided six scenarios analysing the bill's impact on families based on ECA's analysis.³⁷ The department indicated that it had reviewed this modelling with ECA and explained that it was unable to replicate the ECA's findings.

We did have some discussions with ECA after they had released their modelling to discuss some of the methodology. In the simplest terms, it is probably fair to say that we think their estimates are overstated in a number of ways... Their modelling includes the freezes, and it was both CCR and CCB that they were modelling at that time, both of those freezes being in effect in 2017-18 as well—so it was a four-year freeze rather than a three-year one—so some of their total amounts were slightly overstated. We were talking to them about some of their growth factors for families and rates, and they did not align with the department's views of what those growth rates would be, so we think they were overstated as well...

We did not try to replicate their modelling. But, just in talking to them about, as I said, some of the factors and the underpinnings that they were using, we did not agree that they were appropriate and some them were overstated.³⁸

2.24 The committee notes the department took steps to understand the ECA's modelling, but did not try to replicate this modelling. The committee is satisfied that the department has undertaken appropriate modelling.

Retrospectivity

2.25 The explanatory memorandum,³⁹ Minister's second reading speech⁴⁰ and the submission received from the department⁴¹ are silent as to whether the CCB

35 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Committee Hansard*, 25 August 2014, p. 7.

36 Mrs Margaret Pearce, Early Child Care Support Group, Department of Education, *Committee Hansard*, 25 August 2014, p.10.

37 *Submission 4*, pp. 14–21.

38 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Committee Hansard*, 25 August 2014, p. 8.

39 Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2) 2014, *Explanatory Memorandum*.

40 The Hon. Sussan Ley, Assistant Minister for Education, *House of Representatives Hansard*, 25 June 2014, pp. 10–11.

41 *Submission 6*.

indexation pause will be applied retrospectively. As such, the committee sought clarification from the department on this issue. The department provided evidence before the committee that:

As the bill was not passed by the parliament before 1 July 2014, the childcare benefit income thresholds were indexed with effect from 7 July 2014, which is essentially the start date of the first full childcare week. Because the CCB income thresholds were indexed in July 2014, the government is now considering its options in relation to the bill. It would not be appropriate for the department to speculate on the government's possible options. When this measure is proposed to commence is subject to a decision by government.⁴²

2.26 In addressing the committee's concerns about the potential practical and financial impacts of the measures, the department explained that:

... if your income is below the minimum income threshold again there would not be a change. And for those people whose income was above the maximum limit, [\$]150,000 plus, who are not receiving anything at the moment, they would also still not receive anything. For people in between, it would mean that the income threshold rate would not increase by CPI and it may have an impact on what your entitlement may be. The best way to check that: we normally reference people back to the calculator that the HS [Human Services] use because it is hard to say, particularly in bulk emails and letters, what the impacts were. They need to double check with the Department of Human Services what their entitlements will be.⁴³

2.27 The department emphasised their commitment to communicating with families to ensure they do not experience confusion about their level of CCB entitlement. They provided evidence before the committee that in addition to taking steps such as updating the website, sending emails and letters, families in receipt of CCB would need to check online to ascertain their hourly and weekly CCB rates.⁴⁴

Committee view

2.28 The committee believes it is important to remember that the CCB, as with all means tested payments, changes according to individual circumstances and that the proposed amendment to pause the CCB income threshold does not constitute a 'cut'.⁴⁵ It is the view of the committee that this represents a fair and reasonable approach to providing CCB to families, and one that meets community expectation.

42 Ms Margaret Pearce, Early Child Care Support Group, Department of Education, *Committee Hansard*, p. 1.

43 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Committee Hansard*, 25 August 2014, p. 6.

44 Mrs Margaret Pearce, Early Child Care Support Group, Department of Education and Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Committee Hansard*, 25 August 2014, p. 6.

45 The Hon. Sussan Ley, Assistant Minister for Education, *House of Representatives Hansard*, 25 June 2014, p. 10.

2.29 The committee also notes that the form of modelling utilised by the department to develop the policy behind this bill has been used both historically and under the former government.

Productivity Commission Inquiry

2.30 On 22 November 2013, the Treasurer, the Hon Joe Hockey MP, directed the PC to undertake an *Inquiry into Childcare* with a specific focus on developing a system which would address children's learning and development needs whilst supporting workforce participation.⁴⁶ The PC has been asked to report and make recommendations on a number of issues affecting the childcare sector, including: 'options – within existing funding parameters – for improving the accessibility, flexibility and affordability of childcare for families with diverse circumstances.'⁴⁷ The government has asked the PC to provide its final report of the *Inquiry into Childcare* by 31 October 2014.⁴⁸

2.31 A number of submitters suggested that the proposed legislative changes to the CCB be postponed until the conclusion of the PC *Inquiry into Childcare*.⁴⁹

2.32 Other submitters raised concerns that the bill is independent of the draft recommendations of the PC⁵⁰ which propose that the CCR and CCB be combined into a single means-tested subsidy.⁵¹

2.33 In response to these concerns the department's submission explains the measure as a:

...limited and targeted savings measures to help address short term fiscal concerns. In particular, this measure does not pre-empt the outcomes of the Productivity Commission Inquiry into Child Care and Early Childhood Learning, which is a once in a generation opportunity to reform child care and early learning. The Government will use the Productivity Commission

46 Productivity Commission, *Childcare and Early Childhood Learning*, <http://pc.gov.au/projects/inquiry/childcare> (accessed 9 July 2014).

47 Productivity Commission, *Childcare and Early Childhood Learning*, <http://pc.gov.au/projects/inquiry/childcare> (accessed 9 July 2014).

48 Department of Education, *Productivity Commission Inquiry into Child Care and Early Childhood Learning*, <https://education.gov.au/productivity-commission-inquiry-child-care-and-early-childhood-learning> (accessed 15 July 2014).

49 *Submission 2*, pp. 2–3; *Submission 4*; *Submission 5*; *Submission 9*, p. 2; Australian Community Children's Services, *Submission 3*, p. 1, former bill inquiry; SDN Children's Services, *Submission 8*, p. 6, former bill inquiry; United Voice, *Submission 10*, p. 2, former bill inquiry; Community Child Care Co-operative (NSW), *Submission 11*, p. 5, former bill inquiry; Early Learning Association Australia, *Submission 14*, p. 1, former bill inquiry.

50 *Submission 2*, pp. 2–3.

51 Australian Government Productivity Commission Draft Report, *Childcare and Early Childhood Learning*, July 2014, p. 45.

Inquiry process and outcomes to ensure better child care policies into the future.⁵²

2.34 This explanation addresses concerns that the CCB measure should not be taken ahead of the PC's report on the *Inquiry into Childcare* because it is both limited and targeted and will not prevent the government taking on board any recommendations the PC may make about Australia's broader child care and early childhood learning needs in its final report.

Committee view

2.35 The committee acknowledges the government's ongoing commitment to providing affordable and accessible child care options for Australian working families through the provision of financial assistance under the CCB. In particular, the committee is persuaded that the provisions in the bill are a responsible legislative reform that will support sustainability in Australia's family payment system.

2.36 While the committee notes concerns about maintaining the current CCB income thresholds for three years, it is not persuaded that childcare will become unaffordable or inaccessible as a result of this measure. It also notes the PC *Inquiry into Childcare* will be given due consideration by the government in the development of future policy in this area.

2.37 The committee is persuaded that the proposed measure is limited, well targeted and for a finite period of time, and is a necessary part of the broader government agenda of repairing the budget and strengthening the economy. Further, the committee believes that the measure meets community expectations that CCB be paid according to a family's particular circumstances.

Recommendation 1

2.38 The committee recommends that the bill be passed.

Senator Bridget McKenzie
Chair

52 Department of Education, *Submission 6*, p. 3. See: Department of Education, *Submission 4*, p. 3, former bill inquiry.

LABOR SENATORS' DISSENTING REPORT

Key issues

1.1 Labor Senators do not support the chair's report into the Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2) 2014 (the bill).

1.2 The Coalition's pre-election policy document, *The Coalition's Policy for Better Child Care and Early Learning*, published in September 2013, states the Coalition's commitment 'to help ensure child care can be more accessible and affordable'. This bill completely goes against that policy statement by forcing up costs for families already facing rising fees.

1.3 Labor believes in good quality, accessible early childhood education and care (ECEC). In government we undertook major reform in the ECEC sector. Part of the reform is still under way. Our reforms focussed on improving educational outcomes for Australian families. The early ECEC sector has overwhelmingly endorsed Labor's reforms.

1.4 Evidence received by submitters, and evidence presented at the public hearing confirm that the measures contained in the bill are simply budget savings measures, as reflected in the budget papers, redirected by government to repair the budget and fund their policy priorities, without proper assessment of the impact on families.

The bill will not deliver the savings measures announced by the government

1.5 The Department of Education (the department) was unable to release accurate data on how families will be affected by the bill. During the public hearing and in further questions on notice, Senators requested this data from the department, who were either unable, or unwilling to provide it.

Senator LINES: Do you have an idea yet of whom this CCB change will impact on and how it will affect them?

Mrs Pearce: That goes to a question on notice from Senator O'Neill that we did answer, actually.

Mr Willing: In the broader sense, the model produces national savings data. The 500,000 families and 800,000 children that we advised of was the smallest breakdown we could find. For example, I think we were asked a question on notice about income ranges. That cannot be provided because the model does not go to the detail of the circumstances of individual families. The data is quite flat in so far as it goes to the child, the hours and then the rate. The model does not then link multiple children of a family back to a parent or family, so it cannot produce the data about a particular family or particular types of families.¹

1 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Proof Committee Hansard*, p. 6.

1.6 Furthermore, on the issue of retrospectivity outlined in the Bills Digest,² the department were unable to provide any data or assessment of the costs to government or families on retrospectively applying the changes in the bill. Labor Senators of the committee continue to hold concerns regarding the effect of retrospectivity on families, especially considering the government has failed to instruct the department to undertake modelling on the matter.

Mr Willing: If asked we could probably provide some sort of advice or modelling for government.

Senator HANSON-YOUNG: But you have not been asked to do that?

Mr Willing: We have not been asked and we have not done any modelling.³

1.7 We therefore assert that it would be impossible for the government to have any accurate assessment of the costs of administering, or the saving measures achieved by implementing the bill.

The government is avoiding scrutiny over changes to the Child Care Benefit Scheme at the detriment of Australian families.

1.8 Despite new and compelling evidence from peak bodies like Australian Council of Social Service (ACOSS)⁴, key researchers Deborah Brennan and Elizabeth Adamson from the Social Policy Research Centre (UNSW)⁵, and the Parliamentary Joint Committee on Human Rights releasing their Ninth Report of the 44th Parliament that explored the bill⁶, Coalition members of the committee would not agree to hold a hearing receiving evidence from any submitter except the department.

1.9 Labor Senators can therefore only infer that these submitters would have produced evidence oppositional to the government's agenda.

The bill will exacerbate already rising pressures on costs

1.10 Eligibility for CCB has consistently moved away from average earnings. In 2004–5, a family on 70 per cent of average full-time weekly earnings received full CCB. By 2013–14, the income cut off for CCB had fallen to just 55 per cent of average full-time weekly earnings, and by 2019 will fall below 50 per cent.

1.11 Yet, wages for educators remain low in the sector, and Labor Senators do not support a reduction or maintenance of wages to keep costs low, rather increased support from the government to keep services affordable for families.

2 Department of Parliamentary Services (Cth), *Bills Digest*, No.4, 2014–15, p. 8.

3 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Proof Committee Hansard*, p. 7.

4 Australian Council of Social Services, *Submission 9*.

5 Social Policy Research Centre (UNSW), *Submission 1*.

6 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament; Bills introduced 23 – 26 June 2014; Legislative Instruments received 7 June – 20 June 2014*.

1.12 Labor Senators support evidence given in the Submission by Deborah Brennan and Elizabeth Adamson, Social Policy Research Centre NSW, stating:

There are, of course, sound reasons why some services charge high fees. They may have a particular commitment to quality and employ teachers and educators with higher than required qualifications, they may face high rents or be located in remote areas where all inputs other than labour are likely to be cost more than in urban areas. From a policy perspective, however, there needs to be a way of distinguishing between fees that are high for legitimate reasons and fees that are high because of premium features that parents should purchase for themselves or because excessive profits are being taken.⁷

1.13 Labor Senators refer to similar policy that exists under the *Aged Care Act 1997* for Aged Care Services, where care is funded at an adequate level and the user pays for additional services.

1.14 Evidence submitted to the committee demonstrates that prices are likely to continue to rise above general inflation into the future, continuing the long term decline in the value of child care subsidies.⁸ A continued freeze of income thresholds relating to CCB payments will only increase this erosion.

1.15 The department gave evidence pertaining to this during the public hearing, where Mr Willing of the Department stated that child care prices were forecast to increase annually by around seven per cent on average over the forward estimates.⁹

1.16 Furthermore, Mr Willing gave evidence demonstrating that up to 73 per cent of families (800 000 of the 1.1million children in families eligible for CCB) are likely to be effected by the bill.¹⁰

1.17 The Labor Senators of the Committee note that the costs of basic childcare are rising, and increasing in comparison to average family income. Therefore, Labor Senators believe a further freeze on CCB that decreases the accessibility to childcare for almost 73 per cent of families is unacceptable where money is returned to the budget bottom line rather than reinvested into the sector.

The bill negatively impacts labour force participation of parents, and in particular, infringes on women's right to work

1.18 Child care plays a crucial role in supporting the labour force participation of parents, in particular, women's labour force participation, and family income plays an integral role in allowing access to child care.

7 *Submission 1*, p. 30.

8 *Legislative Out-years Customisable Model of Child Care: 2013-14 Budget*, As cited in *Early Childhood Australia, Submission 5*, p. 7.

9 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Proof Committee Hansard*, p. 11.

10 Mr Jeff Willing, Branch Manager, Payments for Families and Services Branch, Department of Education, *Proof Committee Hansard*, p. 6.

1.19 According to data from the Australian Bureau of Statistics (ABS), in families with a combined weekly income of \$2 000 or more, 52 per cent of 0–14 year old children regularly participate in child care, compared with 25 per cent in families with a weekly income of \$800 or less. Families earning \$800–999 per week are the least likely to use either formal or informal child care.¹¹

1.20 NATSEM modelling conducted for the Grattan Institute showed that two parents working full time and earning \$40 000 each, with one child in long day care take home only about half the second earner's wage.¹²

1.21 Increases in the out of pocket costs for childcare creates substantial work disincentives, particularly for second earners in couple families, and can significantly reduce if not remove the monetary benefits of work.¹³

1.22 Labor Senators are aware that affordability is a major barrier to children's participation in early learning, and therefore a contributing factor in their ability to access the inarguable benefits gained from early learning, particularly among already disadvantaged children.

1.23 One of the largest childcare providers in Australia, Goodstart Early Learning, have previously expressed their concern at the impact the CCB income threshold freeze would have on affordability, particularly for low-income families:

We are certainly concerned about it over the longer term, because it is a slow burn impact. Low-income families, as I said, are struggling the most with childcare costs. We should be looking to increase assistance for that group rather than reduce it. We are worried that reducing the amount of CCB for working families will have an impact on whether parents can afford to go back to work. People do make very conscious decisions based on their tax after childcare benefit and whether they can return to work.¹⁴

1.24 Similar evidence was submitted to the committee from the Crèche and Kindergarten Association, who noted that parents will not be able to afford the out-of-pocket expenses for childcare and are likely to choose to remove their children from the services. They could also reduce their working hours which will adversely impact on productivity resulting in lost taxation revenue and an increase in family assistance subsidies.¹⁵

1.25 The Parliamentary Joint Committee on Human Rights releasing their Ninth Report of the 44th Parliament, published July 2014, explored the bill. The Committee

11 *Submission 1*, p. 21.

12 Daley, J & McGannon, C., Grattan Institute, *Submission to the Productivity Commission Inquiry on Childcare and Early Childhood Learning*, March 2014, http://grattan.edu.au/wpcontent/uploads/2014/05/228_daley_mcgannon_submission_pc_childcare.pdf (Accessed 26 August 2014).

13 Department of Parliamentary Services (Cth), *Bills Digest*, no.4, 2014-15, p. 8.

14 Department of Parliamentary Services (Cth), *Bills Digest*, no.4, 2014-15, p. 6.

15 The Creche and Kindergarten Associated Limited, *Submission 5*, p. 2.

majority came to a number of conclusions regarding concerns of the bill infringing on human rights conventions.

1.26 Under article 2(1) of *International Covenant on Economic, Social and Cultural Rights* (ICESCR), Australia has certain obligations in relation to the right to work. These include:

- the immediate obligation to satisfy certain minimum aspects of the right;
- the obligation not to unjustifiably take any backwards steps (retrogressive measures) that might affect the right;
- the obligation to ensure the right is made available in a non-discriminatory way; and
- the obligation to take reasonable measures within its available resources to progressively secure broader enjoyment of the right.¹⁶

1.27 Of further relevance to the right to work in this context, the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) requires States parties to implement measures to eliminate discrimination against women in the field of employment. These include the obligation to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities.

1.28 Accordingly, that Committee recognised that the availability of child care is a critical component of the right to work.

1.29 On exploring the bill, the committee's view was;

- the effect of the measure on the affordability and availability of child care may thus be seen as a limitation on the right to work. The committee notes that the statement of compatibility provides no assessment of the impact of the measures on the right to work.¹⁷

Labor Senators view

1.30 Labor Senators believe that not only does the bill negatively impacts labour force participation of parents, creating a disincentive for work, but infringes on the human rights of 51 per cent of the population and 46 per cent of the working population.

The bill has a disproportionately adverse effect on low-income families

1.31 The committee was presented with damning evidence from the peak body of the community services and welfare sector, ACOSS, regarding the effect of the bill on low income families, in particular:

16 International Covenant on Economic, Social and Cultural Rights, Article 2(1).

17 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament; Bills introduced 23 – 26 June 2014; Legislative Instruments received 7 June – 20 June 2014*.

that the maximum rate income threshold as it stands is only around \$5,000 above a full time minimum wage.

that the majority of families who receive the maximum rate of CCB are sole parent families (72.6%).

that the bill could create a situation where a sole parent faces an effective marginal tax rate of more than 70% due to the combination of income tests for CCB and Family Tax Benefit Part A.¹⁸

1.32 Labor Senators note that whilst the actual dollar amounts outlined in the bill may not be extreme for individual families, it should also be considered in the context of other budget changes which are likely to impact on the affordability of child care, particularly for already disadvantaged and vulnerable families.

1.33 Under the changes proposed in the most recent Coalition budget, parents will be required to pay most of the gap between CCB and actual fees, with the government Jobs, Education and Training (JET) contribution capped at \$8 per hour. The budget also introduces a weekly cap (36 hours per week, down from 50 hours a week for those engaged in approved activities).

1.34 Labor Senators express disappointment that the committee majority failed to recognise the disproportionate impact in vulnerable families who will already be hit hard by a harsh budget.

The bill inappropriately precedes the final report of the Productivity Commission Inquiry into Childcare and Early Childhood Learning

1.35 The Coalition made an election commitment to inject \$2 million into the Productivity Commission Inquiry into Child Care, and to implement any decisions on the matter prior to the final report demonstrates a disregard for the results and makes it difficult for the Commission to provide accurate recommendations, as these recommendations are to be based on existing funding parameters, as per the Terms of Reference.

1.36 The Labor Senators do not support the explanation given in the committee's majority report, and assert that to utilise tax-payer's funds to undertake a multi-million dollar productivity commission inquiry, yet enact amendments to policy before receipt of the outcomes of that report not only undermines the process, but also demonstrates the arrogance of the government.

18 *Submission 9*, p. 1.

Recommendation 1

1.37 The Labor Senators recommend that the Senate reject the bill.

**Senator Sue Lines
Deputy Chair**

AUSTRALIAN GREENS' DISSENTING REPORT

1.1 The Family Assistance Legislation Amendment (Child Care Measures) Bill (No. 2) 2014 seeks to freeze the Child Care Benefit income thresholds for three years. The Australian Greens, as previously outlined in the inquiry into the Family Assistance Legislation Amendment (Child Care Measures) Bill 2014, oppose the measure proposed in this Bill. Evidence provided to the committee made it clear that this budget measure will make it difficult for Australian families to access quality early childhood education and care and will significantly increase families out of pocket costs.

1.2 The majority of submissions provided to the committee were not supportive of the government's proposed changes and concluded that the Bill should not proceed.

1.3 Over half a million Australian families will be affected by the government's regressive budget measure. Rather than injecting the much needed funding into the early childhood education and care sector this government has decided to rip millions of dollars from the pockets of struggling families. This move undermines the government's own Productivity Commission inquiry into Childcare and Early Childhood Learning and is indicative of the government's approach to early education and care.

1.4 The Australian Greens reject the conclusions made in the majority report and recommend that this Bill be rejected by the Senate. This Bill will have a significant impact on families who are already struggling to meet the rising cost of childcare.

Recommendation 1

1.5 The Australian Greens recommend the Senate reject the bill.

Senator Sarah Hanson-Young

APPENDIX 1

Submissions received

- 1** Social Policy Research Centre (UNSW)
- 2** SDN Children's Services
- 3** FamilyVoice Australia
- 4** Early Childhood Australia
- 5** The Creche and Kindergarten Association Limited
- 6** Department of Education
- 7** Australian Services Union (ASU)
- 8** Australian Industry Group
- 9** Australian Council of Social Service (ACOSS)

Response to questions on notice

- 1** Response to question on notice from the Department of Education, received 27 August 2014.

APPENDIX 2

Public Hearing

Canberra, Monday, 25 August 2014.

PEARCE, Mrs Margaret, Group Manager, Early Childhood Care Support Group,
Department of Education

WILLING, Mr Jeff, Branch Manager, Early Childhood Care Support Group,
Department of Education

APPENDIX 3

Submissions received from Family Assistance Legislation Amendment (Child Care Measures) Bill 2014

- 1** Municipal Association of Victoria (MAV)
- 2** National Welfare Rights Network
- 3** Australian Community Children's Services (ACCS)
- 4** Department of Education
- 5** Early Childhood Australia
- 6** National In Home Childcare Association Inc.
- 7** Police Federation of Australia
- 8** SDN Children's Services
- 9** Australian Childcare Alliance
- 10** United Voice
- 11** Community Child Care Co-operative (NSW)
- 12** KU Children's Services
- 13** Goodstart Early Learning
- 14** Early Learning Association Australia (ELAA)
- 15** FamilyVoice Australia
- 16** Australia Industry Group