

Senate Education and Employment Legislation Committee

Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015

Children with Disability Australia
Submission - January 2016

Introduction

Children with Disability Australia (CDA) is the national representative organisation for children and young people with disability aged 0 to 25 years. The organisation is primarily funded through the Department of Social Services (DSS) and is a not for profit organisation. CDA has 5300 members nationally. CDA welcomes the opportunity to provide feedback regarding the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015* (the Bill).

Participation in quality early childhood education and care (ECEC) has been increasingly recognised in international research and policy as critical to child wellbeing and learning outcomes.¹ Access to affordable ECEC is also a crucial component of supporting the workforce participation of families. This is reflected in the Australian Government's present focus on this crucial policy area.

Children with disability and their families in Australia, however, face unique challenges in accessing and participating in ECEC. CDA is frequently informed of a range of poor experiences and barriers in relation to access, participation, resourcing, expertise and discrimination. This places children with disability at a distinct disadvantage compared to their peers without disability as they enter primary education and beyond.

The Direct Experiences of Children with Disability and Families

Children with disability and families frequently report poor experiences in ECEC settings to CDA. There is significant variation between individual ECEC providers in relation to attitudes, expertise and capacity to meet the needs of children with disability.

Experiences reported to CDA include:

(When my son was in pre-school we) fought for funding assistance...It took 18 months to get funding, then pre-school didn't use it because the director thought there was no issues... Before and after school care for kids with disability is seriously lacking too – Parent.

(My daughter) was refused enrolment at the preschool because they don't have aide funding – Parent.

One preschool that I approached told me that they couldn't take my child. The next preschool happily took him using funding for extra staff – Parent.

A mother was informed by her son's childcare provider that he was "too difficult to manage."

Statistics available on participation rates illustrate a disparity between the use of childcare by children with disability compared to their peers without disability. The Productivity Commission's *Report on Government Services 2015* shows that children aged 0 to 12 years with disability had a lower representation in childcare services (3.0 per cent) than their representation in the community (6.7 per cent).² Despite this difference in participation in ECEC, children with disability have not been a specific focus of the reform agenda to date.

¹ Organisation for Economic Cooperation and Development 2015, *Starting strong: Monitoring quality in early childhood education and care*, OECD Publishing, Paris, p. 18.

² Productivity Commission 2015, *Report on Government Services*, Commonwealth of Australia, Canberra, p. 3.24.

The following is a summary of some of the key issues confronting children with disability in ECEC, provided in CDA's recent submission to the Senate Inquiry into *Current Levels of Access and Attainment for Students with Disability in the School System, and the Impact on Students and Families Associated with Inadequate Levels of Support*.

- **Funding.** CDA has previously raised concerns regarding the lack of flexibility in *Inclusion Support Subsidy* payments in meeting the individual needs of each child and recommended a more individualised approach to providing additional funding for children with disability;
- **Inclusion.** Attitudes regarding disability can significantly compromise ECEC experiences. Further, it is often reported to CDA that appropriate accommodations to support children with disability to participate in ECEC are not met. While the *Inclusion Support Programme* (replacing the *Inclusion and Professional Support Programme*) may provide some support in ensuring ECEC providers are inclusive, it is critical that programmes are administered using a firm evidence base and that robust evaluation and monitoring of outcomes occurs. Further, there is a need to ensure that reform promoting inclusive ECEC is embedded, rather than a bolt-on initiative;
- **Choice.** Children with disability experience significant challenges in relation to accessing ECEC and are frequently denied enrolment; and
- **Educational outcomes.** ECEC is vital part of all children's education pathways and plays a key role in preparing children for school. Barriers in access therefore have significant flow on effects and therefore must be considered in broader education outcomes of students with disability.

The barriers encountered in accessing ECEC for children with disability also have specific impacts for families. It is often reported to CDA that families are required to strongly advocate to ensure their children can access ECEC. It is not uncommon for families to feel that their children are unwelcome or are perceived as a burden by providers.

For many families, ECEC is one of the first areas in which barriers and discrimination against children with disability are encountered, a pattern that is typically replicated in school education, employment and access to disability services and supports. Confronting such significant barriers to accessing a basic entitlement afforded to all children causes significant stress for families. It can also compound the financial and time pressures on families who are already balancing the competing requirements of having young children.

There are further implications for workforce participation of families of children with disability. Families of children with disability are sometimes referred to as carers as they provide unpaid care and support to their child. Available statistics show carer workforce participation is much lower than the rest of the community.³ CDA members frequently report difficulties with gaining and keeping employment. Many families report a strong desire to undertake paid employment. The overwhelming lack of care options for children with disability creates a barrier to achieving this.

General Comments on the Bill

The Bill forms a key component of the Australian Government's *Jobs for Families Child Care Package* by establishing new subsidy arrangements for children accessing ECEC. A key issue raised regarding the Bill is the lack of specific consideration of the needs and circumstances of children with disability and families. CDA is concerned that certain components of the Bill may limit access to ECEC for

³ Australian Bureau of Statistics 2013, *Carers – Employment and income*, Commonwealth of Australia, Canberra, viewed 27 January 2016, <http://goo.gl/A7OU5T>.

children with disability and requests further clarification regarding the impacts of the Bill on children with disability and families.

Human Rights Implications

The United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) and *Convention on the Rights of the Child* (CRC) clearly establish the right of children with disability to access quality, inclusive education, including ECEC, on an equal basis to children without disability. Australia has signed and ratified both of these international human rights treaties, thereby demonstrating its commitment to uphold the rights of children with disability.

One important right of relevance to the Bill that is not discussed in the ‘Statement of Compatibility of Human Rights’ is the right to inclusive education. Article 24 of the CRPD obliges States Parties to:

*(Ensure) an **inclusive education system at all levels** and lifelong learning directed to:*
(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
(c) Enabling persons with disabilities to participate effectively in a free society.⁴

Inclusive education is defined as “recognising the right of every child (without exception) to be included and adapting the environment and teaching approaches in order to ensure the valued participation of all children.”⁵ Existing research and evidence clearly supports inclusive education over and above models of segregated and integrated education for children with disability in ECEC and school settings.⁶

Ensuring access to inclusive ECEC requires a multi-level and complex policy approach, including fostering welcoming organisational cultures in which disability represents a valued aspect of diversity, education and training in inclusion for early education professionals and access to expertise regarding the needs of children with disability. While the *Inclusion Support Programme* component of the *Child Care Safety Net* is designed to support inclusive practice, this remains a bolt-on programme outside the core focus of the Child Care Package. It is important that policies aimed at ensuring the availability of inclusive ECEC services are incorporated throughout the reform process.

Specific Comments on the Bill

Activity Test

The activity test requiring families to undertake tiered hours of activity in order to access the Child Care Subsidy (CCS) may result in reduced access for some families of children with disability. Families often report to CDA that they are required to maintain highly flexible working arrangements in order to care for and support children. Children with disability may access early intervention services, disability services and supports or have care and support needs requiring families to frequently

⁴ United Nations General Assembly 2006, *Convention on the rights of persons with disabilities*, article 24.

⁵ Children with Disability Australia 2013, *Inclusion in education: Towards equality for students with disability*, Melbourne, p. 3.

⁶ K Cologon 2014, ‘Better together: Inclusive education in the early years’ in K Cologon (ed), *Inclusive education in the early years: Right from the start*, Oxford University Press, South Melbourne, p. 4.

change their working hours. There is a risk that the activity test requirements may reduce families' access to the CCS if responsibilities for children mean that work or study hours are reduced.

An additional issue arises when children with disability can only access shortened hours in ECEC, requiring families to take time off work. This can occur for a number of reasons. Families may only be able to secure part-time hours in ECEC because providers state they lack the funding or expertise to meet the needs of children with disability. In other cases, families are frequently asked to collect their children early because the provider is unable to meet their needs. Again, CDA is concerned that the activity test requirements do not take into consideration the specific challenges of families of children with disability and may result in reduced access to the CCS.

It is therefore important that there is a mechanism for taking into account the individual circumstances of families of children with disability when using the activity test to calculate the CCS.

A further issue is that given flexible working hours are often required of families of children with disability, the Bill in its current form risks imposing arduous bureaucratic reporting requirements on families who will change the number of 'hours of activity' undertaken from week to week. Requiring significant amounts of time to report upon weekly activities would increase the challenges faced by busy families. It is therefore important to ensure that these requirements are minimised.

Recommendation 1: The development of mechanisms within the activity test to ensure families are not denied access to the Child Care Subsidy in the event that working hours are reduced to meet caring responsibilities for children with disability.

Recommendation 2: The processes associated with reporting requirements and the activity test are as simple and as straightforward as possible. This also applies to circumstances in which there is variability in 'hours of activity' undertaken in a given reporting period.

Increasing Choice

In amending the *A New Tax System (Family Assistance) (Administration) Act 1999*, the Bill has the stated aim of "ensuring greater access and choice in care options from a broader range of service types" such as the *Nanny Pilot Programme*.⁷ There is a risk however, that these increased subsidised options will allow ECEC providers to deny enrolment of children with disability on the basis that ECEC can be accessed elsewhere.

Discrimination in enrolment is a key barrier to children with disability accessing ECEC that continues to be experienced despite the existence of national anti-discrimination legislation including the *Disability Discrimination Act 1992* and the *Disability Standards for Education 2005*.

Recommendation 3: National data is collected regarding reasons enrolment is denied by early childhood education and care providers. The data should clearly state where the enrolment application relates to a child with disability.

Recommendation 4: Information is provided to families, providers and other stakeholders regarding relevant rights and legal protections afforded to children with disability in relation to access and provision of early childhood education and care.

⁷ Parliament of the Commonwealth of Australia, *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015: Explanatory memorandum*, Commonwealth of Australia, Canberra, p. 2.

Recommendation 5: The establishment of clear definitions and relations between the *Jobs for Families Child Care Package* and other areas of practice and reform regarding the quality of early childhood education and care.

Additional Child Care Subsidy – ‘At Risk’ Payment

The provisions in the Bill regarding the Additional Child Care Subsidy (ACCS) for children at risk of experiencing abuse and neglect require clarification. Given that the key definitions of ‘abuse and neglect’ are contained within the yet to be released *Minister’s Rules*, it is difficult to gain an accurate understanding of how children will be assessed as eligible for the payment in practice. In particular, CDA has concerns regarding the delegation of powers to access private information about families and to make assessments of risk of abuse and neglect.

Children with disability are known in research to experience a heightened rate of violence, abuse and neglect. While there is a significant gap in Australian data, international research indicates that children and young people with disability are over three times more vulnerable to experiencing abuse and neglect than their peers without disability.⁸ It is unclear how this known vulnerability will inform ‘at risk’ determinations.

In addition, children with disability are vulnerable to abuse and neglect in institutional settings, as well as in the family home.⁹ For example, CDA has received reports of children with disability experiencing restraint in ECEC settings such as being left in a high chair for hours at a time. There is a need for clarification as to whether these experiences of abuse will be captured in the ACCS.

Further concerns include:

- It is unclear how and when families will be notified if an ‘at risk’ determination is made about their child and how this information is transferred across sectors, including child protection, where relevant;
- Further concerns relate to the capacity of child care providers to make ‘at risk’ determinations. For example, parents with disability frequently encounter assumptions of ‘bad parenting’ on the basis of disability. How will service providers be equipped with appropriate skills to combat similar stereotypes and make determinations in the best interests of children?; and
- Clarification is required regarding whether children who are at risk of experiencing abuse and neglect who are not already receiving the CCS (for example if their families do not meet the activity test requirements) could access the ACCS.

Recommendation 6: A clear definition is established regarding children ‘at risk’ and a transparent process exists for establishing this determination.

Recommendation 7: The Australian Government provides clarification regarding the process for notification of families if a child is deemed to be ‘at risk.’

⁸ P Sullivan et al. 2000, ‘Maltreatment and disabilities: A population-based epidemiological study,’ *Child abuse and neglect*, Vol. 24, No. 10, p. 1257.

⁹ Children with Disability Australia 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, Melbourne, p. 10.

National Disability Insurance Scheme

A further issue relates to the establishment of the National Disability Insurance Scheme (NDIS). The NDIS represents a significant shift from the previous model of providing block funding to disability services to providing portable and individualised funding packages, with a focus on enabling people with disability to exercise choice and control in relation to supports received.¹⁰ The NDIS is not intended to fund services and supports that are provided through mainstream systems such as education, employment, health or child and family services.¹¹

The NDIS will shortly commence its implementation beyond the initial trial sites, with bilateral agreements recently being signed in Victoria, New South Wales, South Australia and Tasmania. From 2016 to 2019 the provision of disability services and supports will therefore undergo a significant transitional period as services and organisations commence being providers funded through the NDIS and people access supports through Individual Funding Packages.

Many children attending ECEC services will access the NDIS through the Early Intervention requirements, which have the aim of:

- (i) mitigating or alleviating the impact of the person's impairment upon the functional capacity of the person to undertake communication, social interaction, learning, mobility, self-care or self-management; or*
- (ii) preventing the deterioration of such functional capacity; or*
- (iii) improving such functional capacity; or*
- (iv) strengthening the sustainability of informal supports available to the person, including through building the capacity of the person's carer.¹²*

NDIS funded services and ECEC will interact in a number of ways. For example, children may access disability services and supports in ECEC settings or there will be need to determine which system will fund particular interventions and supports. To date the work around the NDIS interface with a range of other areas, such as health, education or children and family services, is not well advanced with a complex web of considerations across multiple jurisdictions.

In the context of ECEC, the concurrent transitional period as the two systems undergo significant change from 2016 onwards further underscores the critical need to clearly define interface arrangements. This will involve defining clear roles and lines of responsibility, funding arrangements, present gaps in service provision and ensuring effective collaboration occurs.

A further consideration is also the impact of the Bill on disability specific ECEC services that are therapy based. These centres represent a key area where it is necessary to clearly define roles and funding arrangements with the NDIS.

Recommendation 8: Interface arrangements between the National Disability Insurance Scheme and early childhood education and care are developed as a matter of priority.

Recommendation 9: Children with Disability Australia are involved in work undertaken regarding the establishment of National Disability Insurance Scheme and early childhood education and care

¹⁰ *National Disability Insurance Scheme Act 2013 (Cth)*, section 2(3).

¹¹ *Ibid*, section 34(f).

¹² *Ibid*, section 25(1)(c).

interface arrangements, to ensure the direct experiences of children with disability are a key informant of relevant policy and practice.

Outside School Hours Care

A further area regarding clarification is the impact of the Bill on outside of school hours (OOSH) care. The Bill limits eligibility for accessing the CCS to children aged 13 and under who are not attending secondary school. There are some children with disability aged over 13 that currently access OOSH options in mainstream settings such as schools or youth organisations through existing child care payments. In other cases, children may access programmes that are partially or fully funded outside the childcare payment system. For example, the *Outside School Hours Care for Teenagers with Disability* programme is funded through the Department of Social Services and is currently transitioning into the NDIS.

For children over 13 who are currently accessing OOSH care through child care payments, it is presently unclear how this support will be maintained when the CCS is introduced. The impacts on families will be significant if previously accessed payments are no longer available and families are required to pay full fees. Further, while certain OOSH programs will transition into the NDIS, the NDIS is being progressively implemented until 2019 and the new system for child care payments commences in July 2017, leaving a gap in certain areas.

Recommendation 10: The Australian Government develops transition arrangements for children with disability over 13 years accessing outside school hours care through existing child care payments. This must ensure children continue to access these options as the changes to early childhood education and care and the National Disability Insurance Scheme are implemented.

Intersectionality

It is critical that the impacts of the Bill on diverse groups of children are explicitly considered. Specific consultation and consideration regarding impacts for children who are Aboriginal and Torres Strait Islander, culturally and linguistic diverse, living in regional and remote areas, have parents with disability, as well as children with disability is recommended.

Recommendation 11: The Australian Government undertakes consultation with a range of stakeholders to ensure the needs of children from diverse backgrounds are taken into consideration in the *Jobs for Families Child Care Package*.

Summary of Recommendations

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Recommendation 2: The processes associated with reporting requirements and the activity test are as simple and as straightforward as possible. This also applies to circumstances in which there is variability in 'hours of activity' undertaken in a given reporting period.

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Recommendation 9: Children with Disability Australia are involved in work undertaken regarding the establishment of National Disability Insurance Scheme and early childhood education and care interface arrangements, to ensure the direct experiences of children with disability are a key informant of relevant policy and practice.

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Recommendation 11: The Australian Government undertakes consultation with a range of stakeholders to ensure the needs of children from diverse backgrounds are taken into consideration in the *Jobs for Families Child Care Package*.

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