Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016

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Social Policy Section
This Bills Digest updates an earlier version dated 20 April 2016.

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Date introduced: 1 September 2016
House: House of Representatives
Portfolio: Education and Training
Commencement: Schedules 1 and 2 on 2 July 2018; Part 1 of Schedule 3 and Schedule 4 on the day after Royal Assent; and Part 2 of Schedule 3 on 1 July 2017.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at November 2016.
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The Bills Digest at a glance
The Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016 (the Bill) provides for the key legislative changes required to implement the Government’s Jobs for Families child care reform package. The package was a key 2015–16 Budget measure and is based on recommendations from the Productivity Commission’s inquiry into childcare and early childhood learning. The package, when announced, included an additional $3.5 billion in expenditure on child care assistance over five years.

The Bill introduces:

- A new child care fee assistance payment, the Child Care Subsidy (CCS), replacing two current payments: Child Care Benefit (CCB) and Child Care Rebate (CCR).
- A new supplementary payment, the Additional Child Care Subsidy (ACCS), which provides additional financial assistance for children at risk of abuse or neglect, families experiencing temporary financial hardship, families transitioning to work from income support, grandparent carers on income support, and low income families in certain circumstances. The ACCS partly replaces a number of current payments including Special Child Care Benefit, Grandparent Child Care Benefit and the Jobs, Education and Training Child Care Fee Assistance payment.
- An enhanced compliance framework.

The new payments are to commence from July 2018, while aspects of the new compliance framework will be introduced from Royal Assent.

In 2014–15, the Australian and state and territory governments spent close to $9 billion on early childhood education and care (ECEC) with the main expenditure item being fee assistance payments provided to parents using approved childcare services. In the September quarter of 2015, there were 1,269,190 children and 859,380 families using approved care. The Productivity Commission found that the current fee assistance system is complex, creates work disincentives, is poorly targeted and was creating fiscal pressure for government.

The new CCS payment provides a subsidy rate based on a percentage of the actual fee or an hourly benchmark price (whichever is lower). The benchmark price is different for each service type. The percentage covered is determined by family income with a subsidy rate of 85 per cent of the benchmark price or actual fee for families with incomes at or below $65,710 per annum. This rate tapers by one percentage point for every $3,000 in income over this threshold to 50 per cent for family incomes at $170,710. A flat subsidy rate of 50 per cent applies for family incomes between $170,710 and $250,000 and then tapers for incomes over $250,000 until it reaches the base rate of 20 per cent of the benchmark price (for incomes at or above $340,000 per annum). Families with incomes over $185,000 will have their CCS entitlement capped at $10,000 per child per year.

A three-part activity test determines the number of hours that can be subsidised: 8–16 hours per fortnight of approved activities provides up to 36 hours of CCS per fortnight; 17–48 hours provides up to 72 hours of CCS; more than 49 hours of approved activities provides up to 100 hours of CCS. For couple families, the partner with the lower number of hours of activity determines the CCS entitlement. Approved activities include work, training, study or certain other recognised activities such as volunteering, as well as participation requirements for income support payments. Families with incomes of up to $65,000, who do not meet the activity test, will be eligible to receive up to 24 hours of CCS per fortnight under a separate program known as the Child Care Safety Net.

The Child Care Safety Net will replace existing funding programs for service providers and also includes the ACCS. The ACCS will provide a top-up payment to the CCS for disadvantaged and vulnerable families.

The Government estimates that around 815,600 families will receive a higher level of fee assistance under the changes compared to the current funding model; around 140,500 families will receive around the same level of assistance and around 183,900 families will receive a lower level of assistance. Alternative modelling by the ANU’s Centre for Social Research and Methods estimated 582,000 families will be better off, around 330,000 families will be worse off and 126,000 families will receive around the same level of subsidy.

Providers, academics and interest groups are concerned that the activity test is too complex and will exclude many children from ECEC. There are also concerns at the new administrative requirements for providing assistance to children at risk of abuse and neglect. The design of the CCS payment may also lead to a decline in the real value of assistance provided to families over time, and significant child care fee increases will need to be borne by families without additional assistance from government.
### List of abbreviations

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<th>Abbreviation</th>
<th>Definition</th>
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<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
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<td>ACA</td>
<td>Australian Childcare Alliance</td>
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<td>ACCS</td>
<td>Additional Child Care Subsidy</td>
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<td>ACECQA</td>
<td>Australian Children’s Education and Care Quality Authority</td>
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<td>ANU</td>
<td>Australian National University</td>
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<td>CCB</td>
<td>Child Care Benefit</td>
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<td>CCR</td>
<td>Child Care Rebate</td>
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<td>CCS</td>
<td>Child Care Subsidy</td>
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<td>CPI</td>
<td>Consumer Price Index</td>
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<td>ECA</td>
<td>Early Childhood Australia</td>
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<td>ECEC</td>
<td>Early childhood education and care</td>
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<td>FA Act</td>
<td>(A\ New\ Tax\ System\ (Family\ Assistance)\ Act\ 1999)</td>
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<td>FA Admin Act</td>
<td>(A\ New\ Tax\ System\ (Family\ Assistance)\ (Administration)\ Act\ 1999)</td>
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<td>FDC</td>
<td>Family day care</td>
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<td>GST</td>
<td>Goods and Services Tax</td>
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<td>IHC</td>
<td>In-home care</td>
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<td>JETCCFA</td>
<td>Jobs, Education and Training Child Care Fee Assistance</td>
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<td>LDC</td>
<td>Long day care</td>
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<td>National Law</td>
<td>(Education\ and\ Care\ Services\ National\ Law)</td>
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<td>National Regulations</td>
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<td>NQF</td>
<td>National Quality Framework</td>
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<td>OSHC</td>
<td>Outside school-hours care</td>
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<td>PC</td>
<td>Productivity Commission</td>
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<td>SCCB</td>
<td>Special Child Care Benefit</td>
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History of the Bill
A version of this Bill was introduced into the 44th Parliament on 2 December 2015. The previous Bill was not debated following its introduction in the House of Representatives and lapsed at prorogation on 15 April 2016. While the main provisions in the new Bill are the same as the previous version, a number of notable changes have been made. These are discussed below.

In the 2016–17 Budget the Government announced that it would delay the commencement of the measures by a year: from July 2017 until July 2018. The reason given for the delay was the Senate not passing savings from the Family Tax Benefit program that the Government has linked to funding for the Jobs for Families Child Care Package. These savings measures have being reintroduced in the Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2016.

Purpose of the Bill
The purpose of the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016 (the Bill) is to amend the A New Tax System (Family Assistance) Act 1999 (the FA Act), the A New Tax System (Family Assistance) (Administration) Act 1999 (the FA Admin Act), the A New Tax System (Goods and Services Tax) Act 1999, the Early Years Quality Fund Special Account Act 2013, the Fringe Benefits Tax Assessment Act 1986 and the Income Tax Assessment Act 1997, to introduce the following elements of the Government’s Jobs for Families child care package:

• a new child care fee assistance payment, the Child Care Subsidy (CCS), replacing two current payments: Child Care Benefit (CCB) and Child Care Rebate (CCR)
• a new supplementary payment, the Additional Child Care Subsidy (ACCS), which provides additional financial assistance for children at risk of abuse or neglect, families experiencing temporary financial hardship, families transitioning to work from income support, grandparent carers on income support, and low income families in certain circumstances. The ACCS partly replaces a number of current payments including Special Child Care Benefit, Grandparent Child Care Benefit and the Jobs, Education and Training Child Care Fee Assistance payment
• an enhanced compliance framework.

The new payments are to commence from July 2018, while some aspects of the new compliance framework will be introduced from Royal Assent.

Structure of the Bill and the Bills Digest
The Bill comprises four Schedules:

• Schedule 1 provides for the main amendments to family assistance law to provide for the introduction of the CCS and ACCS to replace the current system of child care fee assistance payments
• Schedule 2 makes consequential amendments to a number of pieces of legislation, primarily tax law, to reflect the new child care payment system and terminology around types of care
• Schedule 3 makes amendments to: allow determinations made by the Minister in relation to immunisation requirements to incorporate matters set out in other written instruments; provide for the Goods and Services Tax (GST) treatment of certain child care services (allowing for the Minister for Education and

3. Ibid.
Training to determine that certain kinds of child care are GST-free; and provide for the approval of child care services under family assistance law during the transition period to the new child care payment system, and for the cessation of enrolment advances

• Schedule 4 provides for application, transitional and savings provisions relating to the transition from the current child care payment system to the new system. The Schedule includes a provision giving broad powers to the Minister for Education and Training to make rules, including the power to modify principal legislation, ostensibly to ensure a smooth transition to the new child care payment system.

The Bills Digest for the previous Bill provided background to the Jobs for Families Package (including an overview of child care in Australia) and a detailed analysis of the main provisions.\(^11\)

This Bills Digest will describe the key differences between the two Bills, provide details of any committee inquiries and reports, provide updated information on the views of non-government parties or members, and any new comments from key stakeholders. This Bills Digest will also provide a brief description of the key changes but the previous Bills Digest should be referred to for more detailed discussion of the relevant issues.

**Background**

For full background on the child care system in Australia and Australian Government funding for child care, see the Background section of the Bills Digest for the previous Bill.\(^12\)

**Early childhood education and care in Australia**

The Australian Bureau of Statistics (ABS) estimates that there were 3.8 million children aged 0–12 in Australia as at June 2014.\(^13\) Almost half (1.8 million) received some form of child care. Nearly a quarter (919,400) attended formal care and 1.3 million attended informal care—such as care by grandparents or other relatives.\(^14\) Around 327,800 children usually attended both formal and informal child care. Formal care is care provided by the early childhood education and care (ECEC) sector and includes:

• long day care (LDC)—a centre based form of ECEC catering for children aged zero to six years
• family day care (FDC)—a flexible form of ECEC (all-day, part-time, casual, overnight, before/after school and school holiday care) provided in the home of carers (referred to within the sector as educators)
• in-home care (IHC)—a flexible form of ECEC provided to eligible children by an educator in the family home
• outside school hours care (OSHC)—a centre-based form of ECEC for primary school aged children and available before and after school (7.30am–9.00am, 3.00pm–6.00pm), during school holidays and on pupil-free days and
• occasional care—a flexible form of centre-based ECEC that can be accessed on a regular basis (like LDC) or as the need arises. For example, where parents have irregular or unpredictable work hours.\(^15\)

The ECEC sector also includes preschool services—generally defined as structured, play-based learning programs delivered by degree qualified teachers to children in the year or two before they commence full time schooling.\(^16\) While some LDC and OSHC services also deliver preschool programs, preschool is defined separately from child care and different governance and funding arrangements apply to preschool and child care services.

According to the ABS, LDC is the most attended of all formal child care services, with 13.5 per cent of all children aged 0–12 usually attending an LDC service.\(^17\) Around 7.8 per cent of children attended OSHC services and 2.5 per cent usually attended an FDC service.\(^18\) For younger age-groups, the percentage of children attending

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12. Ibid., pp. 7–22.
14. Ibid.
17. ABS, *Childhood education and care, Australia, June 2014*, op. cit.
18. Ibid.
formal services is much higher: 41.8 per cent of two year-olds (129,300) and 49.3 per cent of three year-olds (146,200) usually attended LDC services as at June 2014.19

According to the Australian Children’s Education and Care Quality Authority (ACECQA), there were 15,417 children’s education and care services operating in Australia in June 2015. This number included 14,317 centre-based services and 1,100 FDC services (FDC services generally consist of a coordination unit administering or supporting a number of individual educators).20

**Approvals**

**Provider and service approvals**

LDC, FDC and OSHC operators require a provider approval and a service approval issued by state or territory regulatory authorities. Provider approvals establish that an applicant is a fit and proper person to be involved in the provision of education and care services.21 While a provider approval is issued by one regulatory authority, it is recognised nationally and a provider does not need to have a separate approval for each jurisdiction in which it operates a service.22 To receive a service approval, the provider must meet certain requirements to ensure the safety, health and wellbeing of children attending the service; that the service will meet the education and developmental needs of children attending the service; and that the service complies with conditions prescribed by the Education and Care Services National Law (the National Law),23 the Education and Care Services National Regulations (the National Regulations)24, or by the regulatory authority (all of these regulatory conditions form part of the National Quality Framework (NQF)).25

**Approval for Child Care Benefit**

Separate from the regulatory authority approval system is the Australian Government’s determination that a service is ‘approved’ for CCB purposes. CCB (and CCR) can only be paid to children using ECEC services that have met the approved care requirements under family assistance law. These requirements relate to the suitability of the operator/provider to provide the appropriate quality of care; their reporting and information obligations to the government; governance arrangements; hours of operation; the attendance of school-age children at particular services; compliance with applicable Australian Government legislation and regulations and with applicable state and territory regulations (including the National Law and the National Regulations).26 Occasional and in-home care services can also be approved care for CCB purposes but do not currently have to meet the NQF requirements (but are required to meet interim standards).27

CCB can be paid to non-approved ‘registered care’ providers—that is, grandparents, relatives, friends, neighbours, nannies or babysitters who are registered as carers with the Department of Human Services.28

**Australian Government funding for early childhood education and care**

The Australian Government provides fee assistance payments to families and direct assistance to services to improve equity of access to child care services, encourage and support the participation of women in the workforce and to improve the quality of ECEC in order to assist with children’s development.29 State and territory governments primarily fund or provide early childhood education (preschool) services as well as regulating ECEC services operating within their jurisdiction. Local governments also fund and provide ECEC

19. Ibid.
22. Ibid.
23. The Victorian Parliament passed the Education and Care Services National Law Act 2010 (Vic) and other jurisdictions adopted that law through an application Act or passed corresponding legislation in 2010, 2011 or 2012. ACECQA, “National law”, ACECQA website.
24. Education and Care Services National Regulations (NSW).
27. Ibid.
services in response to community need and facilitate access to services through their role in land use planning.  

In 2014–15, total Australian and state and territory government funding on ECEC services was $8.6 billion. The Australian Government’s expenditure accounted for 83.0 per cent ($7.1 billion) of this total. The main components of the Australian Government’s funding for ECEC is fee assistance payments, however, $356.2 million was provided to state and territory governments in 2014–15 under the National Partnership Agreement on Universal Access to Early Childhood Education (not included in the $7.1 billion total).

Table 1 sets out the expenditure estimates for key components of the Australian Government’s funding for ECEC, including the new CCS and Early Childhood Safety Net (included in the Child Care Services Support funding):

Table 1: Key components of Australian Government child expenditure, budget estimates, $’000

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<td>376 781</td>
<td>376 801</td>
<td>358 579</td>
<td>365 692</td>
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<tr>
<td>Jobs Education and Training Child Care Fee Assistance</td>
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<td>39 119</td>
<td>38 749</td>
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Child Care Subsidy

According to the Department of Education and Training, in the September quarter of 2015, there were 1,269,190 children and 859,380 families using approved care. An estimated 795,340 families were in receipt of CCR.

Child Care Benefit

CCB is paid to those using approved or registered care services who meet the means test. Parents/carers using approved care services can currently claim CCB for up to 50 hours of care per child per week (either as a fee reduction paid directly to the child care provider or as a lump sum at the end of the financial year). Single parents and both parents/carers in a couple family must meet the work, training or study test for at least 15 hours per week (or have an exemption) to be eligible for more than 24 hours of CCB per child per week. The work, training or study test looks at whether the parent(s)/carer(s) used child care for work-related commitments such as paid work, looking for work, training or volunteering.

CCB for registered care is paid when a claim is made to the Department of Human Services and can be for up to 50 hours of child care per week for a non-school-aged child. For registered care, both parents/carers or the single parent/carer must meet the work, training or study test at some time during the week child care is used (there is no minimum requirement and exemptions from the test can be granted).

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1. Machinery of Government changes announced on 21 September 2015 saw responsibility for the main ECEC programs move from the Department of Social Services to the Department of Education and Training: 2015–16 figures represent the sum of the estimated actual expenditure figures reported for each portfolio.

2. Does not include funding for the Early Years Quality Fund Special Account. From 1 July 2017 the Early Childhood Safety Net will be phased-in replacing most of the existing Child Care Services Support sub-elements by 1 July 2018.


According to the Department of Education and Training, in the September quarter of 2015, there were 1,269,190 children and 859,380 families using approved care. An estimated 795,340 families were in receipt of CCR.

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CCB for registered care is paid when a claim is made to the Department of Human Services and can be for up to 50 hours of child care per week for a non-school-aged child. For registered care, both parents/carers or the single parent/carer must meet the work, training or study test at some time during the week child care is used (there is no minimum requirement and exemptions from the test can be granted).

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30. Ibid., p. 113.
32. Ibid.
Eligibility for CCB requires parents/carers have their child up to date with the age-appropriate immunisation schedule (or an approved catch up schedule).

**Income test and payment rates**

For those using approved care, the maximum CCB rate is payable to those families with an adjusted taxable income under $44,457 or to families on income support. Family income over this amount reduces the maximum CCB rate and families with income above the income limit will not receive any CCB. The income limit for one child in care is currently $154,697. The income limit for two children is $160,308. For three children it is $181,024 (+$34,237 for each child after the third).

The current maximum CCB rates are:

- for approved care: up to $4.24 per hour for a non-school child ($212.00 for a 50 hour week)
- for registered care: $0.708 per hour, up to $35.40 per week.

Rates for school children are 85 per cent of the non-school child rates.

The calculation of CCB entitlements is complex with different rate adjustment factors taking account of the number of children a family has attending ECEC services, the type of service attended, the hours attended, whether the children are school or non-school children, the family’s adjusted taxable income, the standard hourly rate payable and the hours of care the family is eligible to receive CCB for (under the work, training or study test).

**Special Child Care Benefit**

Special Child Care Benefit (SCCB) is another component of CCB. SCCB provides extra assistance with the costs of child care for families and children in special circumstances, covering up to the full cost of child care for a certain period of time or providing additional hours of care on top of the usual CCB entitlement. There are two types of SCCB—one which is intended to help children at risk of abuse or neglect, and another intended to help families who are experiencing financial hardship in exceptional circumstances.

The SCCB rate is not a set amount and will usually cover the entire cost of the fees for the particular ECEC service. The general rules for CCB eligibility and attendance at child care apply. However, where a parent or carer is not eligible for CCB (for example, where they have not lodged an application form) and an approved child care service has concern for a child in regards to abuse or neglect, the child care service can itself apply to be eligible to receive SCCB on behalf of the child.

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34. As of 1 January 2016, exemptions from these requirements only apply where a general practitioner has certified that vaccination would be medically contraindicated or a child has natural immunity; where the child is a participant in a registered vaccine study; where an vaccine is temporarily unavailable; where the child has been vaccinated overseas; or the Department of Education and Training has determined that the child meets immunisation requirements (in line with decision making principles set out in a legislative instrument). These requirements were recently changed to remove exemptions for conscientious objectors. M Klapdor, *Social Services Legislation Amendment (No Jab, No Pay) Bill 2015*, Bills digest, 36, 2015–16, Parliamentary Library, Canberra, 2015.

35. Adjusted taxable income is the sum of taxable income, adjusted fringe benefits, target foreign income, total net investment loss, tax free pensions and reportable superannuation contributions minus any child maintenance expenditure. Department of Social Services (DSS), ‘1.1 A.20 Adjusted taxable income (ATI)’, *Family assistance guide*, version 1.190, DSS website, last reviewed 11 May 2015; Department of Human Services (DHS), ‘Child Care Benefit’, DHS website, last updated 14 November 2016.

36. DHS, ‘Child Care Benefit’, op. cit.

37. Ibld.

38. DSS, ‘3.5.2.10 CCB overall rate calculation – approved care’, *Family assistance guide*, version 1.190, DSS website, last reviewed 20 September 2016.


40. DSS, ‘2.6.7 Special Child Care Benefit (SCCB) – eligibility criteria’, *Family assistance guide*, version 1.190, DSS website, last reviewed 20 September 2016.
SCCB is generally payable for periods of up to 13 weeks. Only the Department of Human Services can approve SCCB for periods longer than 13 weeks.

**Child Care Rebate**

CCR is a separate payment from CCB and assists families with their out-of-pocket costs for approved child care (but not registered care). Out-of-pocket costs are total fees minus CCB. CCR covers 50 per cent of out-of-pocket costs up to a maximum of $7,500 per financial year per child (this amount is usually indexed to CPI but indexation has been paused since 2011–12).

To be eligible for CCR an individual must be eligible for CCB. Parents/carers can still be eligible for CCR even if receiving no CCB because of a high income because CCR is not means tested. That is, parents/carers must meet all the eligibility criteria for CCB except for the income test (the requirements relating to the care relationship with the child, residency, the work, training or study test, and immunisation).

CCR does have an activity test (both parents/carers or single parents/carers must work, study or train at some time during the week in which child care is used), however, there is no minimum number of hours for such activities.

CCR is paid either fortnightly, to families or directly to ECEC service, or as an annual lump sum to the family.

**Jobs, Education and Training Child Care Fee Assistance**

The Jobs, Education and Training Child Care Fee Assistance (JETCCFA) program helps certain income support recipients (primarily payments for the unemployed such as Newstart Allowance, Parenting Payment and Youth Allowance (Other)) who are undertaking work, study or training, with the costs of child care by covering most of the gap between the total childcare fee and the amount CCB will cover. Parents and carers need to make a contribution of one dollar per hour per child in ECEC and JETCCFA will cover the remaining fee cost (after CCB has been deducted) for eligible hours up to $8.28 per hour per child. Any remaining costs over the JETCCFA cap have to be met by the parent (with 50 per cent of any remaining out-of-pocket costs covered by CCR). The number of eligible hours depends on the activity being undertaken by parents: those undertaking an approved activity as part of the Job Plan or Participation Plan attached to their income support payment can receive up to 24 hours of JETCCFA assistance per week per child; those undertaking a study or training activity can receive up to 36 hours per week per child.

Eligibility for the JETCCFA program is for a limited time—jobseekers are only eligible for up to 20 days while other categories of recipients (students or participants in a labour market program) may be eligible for 26–104 weeks of JETCCFA.

**Funding for providers and quality support**

Apart from fee subsidies, the Australian Government provides funding for ECEC services directly via the Child Care Services Support Programme. This program includes:

- the Community Support Programme which provides funding for the establishment or maintenance of ECEC services in areas where the services might not otherwise be viable or able to meet the requirements of the community (particularly communities in disadvantaged, regional and remote areas)
- the Budget Based Funded Programme which contributes towards the operational costs of just over 300 ECEC services in approved locations, primarily regional, remote and Indigenous communities and
- the Inclusion and Professional Support Programme which funds services to provide the ECEC sector with professional development, advice, access to additional resources and inclusion support for services and educators.

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42. DHS, ‘Jobs, Education and Training Child Care Fee Assistance’, DHS website, page last updated 6 October 2016.
43. Teenage parents completing secondary education (or equivalent study) pay a contribution of $0.10 per hour per child. Ibid.
44. Ibid.
**Jobs for Families Package**

The Jobs for Families Child Care Package was announced as the Government’s response to the Productivity Commission’s (PC’s) report on child care and early childhood learning.

Soon after winning government (on 22 November 2013), then Treasurer, Joe Hockey, requested the PC undertake an inquiry into ‘Child Care and Early Childhood Learning’ to report by the end of October 2014.\(^{46}\) The PC released an issues paper on 5 December 2013 and a draft report on 22 July 2014. The final report was provided to the Government on 31 October 2014 and published on 20 February 2015.\(^{47}\) Details of the report’s findings and recommendations are set out in the Bills Digest for the previous Bill.\(^{48}\)

Just prior to the 2015–16 Budget, the Abbott Government announced its response to the PC’s report: the Jobs for Families child care package.\(^{49}\) The centrepiece of the package is the Child Care Subsidy (CCS) which is to replace CCB, CCR and JETCCFA. Key features of the CCS as announced were:

- a subsidy based on a percentage of an hourly benchmark price or the actual fee, whichever is lower, with the benchmark to be set by Government and differentiating between service type (LDC, FDC, OSHC and in-home care). The benchmark price, known as the hourly fee cap, is based on the projected average price for 2017–18, plus 17.5 per cent for LDC and OSHC and plus 5.75 per cent for FDC.\(^{50}\) The hourly fee caps will be:
  - LDC: $11.55 per hour
  - OSHC: $10.10 per hour
  - FDC: $10.70 per hour
  - In-home care: $7.00
- a subsidy rate of 85 per cent of the benchmark price or actual fee for families with incomes at or below $65,000 per annum, tapering by one percentage point for every $3,000 in income over this threshold to 50 per cent for family incomes at or above $170,000
- families with incomes over $185,000 will have their CCS entitlement capped at $10,000 per child per year
- hours of Early Childhood Education and Care (ECEC) to be subsidised based on the hours parents/carers spend undertaking approved activities in a fortnight:
  - 8–16 hours = up to 36 hours of CCS
  - 17–48 hours = up to 72 hours of CCS
  - 49 hours and above = up to 100 hours of CCS
- for couple families, the partner with the lower number of hours of activity determines the CCS entitlement
- approved activities will include work, training, study or certain other recognised activities such as volunteering as well as participation requirements for income support payments (such as Newstart Allowance, Parenting Payment and Youth Allowance (Other))
- families with incomes of up to $65,000, who do not meet the activity test, will be eligible to receive up to 24 hours of CCS per fortnight under a separate program known as the Child Care Safety Net
- the Child Care Safety Net will replace the existing Inclusion and Professional Support Programme, the Community Support Programme and the Budget Based Funded Programme and will include the Additional Child Care Subsidy (ACCS), a new Inclusion Support Programme and the Community Child Care Fund:
  - the ACCS will provide additional assistance, on top of the CCS, to disadvantaged or vulnerable families

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47. PC, ‘*Childcare and early childhood learning*’, PC website.
49. T Abbott (Prime Minister) and S Morrison (Minister for Social Services), *Jobs for Families child care package delivers choice for families*, media release, 10 May 2015.
50. The Department of Social Services stated that the caps were determined by increasing the fees for LDC, FDC and OSHC in the department’s model from 2013–14 values to 2017–18 values using the Department of Finance’s agreed growth parameters; removing the top five per cent of fees for each service type; then determining the average fee for each service type; then increasing this average by 17.5 per cent for LDC and OSHC and by 5.75 per cent for FDC. Senate Community Affairs Committee, *Answers to Questions on Notice, Social Services Portfolio, Budget Estimates 2015–16*, June 2015, [Question S915-000466](https://www.aph.gov.au/Parliamentary_Business/Questions/Hansard_Questions/2015_senate/201506/20150623_CACQ_S915).
the Inclusion Support Programme will assist services with staff training and equipment to support children with special needs.

- the Community Child Care Fund will provide grants to child care services to improve access in disadvantaged areas, areas of high demand but low availability, and to improve affordability for low income families in areas where fees are greater than the CCS benchmark. \(^{51}\)

CCS for in-home care is to be trialled via a pilot scheme, the Nanny Pilot Programme, which will support up to 10,000 children in families who find it difficult to access mainstream child care services. \(^{52}\) The pilot commenced at the beginning of 2016 and will run for two years. Providers were selected from a field of applicants with nannies only required to hold a working with children check and first aid qualification (as well as residency requirements). \(^{53}\)

Under the Budget measures, an additional $3.2 billion over five years was to be provided for the introduction of the CCS, and additional funding of $327.7 million over four years was to be provided for the Child Care Safety Net. \(^{54}\) The additional funding for the CCS includes $246 million over two years for the nanny pilot program.

Revised Jobs for Families package

In December 2015, the Government announced that it had revised the package following consultation with parents and stakeholders and following difficulties in passing savings measures from the Family Tax Benefit program in the Parliament. \(^{55}\) Under the revised package, the percentage of the benchmark price covered by the CCS would be set at 50 per cent of the benchmark price for families on incomes between $170,000 and $250,000 per annum but would then continue to taper for families on incomes over $250,000 until it reached the base rate of 20 per cent of the benchmark price (for incomes at or above $340,000 per annum). \(^{56}\) The revised income test is set out in Table 2 and illustrated in Chart 1:

Table 2: Revised Child Care Subsidy income test

<table>
<thead>
<tr>
<th>Family income*</th>
<th>Subsidy rate – percentage of actual fee or benchmark price, whichever is lower</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to $65,710</td>
<td>85 per cent</td>
</tr>
<tr>
<td>More than $65,710 to below $170,710</td>
<td>Tapering from 85 to 50 per cent</td>
</tr>
<tr>
<td>$170,710 to below $250,000</td>
<td>50 per cent</td>
</tr>
<tr>
<td>$250,000 to below $340,000</td>
<td>Tapering from 50 to 20 per cent</td>
</tr>
<tr>
<td>$340,000 or more</td>
<td>20 per cent</td>
</tr>
</tbody>
</table>

* Due to the delayed commencement of the package, these thresholds will be indexed according to movements in the Consumer Price Index (CPI) for implementation on 1 July 2018 (so will be slightly higher).

Source: Department of Education and Training (DET), Overview: Jobs for Families child care package, DET, Canberra, 3 May 2016.

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52. Under the pilot program, eligible families would receive a percentage of a benchmark hourly price of $10.00 per hour per child. Families with income under $60,000 per annum receive 85 per cent of this benchmark, decreasing to a base rate of 50 per cent of the benchmark for families earning between $165,000 and $250,000. Families with incomes over $250,000 per annum are ineligible for the program. DET, "Nanny Pilot Programme—frequently asked questions", DET website, last modified 19 July 2016. Initially, the benchmark price was set at $7.00 but this was later increased to $10.00 from 1 July 2016. DET, Interim Home Based Carer Subsidy Programme (Nanny Pilot Programme): programme guidelines, DET, Canberra, May 2016, pp. 12, 36.
53. Ibid.
55. S Birmingham (Minister for Education and Training) and C Porter (Minister for Social Services), Family tax reform to better support Australian children, joint media release, 2 December 2015. For background on the Family Tax Benefit measures see M Klapdor, Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2015, Bills digest, 50, 2015–16, Parliamentary Library, Canberra, 18 November 2015; M Klapdor, Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill (No. 2) 2015, Bills digest, 65, Parliamentary Library, Canberra, 19 January 2016.
56. S Birmingham (Minister for Education and Training) and C Porter (Minister for Social Services), Joint press conference: child care reforms, joint media release, 2 December 2015.
The changes to the income test contributed to a reduction in the estimated expenditure on the CCS. In the Portfolio Budget Statements released in May 2015, the CCS was expected to cost $21.02 billion in its first two years, but in the Portfolio Additional Estimates released in February 2016, the estimated expenditure in the first two years was expected to be $19.87 billion, a reduction of around $1.15 billion.

On 29 November 2015 the Government also announced that grandparent carers (those who have care of their grandchildren for more than 65 per cent of the time) would be made exempt from the CCS activity test and thus eligible for up to 100 hours of subsidised care per fortnight. Grandparent carers in receipt of income support (such as the Age Pension) would be eligible for a rate of up to 120 per cent of the CCS benchmark price.

The Regulation Impact Statement accompanying the Bill confirmed that the Government’s preferred option is to retain the activity test exemptions for CCB as the activity test exemptions for the CCS but would add an additional exemption for families whose child is attending a preschool program in an LDC centre (for the period of the preschool program).

Impact of the revised package

The Department of Education and Training’s submission to the Senate inquiry into the previous Bill outlined the estimated impact of the revised package on families. The department used administrative data from the Legislative Out-years Customisable Model of Child Care (LOCMOCC) as at the Mid-Year Economic and Fiscal Outlook 2015 to estimate that around 815,700 families will receive a higher level of fee assistance under the

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changes compared to the current funding model; around 140,500 families will receive around the same level of assistance and around 183,900 families will receive a lower level of assistance.  

Of the 250,000 families earning $65,710 or less per year (the lower income threshold):

- around 104,100 will be better off (will receive a greater level of assistance than under the current system)
- around 81,000 will experience no change in the level of support
- around 52,100 will be worse off, primarily because of the impact of the activity test and
- around 12,800 families are on income support and have not reported their income and the department was unable to determine the impact of the changes on them.  

Of the 653,900 families with income between $65,710 and $170,710:

- around 565,400 will be better off
- around 32,800 will experience no change and
- around 55,700 will be worse off, either because they do not meet the activity test requirements or are paying child care fees in excess of the hourly fee cap.  

Of the 178,500 families with income between $170,710 and $250,000:

- around 142,400 families will be better off
- around 19,500 will experience no change and
- around 16,600 families will be worse off, primarily as a result of paying child care fee in excess of the hourly fee cap.  

Of the 70,500 families with income over $250,000:

- around 3,800 families will be better off
- around 7,200 will experience no change and
- around 59,500 families will be worse off.  

The Minister for Education and Training has stated families earning between $65,000 and $170,000 will ‘be around $30 a week better off as a result of the child care reforms’.  

In an Answer to a Question on Notice from the 2015–16 Senate Additional Estimates hearings, the Department provided a breakdown of those who would receive a lower subsidy rate under the changes, by reason (these figures do not include 30,500 families who are likely to be ineligible for subsidy under the changes) — set out in Table 3.

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61. Ibid., p. 24.
63. Ibid., p. 24.
64. Ibid., p. 25.
### Table 3: Families expected to receive a lower subsidy rate by income band, 2017–18

<table>
<thead>
<tr>
<th>Reason for potential decrease in subsidy</th>
<th>Families by income band</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Less than $65,710</td>
</tr>
<tr>
<td>Activity test</td>
<td>28,000</td>
</tr>
<tr>
<td>Hitting fee cap</td>
<td>6,200</td>
</tr>
<tr>
<td>Both activity test and fee cap</td>
<td>1,200</td>
</tr>
<tr>
<td>Other reason</td>
<td>16,800</td>
</tr>
<tr>
<td>Reduction in subsidy level</td>
<td>0</td>
</tr>
<tr>
<td>Total families receiving lower subsidy</td>
<td>52,100</td>
</tr>
</tbody>
</table>

Notes: Estimates based on Legislative Out-years Customisable Model of Child Care (LOCMOCC) as at the Mid-Year Economic and Fiscal Outlook 2015. Totals may not match due to rounding. Families may receive less subsidy under CCS due to other reasons which cannot be separately identified.


The Minister stated that ‘some 240,000 Australian families are estimated to increase their workforce participation and involvement as a result of the reforms’.66 This figure is based on the results of an online survey conducted by ORIMA Research of approximately 2,000 people where 24 per cent indicated they would be willing to work more as a result of the measures (as proposed in the Budget).67 This 24 per cent figure was applied to 2011 census data on the number of families using child care to give the estimate of 240,000 families who would increase their participation involvement as a result of the reforms.68 The department has not released the research report this data is taken from, and a redacted version of two pages from the report released under Freedom of Information provided no further information.69

The estimated impact on workforce participation derived from this survey is of limited use as it based on respondents indicating a willingness to work more and does not quantify the amount of additional labour market activity. The PC provided a detailed model for assessing the labour force impact of its proposed model (estimating that the changes would result in increased workforce participation equivalent to an additional 16,000 full-time equivalent workers).70 PricewaterhouseCoopers conducted an economic impact analysis of the CCS as proposed in the 2015 Budget (for childcare provider Goodstart Early Learning) and found that by 2050, an additional 29,000 full-time equivalent workers will have joined the workforce as a result of the payment model (with around half of this impact derived from existing workers increasing their hours).71

Early Childhood Australia also commissioned distributional modelling of the proposed reforms from the Australian National University’s (ANU) Centre for Social Research and Methods.72 This modelling was based primarily on unit record data from the Australian Bureau of Statistics’ Survey of Income and Housing 2013–14 with prices and parameters adjusted to analyse the impact in 2017–18. The modelling found that an estimated 582,000 families will be better off under the package compared to the current fee assistance arrangements,
around 330,000 families will be worse off and 126,000 families will receive around the same level of subsidy as they currently do. The detailed impact is set out in this table from the report:

**Table 4: ANU Centre for Social Research and Methods modelling of ‘winners’ and ‘losers’ from proposed Jobs for Families policy—families**

<table>
<thead>
<tr>
<th>Family income level</th>
<th>Activity test hours worked by parents</th>
<th>Worse off families</th>
<th>Better off families</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>&lt;8 hours</td>
<td>16 hours</td>
<td>&lt;48 hours</td>
</tr>
<tr>
<td></td>
<td>(Cap)</td>
<td>Other</td>
<td>Total</td>
</tr>
<tr>
<td>&lt; $65,000</td>
<td>29,281</td>
<td>4,079</td>
<td>2,030</td>
</tr>
<tr>
<td>&lt; $175,000</td>
<td>79,394</td>
<td>7,479</td>
<td>1,404</td>
</tr>
<tr>
<td>&lt; $250,000</td>
<td>7,013</td>
<td>2,187</td>
<td>563</td>
</tr>
<tr>
<td>&gt; $250,000</td>
<td>11,563</td>
<td>4,009</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>127,250</td>
<td>17,754</td>
<td>3,697</td>
</tr>
</tbody>
</table>

Notes: this model projects around ten per cent fewer families using child care by 2017–18 than projected by the Department of Education and Training (possible reflecting different data sources). Around 6,600 families are impacted by both the activity test and hourly price cap—all families in this group are counted towards the activity test. All families in receipt of income support payments, except for Parenting Payment (Single) and partnered families with children aged under six are assumed to have passed the activity test due to job search requirements attached to those payments.


The ANU’s modelling projects a much larger group of ‘losers’ as a result of the reforms than the Department of Education and Training has projected. Of the estimated 330,000 worse off, around 149,000 are affected by the proposed activity test.73 The report notes that the main driver of the difference between its estimates of those worse off and those of the department is a much lower activity test impact estimated by the department.74 The report notes the administrative data used for the department’s estimates has only limited information on the hours worked by parents compared to that offered by the ABS Survey.75 The administrative data is advantaged by having data on the full population of families using approved childcare (including adjusted taxable income) compared to a limited survey sample of 1,100 income units using formal child care offered by the ABS Survey.

**Committee consideration**

**Previous consideration**

**Senate Education and Employment Committee**

The previous Bill was referred to the Senate Education and Employment Legislation Committee for inquiry and report by 17 March 2016. On 17 March 2016, the Senate granted an extension of time for reporting until 4 April 2016 and the Committee tabled its report on that date. Details of the inquiry are on the Committee’s website.76

The Committee recommended the previous Bill be passed without amendment.77 While noting the concerns of some interest groups particularly in regards to the activity test, the Committee found that the provisions of the previous Bill would ‘target taxpayer support to encourage workforce participation while providing the safety net for those families on lower income’.78 The Committee report stated that ‘the activity test provisions of the Bill

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73. Ibid.
74. Ibid., p. 9.
75. Ibid., p. 10.
78. Ibid., p. 19.
are a fair and equitable way to ensure that the Child Care Subsidy is targeted at best at the families who will need and use it most. 79

Both Labor Senators and Greens Senators issued dissenting reports recommending amendments to the previous Bill. 80

Senate Standing Committee for the Scrutiny of Bills
The Senate Scrutiny of Bills Committee considered the previous Bill in Alert Digest 1 of 2016. 81

The Alert Digest raised concerns that subsection 27A(1) of the Administrative Appeals Tribunal Act 1975 would not apply to deemed refusals for either an application for a determination of risk of serious abuse or neglect or for an application for a determination of temporary financial hardship (at proposed subsections 85CE(4) and 85CH(5) of the FA Act, at item 40 of Schedule 1 of both versions of the Bill). 82 Subsection 27A(1) of the Administrative Appeals Tribunal Act requires a notice of decision and review rights to be given to any person whose interests are affected by the decision. 83 The Scrutiny of Bills Committee stated that the Explanatory Memorandum for the previous Bill did not provide a justification and sought the Minister’s advice for the rationale for the proposed approach. The explanation provided in the Explanatory Memorandum is that the deemed refusal provisions are not intended to be relied upon and have only been included in the unlikely event that the Secretary does not meet requirements to clarify the status of an application within 28 days. 84

The Committee also raised concerns with the ‘Henry VIII’ clause (at proposed section 199G of the FA Admin Act, at item 202 of Schedule 1 to the previous Bill and item 205 of Schedule 1 of the current Bill) and the power to make transitional rules (at Schedule 4, item 12 of both versions of the Bill). Henry VIII clauses are those that enable delegated or subordinate legislation to override the operation of legislation which has been passed by the Parliament. The Scrutiny of Bills Committee raises concerns in regards to such clauses when the rationale for their use is not provided or is insufficient as ‘such clauses may subvert the appropriate relationship between the Parliament and the Executive branch of government’. 85 In this instance, the Committee sought advice from the Minister as to whether these clauses could be drafted to ensure the provisions are only used beneficially (as is their stated intent in the Explanatory Memorandum). 86

The Committee also sought advice from the Minister regarding strict liability offences, stating that the Committee expects ‘a detailed justification of each instance of the application of strict liability’. 87 The Committee stated that these provisions may be considered to trespass unduly on personal rights and liberties. 88

Consideration of the 2016 Bill

Senate Education and Employment Legislation Committee
The current Bill was referred to the Senate Education and Employment Legislation Committee for inquiry and report by 10 October 2016, together with the Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2016 (which contains the Family Tax Benefit savings measures that have been linked with the additional expenditure on the Jobs for Families Child Care Package). The Committee tabled its report on that date. Details of the inquiry are on the Committee’s website. 89

79. Ibid., p. 19.
82. Ibid., p. 20.
86. Ibid., p. 20.
87. Ibid., p. 21.
88. Ibid., p. 21.
The Committee recommended both Bills be passed without amendment. The report noted the concerns from some interest groups (outlined in the ‘Position of major interest groups’ section below), particularly in regards to the activity test and a perceived prioritisation of workforce participation objectives over children’s needs. The report stated that ‘the committee is not persuaded that a focus on workforce participation has come at the expense of the needs of children, and is of the view that the Bill can achieve both’. The Committee also found that the Bill would ‘result in a fairer system, where low income families receive more help and subsidies to high income families fall’. Both the Australian Labor Party (Labor) and the Australian Greens (Greens) issued dissenting reports. The Nick Xenophon Team also issued additional comments on the report. These are discussed in the ‘Policy position of non-government parties/independents’ section below.

Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills commented on the Bill in Alert Digest 7 of 2016. The Committee noted that it had previously commented on the measures as presented in the previous Bill and restated those comments with some modifications. The Committee had received correspondence from the Minister for Education and Training in March 2016 in response to the issues raised in Alert Digest 1 of 2016.

The Minister addressed the issue of certain deemed refusals (under proposed subsections 85CE(4) and 85CH(5), at item 40 of Schedule 1 in both versions of the Bill) being exempt from the requirements under subsection 27A(1) of the Administrative Appeals Tribunal Act 1975 (AAT Act) to give a notice of decision and review rights to any person whose interests are affected by the decision, stating:

Subsection 27A(1) of the AAT Act provides that a person who makes a reviewable decision must take reasonable steps to give to an affected person a written notice of the decision and of their review rights. It would not be appropriate to require the Secretary to give a decision notice advising of review rights in relation to deemed refusals under subsections 85CE(4) and 85CH(5), because deemed refusals only come into effect in circumstances where the Secretary, (or his or her delegate), has failed to personally make a decision: in other words, no actual decision was made by an officer. Accordingly, proposed subsections 85CE(4) and 85CH(5) simply reflect that it would be inappropriate to oblige the Secretary to notify of the act of not making an active decision. As such, the exemption from the notification requirement merely reflects the practical reality that any deemed refusals are likely to occur without the Secretary’s actual and active knowledge.

The Minister’s justification here is that while a determination has been made that means a child is not deemed to be at risk or a family in temporary financial hardship, the decision was ‘not made personally’ and is not an ‘active decision’.

While such deemed refusals are expected to be rare, it is unclear how applicants will become aware that the application has been refused other than by contacting the department to ask about the progress of their application. They would also need to ask about their review rights.

The Committee had no further comments to make in relation to these provisions in light of the information provided by the Minister and its inclusion in the Explanatory Memorandum to the current Bill.

In regards to the concerns the Committee had raised regarding the Henry VIII clause at proposed section 199G of the FA Admin Act and its suggestion that the clause be redrafted so that it could only be used for beneficial purposes, the Minister responded:

Although it may be possible to include limiting words to ensure the provisions are only used beneficially, amendments of this nature could be equivocal and possibly confusing due to difficulties in defining what a ‘benefit’ is in the context of lifting obligations relating to backdated approvals. I note that any rules made in accordance with section 199G will be subject to further parliamentary scrutiny through the disallowance process for legislative


91. Ibid.


93. Ibid., pp. 61–62.

94. Ibid., p. 62.
instruments, which means that Parliament will be able to disallow any rules that are considered non-beneficial or otherwise unfair.95

The Committee did not accept that this was a compelling justification for broadening the scope of delegated powers to override the operation of the primary legislation:

While the committee notes that the intention is for modifications to be beneficial, the suggestion that limiting words ‘could be equivocal and possibly confusing’ is not a compelling justification for broadening the scope of delegated powers.

The committee draws the breadth and nature of this power to the attention of Senators and, noting that any rules made in accordance with section 199G will be subject to disallowance, leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.96

In relation to the Committee’s concerns regarding the Henry VIII clause at item 12 of Schedule 4 (the transitional rules), the Minister argued in his letter to the Committee that the power was justified given it would only operate for a limited period of two years and the rules would be subject to disallowance by the Parliament.97

The Committee noted the justification provided and left the question whether the scope of this delegation of legislative power is appropriate to the Senate as a whole to consider.98

In regards to the Committee’s request for a detailed justification of each application of strict liability, the Minister had responded with a rationale for various strict liability offences and included further information on these provisions in the Explanatory Memorandum for the Bill (additional to that provided in the Explanatory Memorandum for the previous Bill).

The Committee found that these explanations appeared to be consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (the Guide).99 However, it found that the ability to impose penalties above 60 penalty units is not.100 The Committee noted that the Minister had advised that these higher penalties were considered appropriate in order to promote compliance with family assistance law but stated:

... it remains the case that in order to be consistent with the principles outlined in the Guide ... strict liability offences should be applied only where the penalty does not include imprisonment and the fine does not exceed 60 penalty units for an individual.101

The Committee left the question of whether this approach is appropriate to the Senate as a whole to consider. It also drew attention to the provisions as “they may be considered to trespass unduly on personal rights and liberties”.102

The Committee also commented on new provisions (items 1 and 2 of Schedule 3) not contained in the previous Bill.103 These items allow for a determination made by the Minister in relation to immunisation requirements for certain payments to adopt or incorporate matters set out in another written instrument. Without this authorisation, subsection 14(2) of the Legislation Act 2003 would prevent this approach.104 The Explanatory Memorandum explains that this is ‘intended to ensure that future versions of the instruments that set out vaccination and immunisation details and schedules (including the Australian Immunisation Handbook) can

95. Ibid., p. 63.
96. Ibid., p. 64
97. Ibid., p. 65.
98. Ibid., p. 65.
99. Attorney-General’s Department (AGD), A guide to framing Commonwealth offences, infringement notices and enforcement powers, AGD, Canberra, September 2011.
100. Senate Standing Committee for the Scrutiny of Bills, Alert digest, 7, 2016, op. cit., p. 68.
101. Ibid.
102. Ibid.
103. Ibid., p. 69.
continue to be meaningfully referred to’. The Committee acknowledged the comprehensive justification for the provisions in the Explanatory Memorandum and did not make any further comment on the measures.

**Policy position of non-government parties/independents**

**Australian Labor Party**

Labor Senators issued a dissenting report to the Senate Education and Employment Committee’s report on the Bill. Labor Senators stated that the issues identified in their dissenting report to the inquiry into the previous Bill remained. These included concerns over the impact of the activity test, the impact on Budget Based Funded Indigenous and Mobile services, and the limited information available on delegated legislation to be made under the Bill and on the Government’s proposed Community Child Care Fund. Labor Senators also raised a new concern over the delay in providing additional funding for ECEC (as a result of the delayed commencement of the package).

Labor Senators also rejected the Government’s proposal to link savings from the Family Tax Benefit program with any additional funding for ECEC:

> The link between the Jobs for Families Bill and the Social Services Bill has been artificially devised for political purposes and is not supported by Labor. Investment in early education should not be held hostage to Family Tax Benefit cuts. This is robbing Peter to pay Paul: taking money from low income families to give to other families through child care assistance.

Labor Senators stated that they are concerned that too many families would be worse off under the Jobs for Families child care package and called on the Government to amend the Bill to ‘improve the balance between children’s early education and parent’s workforce participation’. Recommendations from the Labor Senators include:

- continuing to provide all children with access to two days early education a week and for any changes to current activity tests to be trialled before introduction
- an immediate increase in assistance for families to cover the period prior to the Jobs for Families package commencing in July 2018
- not making additional funding for ECEC conditional on cuts to Family Tax Benefit expenditure.

The Dissenting Report did not include a recommendation that the Bill be opposed, only that the Bill containing the Family Tax Benefit savings be rejected.

**Australian Greens**

The Greens stated in their dissenting report that while supporting the aims of the Bill, the Greens were concerned that ‘the measures included in this Bill as currently drafted will not achieve these aims, and will in fact result in a number of families being unable to access childcare or receive reduced access to subsidised care’. The Greens were particularly concerned with the impact of the proposed activity test and also on the closure of the Budget Based Funding program under the Jobs for Families Package (a component of the package but not the Bill).

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105. [Explanatory Memorandum](#), Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016, p. 92.
106. Ibid., p. 70.
108. Ibid., pp. 32–35
109. Ibid., pp. 31–32
110. Ibid., p. 37.
111. Ibid., p. 39.
112. Ibid., p. 40.
The Greens made a number of recommendations including changes to the activity test so that families with 0–8 hours of activity would be eligible for two days of subsidised care.  

**Nick Xenophon Team**

The Nick Xenophon Team (NXT) issued additional comments to the Senate Education and Employment Committee’s report on the Bill and raised a number of concerns in relation to the impact of the activity test on ECEC providers and workers and the Department of Education and Training’s consultation procedures. NXT also sought clarification from the Department regarding ongoing funding for in-home care services.

**Position of major interest groups**

The positions of major interest groups were canvassed in detail in the Bills Digest for the previous Bill and the concerns raised by these groups previously have not changed.

In relation to the 2016 Bill, three peak bodies (Early Childhood Australia, Australian Childcare Alliance and the Early Learning and Care Council of Australia) joined with the largest child care provider, Goodstart Early Learning, to issue a joint submission to the Senate Education and Employment Committee’s inquiry into the Bill. The four organisations reiterated their support for the broad thrust of the Jobs for Families Package and their continued concern over the impact of the activity test. The joint submission held that the base CCS entitlement for low income families who do not meet the activity test should be increased from 12 hours per week to 15 hours per week. The submission also proposed raising the income threshold for this base entitlement from $65,710 to $100,000 arguing that 56 per cent children considered developmentally vulnerable under the Australian Early Development Census are from the least advantaged 40 per cent of families. The submission also identified some potential areas for savings to cover the cost of their proposed changes and identified areas for further discussion. The submission also argued that the additional funding for the Jobs for Families Package should be decoupled from the proposed Family Tax Benefit savings measures.

**Financial implications**

The Explanatory Memorandum to the Bill states that the Child Care Subsidy and Additional Child Care Subsidy will cost $23.37 billion over two years from 2018–19.

As illustrated in Table 1 (above), most of this funding will be redirected from existing ECEC programs. The Explanatory Memorandum for the Bill states that an additional $3 billion in additional expenditure will be provided to support the implementation of the Jobs for Families Child Care Package.

**Statement of Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights listed the Bill in its seventh report of 2016 as not raising human rights concerns.

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114. Ibid., p. 42.
116. Ibid., p. 51.
118. Ibid., pp. 1–2
119. Ibid., p. 3.
120. Ibid., pp. 5–6.
122. Ibid.
123. The Statement of Compatibility with Human Rights can be found at page 6 of the Explanatory Memorandum to the Bill. Ibid., p. 6.
In regards to the previous Bill, the Committee stated in its 33rd report of the 44th Parliament that the Bill reintroduced measures previously considered by the Committee, and that the Bill ‘continues arrangements in relation to the Social Services Legislation Amendment (No Jab, No Pay) Bill 2015 which the committee previously considered’. While the immunisation requirements introduced under the No Jab, No Pay Bill are continued under the new child care payment arrangements, this is a relatively minor part of the proposed changes.

The Statement of Compatibility with Human Rights lists a number of human rights treaties that the Bill engages with but the Committee appears to have determined that any human rights limitations are permissible.

**Key issues and provisions**

The key issues and provisions are discussed in detail in the Bills Digest for the previous Bill. This section will only highlight significant differences between the two versions of the Bill.

The Department of Education and Training provided a full list of differences between the Bill and the previous Bill, and the reasons for the change, in Attachment 2 to its submission to the Senate Education and Employment Committee’s inquiry into the Bill.

Table 5 sets out key changes between the two versions of the Bill. Other changes primarily relate to date changes (due to the delayed commencement of the Bill) and corrections or amendments in response to drafting errors in the previous Bill.

### Table 5: Key differences between the 2015 and 2016 versions of the Jobs for Families Package Child Care Bill

<table>
<thead>
<tr>
<th>Key changes or new provisions</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Child Care Subsidy (ACCS) (at risk) has been renamed ACCS (child wellbeing) and all relevant references throughout the Bill have been amended.</td>
<td>The Department of Education and Training explained that this change was in response to feedback from the ECEC sector that the ‘at risk’ name could deter families from accessing the additional support ACCS provides, ‘which is at odds with the policy intent’.</td>
</tr>
<tr>
<td>The lower income threshold, CCS hourly rate caps and CCS annual cap will be adjusted upon commencement to reflect CPI movements (by item 5 of Schedule 4)</td>
<td>Certain amounts in the previous Bill were to be adjusted once a year on 1 July in line with CPI movements. Due to the commencement of the CCS being delayed for a year, until 2 July 2018, the amounts set out in the Bill for the lower income threshold, CCS hourly rate caps and CCS annual cap will be lower than initially intended for 2 July 2018. The new provision provides for indexation of these amounts to occur on 1 July 2018, despite the amounts not existing until commencement of the CCS on 2 July 2018. This will mean that each of these amounts and each of the income test thresholds will be slightly higher than outlined above. All of the higher income test thresholds will be increased as a result of the indexation of the lower income threshold as they are set as whole dollar amounts above the lower income threshold.</td>
</tr>
<tr>
<td>Proposed subsections 85BA(2) and</td>
<td>The previous Bill limited eligibility to the CCS and ACCS to</td>
</tr>
</tbody>
</table>

### Key changes or new provisions

| **85CA(3) of the FA Act (inserted by item 40 of Schedule 1)** will give a new rule-making power to the Minister so that children older than 13 years can be eligible for CCS or ACCS. | children 13 years and under who do not attend secondary school. The new power will enable the Minister for Education and Training to determine circumstances in which children over the age of 13 and/or attending secondary school may be eligible for CCS or ACCS. The Department of Education and Training explained that this was in response to concerns from stakeholders about the impact of this age limit on older children with disability and their families, who may need to access child care services, such as outside school hours care.  

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| **Proposed section 85EE of the FA Act (inserted by item 40 of Schedule 1 to the Bill) has been changed to reduce the period a person can be temporarily overseas and receive CCS or ACCS (the portability period) from 56 weeks to six weeks.** | The previous Bill allowed for temporary overseas absences of up to 56 weeks, similar to the portability rules for Family Tax Benefit (FTB) and CCB at the time. The FTB and CCB portability rules have since been reduced to six weeks and the 2016 Bill has reduced the period for the CCS and ACCS to six weeks. The portability rules for FTB and CCB were changed via the *Social Services Legislation Amendment (Family Measures) Act 2015*.  

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| **Proposed clause 12 of Schedule 2 of the FA Act (inserted by item 41 of Schedule 1 to the Bill) has additional subclauses setting out that ‘associated activities’, as prescribed by the Minister’s rules, will also be taken to be ‘recognised activities’ under the activity test, including taking leave or a break; and provide for the rules to set out ways of working out the number of hours to be counted towards a recognised activity and a maximum limit on the number of hours that can be counted towards an activity.** | This change will allow the Minister to create rules that define or expand upon the list of activities listed in the Bill, to clarify what kinds of activities constitute the recognised activities listed at proposed subclause 12(2) of Schedule 2 to the *FA Act* and to limit the number of hours which can be counted in respect of a particular activity. The Department of Education and Training stated that these changes give better effect to the policy intent of the rule-making powers. The Department suggested that the time-limits could be applied so as to specify that hours spent volunteering could only be applied to the first step of the activity test. This would mean that certain types of activity would only be eligible for a set maximum amount of CCS hours, regardless of the total number of hours spent in that activity.  

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| **Proposed clause 3AA of Schedule 3 of the FA Act (inserted by item 45 of Schedule 1 to the Bill) provides a method for working out adjusted taxable income for a member of a couple during CCS fortnights, particularly where the person’s partner was not their partner for the whole year.** | This new clause provides for the proportion of a partner’s income that is equivalent to the proportion of the financial year that the partner was in a couple relationship with the CCS claimant to be included in the income test. As CCS is to be worked out on a fortnightly basis, it appears this provision has been included to allow for couple rates to be calculated based on the fortnights a couple was together in a relationship. This is different from other family assistance payments where rates are calculated on an annual basis divided into a daily rate. For these payments, where circumstances change during the year such as a person entering a couple relationship, a different rate is calculated based on the relevant period where the circumstances are changed (a new annual rate is calculated and a new daily rate determined). The Department of Education and Training’s submission to the... |

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129. Ibid.  
132. Ibid.
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| Senate Education and Employment Committee’s inquiry into the Bill notes this new clause but only explains a related change at **item 114 of Schedule 1** (relating to reconciliation provisions).\(^{133}\)  
It is unclear why CCS needs to make use of this new formula for the income test rather than the existing family assistance provisions but it appears that the Government would rather all aspects of the rate calculation process be tied to the CCS fortnight structure.  
A separate issue with this new clause is that it makes reference to a ‘TFN determination person’ without a definition of this term. A TFN determination person is not defined in the FA Act and is only defined in the FA Admin Act (at section 3). | |

**Proposed subsection 194E(d) of the FA Admin Act** (inserted by **item 205 of Schedule 1**) (which relates to one of the factors the Secretary should have regard to in assessing whether someone is a ‘fit and proper’ person to be a provider or person responsible for the day-to-day running of an approved child care service) has been reworded.  

In the previous Bill, the proposed subsection stated the Secretary should have regard to: ‘any conviction of a relevant person for an offence against a law of the Commonwealth or a State or Territory’.  

In the Bill, the proposed subsection reads: ‘subject to Part VIIC of the Crimes Act 1914, any conviction, or finding of guilt, against a relevant person for an offence against a law of the Commonwealth or a State or Territory, including (without limitation) an offence against children, or relating to dishonesty or violence’. The revised paragraph will cover people who have been found guilty of an offence in circumstances where a conviction has not been recorded.  

The Department of Education and Training states that this change was made to reflect the current eligibility determination.\(^{134}\) |

**Concluding comments**

The Bill proposes the most significant changes to child care fee assistance arrangements in more than 15 years, aimed at making the system simpler and more sustainable, while improving affordability for families and increasing work participation incentives. Arguably, the system will remain complicated, but the income test and method for calculating payment rates is simpler than under the current system. Most families are expected to see increased levels of assistance. However, there will be around 200,000–300,000 families worse off under the proposed arrangements.

Overall, the proposed system is an improvement on the existing system and comes with a sizeable amount of additional investment in ECEC. However, the design of the activity test continues to be controversial, and issues with indexation and administrative arrangements for providing assistance to children at risk of abuse or neglect (raised in the Bills Digest for the previous Bill) persist. Some issues may arise or be resolved in yet to be seen subordinate legislation and key components of the Jobs for Families Package (the Child Care Safety Net) are yet to be detailed. With more than a million children attending formal ECEC services, the impact of this package, both the known and unknown components, will be massive. Success will depend upon explaining the choices that have been made, addressing controversial issues and careful implementation.

\(^{133}\) Ibid.  
\(^{134}\) Ibid., p. 2.