

# CHAPTER 1

## Background

### Reference

1.1 On 2 December 2015, the Senate referred an inquiry into the provisions of the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015 (the Bill) to the Education and Employment Legislation Committee (the committee) for inquiry and report by 17 March 2016. On 17 March 2016, on the request of a committee member, the committee unanimously agreed to seek an extension of time to report until 4 April 2016. The Senate granted this extension.

### Conduct of the inquiry

1.2 Details of the inquiry were made available on the committee's website. The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 143 individuals and organisations, as detailed in Appendix 1.

1.3 A public hearing was held in Canberra on 4 March 2016. A list of witnesses can be found in Appendix 2.

### Background

1.4 The Bill forms part of the government's Jobs for Families Child Care Package as included in the 2015-16 Budget. The aim of the Bill is to support improved affordability, accessibility and flexibility of child care for families and thus encourage greater engagement from families with the paid workforce.<sup>1</sup>

1.5 The Bill's main provisions include the introduction of a new Child Care Subsidy (CCS), replacing the current Child Care Benefit and Child Care Rebate, and changes to the requirements of approved child care providers.<sup>2</sup>

1.6 The government's Jobs for Families Child Care Package as a whole is a response to the Productivity Commission's report *Childcare and Early Childhood Learning*, which was commissioned in November 2013 and reported in October 2014.<sup>3</sup>

1.7 The Productivity Commission's inquiry terms of reference were:

1. The contribution that access to affordable, high quality child care can make to:

(a) increased participation in the workforce, particularly for women

(b) optimising children's learning and development.

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1 Explanatory Memorandum, p. 2.

2 Explanatory Memorandum, p. 2.

3 Productivity Commission 2014, *Childcare and Early Childhood Learning*, Inquiry Report No. 73, Canberra.

2. The current and future need for child care in Australia, including consideration of the following:

- (a) hours parents work or study, or wish to work or study;
- (b) the particular needs of rural, regional and remote parents, as well as shift workers;
- (c) accessibility of affordable care;
- (d) types of child care available including but not limited to: long day care, family day care, in home care including nannies and au pairs, mobile care, occasional care, and outside school hours care;
- (e) the role and potential for employer provided child care;
- (f) usual hours of operation of each type of care;
- (g) the out of pocket cost of child care to families;
- (h) rebates and subsidies available for each type of care;
- (i) the capacity of the existing child care system to ensure children are transitioning from child care to school with a satisfactory level of school preparedness;
- (j) opportunities to improve connections and transitions across early childhood services (including between child care and preschool/kindergarten services);
- (k) the needs of vulnerable or at risk children;
- (l) interactions with relevant Australian Government policies and programmes.

3. Whether there are any specific models of care that should be considered for trial or implementation in Australia, with consideration given to international models, such as the home based care model in New Zealand and models that specifically target vulnerable or at risk children and their families.

4. Options for enhancing the choices available to Australian families as to how they receive child care support, so that this can occur in the manner most suitable to their individual family circumstances. Mechanisms to be considered include subsidies, rebates and tax deductions, to improve the accessibility, flexibility and affordability of child care for families facing diverse individual circumstances.

5. The benefits and other impacts of regulatory changes in child care over the past decade, including the implementation of the National Quality Framework (NQF) in States and Territories, with specific consideration given to compliance costs, taking into account the Government's planned work with States and Territories to streamline the NQF.

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6. In making any recommendations for future Australian Government policy settings, the Commission will consider options within current funding parameters.<sup>4</sup>

1.8 The Bill therefore addresses the following priorities identified by the Productivity Commission's report:

simplifying and streamlining a complex system that is difficult to understand;

improving affordability for parents, including taking steps to constrain fee growth;

improving accessibility and flexibility;

better targeting assistance for vulnerable children and communities; and

reducing regulatory burden through improved data/information sharing and IT systems.<sup>5</sup>

### **Overview of the Bill**

1.9 The Bill is comprised of four schedules:

- Schedule 1 – Main amendments;
- Schedule 2 – Contingent and consequential amendments;
- Schedule 3 – Other amendments; and
- Schedule 4 – Application, saving and transitional provisions.<sup>6</sup>

#### ***Schedule 1 – Main amendments***

1.10 The main amendments of this Bill will amend the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* to have the effect of:

- ceasing the Child Care Benefit (CCB) and Child Care Rebate (CCR);
- introducing, from 1 July 2017, a new Child Care Subsidy (CCS), which is subject to both an income and activity test;
- introducing various rates of Additional Child Care Subsidy (ACCS) that are available to individuals (and in one case, child care providers) in various circumstances; and
- making other amendments to deal with CCS and ACCS claims, reviews of decisions, provider approvals and compliance obligations of approved providers of child care services.<sup>7</sup>

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4 Productivity Commission 2014, *Childcare and Early Childhood Learning*, Inquiry Report No. 73, Canberra, pp v–vi.

5 Department of Education and Training, *Submission 30*, p. 7.

6 Explanatory Memorandum, p. 4.

7 Explanatory Memorandum, p. 11.

### ***Schedule 2 – Contingent and consequential amendments***

1.11 Item 1 amends a provision in section 6 of the *A New Tax System (Family Assistance) Act 1999* regarding immunisation requirements. This item is contingent on the passage of the Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2015 because that Bill also proposes amendments to that provision of the *A New Tax System (Family Assistance) Act 1999*.<sup>8</sup>

1.12 Items 2 and 3 amend the *A New Tax System (Goods and Services Tax) Act 1999* which is consequential to the removal of 'registered care' as a kind of Commonwealth supported child care by Schedule 1 of this Bill.<sup>9</sup>

1.13 Items 4 and 5 make minor consequential amendments to the *Early Years Quality Fund Special Account Act 2013* based on the introduction of new terminology of 'approved provider' and 'large centre-based day care provider' in Schedule 1 of this Bill.<sup>10</sup>

1.14 Item 6 reflects the usage of the term 'approved child care service' in Schedule 1 of this Bill to make a minor consequential amendment to the *Fringe Benefits Tax Assessment Act 1986*.<sup>11</sup>

1.15 Items 7, 8 and 9 make amendments to the *Income Tax Assessment Act 1997* in consequence of the cessation of the CCB and CCR and the introduction of the CCS and ACCS by Schedule 1 of this Bill. The Explanatory Memorandum notes that: 'The overall approach to the tax treatment of child care payments, however, remains unchanged'.<sup>12</sup>

### ***Schedule 3 – Other amendments***

1.16 Items 1 and 2 come into effect the day after Royal Assent and simplify a provision in the *A New Tax System (Goods and Services Tax) Act 1999* relating to the Goods and Services Tax (GST) treatment of child care funded by the Commonwealth. The provision allows the Minister to determine certain kinds of child care for this purpose to enable new child care funding programmes to be treated consistently for GST purposes.<sup>13</sup>

1.17 Items 3 and 4 come into effect on 1 July 2016 and allow the Minister to prescribe circumstances in which applications (made after that date) for approval of a child care service are taken to not have been made. This rule making power is intended to be used to limit applications to address excessive growth within a

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8 Explanatory Memorandum, p. 62.

9 Explanatory Memorandum, p. 62.

10 Explanatory Memorandum, p. 62.

11 Explanatory Memorandum, p. 62.

12 Explanatory Memorandum, p. 62.

13 Explanatory Memorandum, p. 63.

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particular child care service type, specifically where there are concerns about proven or alleged non-compliance with family assistance law.<sup>14</sup>

1.18 Items 5 and 6 shorten the period, from six months to three, in which CCB service approvals are able to be backdated from the date of application. This provision comes into effect on 1 July 2016 and is transitional in nature, serving to ensure that lengthy backdated approvals are not possible in the lead up to the new CCS system.<sup>15</sup>

1.19 Items 7 and 8 come into effect on 1 July 2016 and allow the Secretary to reassess whether a child care service continues to meet the conditions of continued approval. Where the service does not, its approval may be cancelled. This provision ensures that sanction action in relation to non-compliant services can occur in the lead-up to the new CCS system and aligns with the Secretary's capacity to review the approval of approved providers upon commencement of Schedule 1 of this Bill.<sup>16</sup>

1.20 Items 9 through 18 make amendments related to the cessation of enrolment advances, ensuring that no new enrolment advances received from 1 July 2016 are payable and will ensure that where, from 1 July 2016, enrolment advances were paid in relation to enrolments that occurred more than four years beforehand, the Secretary is able to begin recovery of those advances.<sup>17</sup>

#### ***Schedule 4 – Application, saving and transitional provisions***

1.21 Item 1 defines terms specifically for the purposes of the application, savings and transitional provisions in Schedule 4.<sup>18</sup>

1.22 Items 2 through 6 are provisions relating to the transition to and commencement of the new system, particularly as it relates to the CCS and ACCS, brought into effect by the Bill.<sup>19</sup>

1.23 Items 7 and 8 relate to the existing CCB and CCR system, including saving the operation of legislation and instruments to ensure that eligibility and entitlement for the CCB and CCR (for child care that occurred before commencement) can still be determined and reviewed after the new system commences.<sup>20</sup>

1.24 Item 9 ensures continuity by deeming operators of child care services to be 'providers' under the new CCS system on and from commencement day.<sup>21</sup>

1.25 Item 10 saves the effects of the previous law relating to debts incurred under the previous system. Liability for debts under the old system continue, new debts can

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14 Explanatory Memorandum, p. 63.

15 Explanatory Memorandum, p. 63.

16 Explanatory Memorandum, p. 63.

17 Explanatory Memorandum, p. 63.

18 Explanatory Memorandum, p. 64.

19 Explanatory Memorandum, p. 64.

20 Explanatory Memorandum, pp 64-65.

21 Explanatory Memorandum, p. 65.

arise in relation to CCB and CCR payments, debts can be recovered under the recovery powers (as amended in Schedule 1 of this Bill) and old decisions are still reviewable.<sup>22</sup>

1.26 Item 11 clarifies that the amendment of the delegation power does not affect a delegation (or power exercised in reliance on one) previously in effect.<sup>23</sup>

1.27 Item 12 gives the Minister broad power to make rules, particularly dealing with transitional issues. The Bill's Explanatory Memorandum notes:

Although the power is broad and allows the Minister to modify the effect of principal legislation, the power is intended to be limited to ensuring the smooth transition into the new CCS and ACCS system. The power is intended to be relied on to ensure beneficial outcomes for providers, services and individuals who may otherwise be affected by unanticipated scenarios that arise at transition. The power to modify principal legislation is also limited to a two year period from commencement in light of the expectation that no further transitional issues will arise after that time.<sup>24</sup>

### **Human rights implications**

1.28 The Bill engages the following human rights, as outlined in the Explanatory Memorandum:

- the right to work, under Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- the rights of parents and children, under Articles 3, 18 and 19 of the *Convention of the Rights of the Child* (CRC);
- the right to an adequate standard of living, under Article 27 of the CRC;
- the right to social security, under Article 9 of the ICESCR;
- the right to be not discriminated against, under Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the CRC;
- the right to be presumed innocent, under Article 14 of the ICCPR; and
- the right to privacy, under Article 17 of the ICCPR and Article 16 of the CRC.

1.29 The Bill's Explanatory Memorandum notes that the Bill advances human rights by encouraging families to work, or work more, by simplifying and making more affordable and flexible access to child care.<sup>25</sup>

1.30 Further, to the extent the Bill may limit some rights, those limitations are 'reasonable, necessary and proportionate'.<sup>26</sup>

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22 Explanatory Memorandum, p. 65.

23 Explanatory Memorandum, p. 65.

24 Explanatory Memorandum, p. 65.

25 Explanatory Memorandum, pp 8-9.

26 Explanatory Memorandum, p. 9.

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## **Financial impact statement**

1.31 The Bill's Explanatory Memorandum notes that the Bill forms part of the government's \$40 billion Jobs for Families Child Care Package, which includes more than \$3 billion of additional expenditure over the forward estimates.<sup>27</sup>

1.32 The Child Care Subsidy introduced by the Bill is funded for \$21 billion over two years from 2017-18; the Additional Child Care Subsidy for \$178.3 million over the same period.<sup>28</sup>

## **Acknowledgement**

1.33 The Committee thanks those individuals and organisations who contributed to the inquiry by preparing written submissions or by appearing at the public hearing.

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27 Explanatory Memorandum, p. 3.

28 Explanatory Memorandum, p. 3.

