Family Day Care Australia

Submission to
THE SENATE EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE
on the

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

September 2016

Family DAY CARE AUSTRALIA

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Foreword

About Family Day Care Australia

Family Day Care Australia (FDCA) is the national peak body for family day care. Our role is to promote, support and advocate for family day care services and educators. Our aim is to ensure the strength and continued growth of the sector in Australia and to support high quality learning and developmental outcomes for children. FDCA has approximately 24,500 members, including over 800 approved service members and over 23,500 educators[1]. FDCA takes a rights-based approach to all research, policy development and advocacy work it undertakes, underpinned by a strong commitment to the UN Convention on the Rights of the Child.

About family day care

Family day care supports more than 127,000 families across Australia, providing early childhood education and care for 227,990 children. This accounts for approximately 18 per cent of the Early Childhood Education and Care (ECEC) sector.[2]

Family day care is a form of regulated ECEC that takes place in the educator's home. Family day care educators are ECEC professionals, registered with a family day care 'approved service' that is responsible for registering, supporting, training, monitoring and advising its educators. The approved service administers a 'coordination unit', which employs administrative staff as well as coordinators; field staff who actively support and monitor educators in their work.

Family day care operates under the National Quality Framework for Early Childhood Education and Care (NQF); incorporating national regulations, quality and qualification standards, educational frameworks and an assessment and ratings process. Family day care services are Child Care Benefit (CCB) approved under Family Assistance Law, making it eligible for Federal Government CCB and Child Care Rebate (CCR) subsidies.

The family day care sector provides flexible ECEC across both standard and non-standard hours, and is regulated under the Education and Care Services National Law and Regulations, thereby meeting the requirements defined in the National Quality Standard (NQS). Family day care is provided across Australia, including in rural and remote communities where in some instances, family day care is the only approved form of ECEC available to families. Family day care provides experiences which reflect the diversity of the communities in which they operate. Family day care educators work with small groups of no more than four children under school age. An educator may care for an additional three school aged children outside of school hours. The majority of family day care educators are self-employed, working as sole traders, with a small percentage engaged as employees by the approved service.

Educators are required, under the *Education and Care Services National Regulations*, to hold (or be actively working towards) a Certificate III in Early Childhood Education and Care (or equivalent) and coordinators are required to have a Diploma in Children's Services (or equivalent), as a minimum qualification.

1 FDCA administrative data, figures as at 31 August 2016.
2 Australian Government Department of Education and Training, *Early Childhood and Child Care Summary*, September Quarter 2015.

Background

Family Day Care Australia (FDCA) makes this submission to the Senate Education and Employment Committee on the Inquiry into the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016* ('the Bill') primarily through a reiteration of FDCA's submission to the Senate Inquiry into the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015* (see Appendix A). This reiteration will be informed by additional considerations that have surfaced since the introduction of the original Bill. As such, this submission will outline FDCA's position on the key elements of the Bill, and refer the reader to Appendix A for more detail. The submission will also address developments related to the Bill that have occurred since January 2016.

Overview

FDCA supports the overarching intent of many aspects of the Jobs for Families Child Care Package Bill 2016 and welcomes the over $3 billion of additional expenditure for the early childhood education and care (ECEC) sector. FDCA believes the Bill has the potential to benefit the majority of families utilising ECEC, through more affordable ECEC and hence increased participation, which will lead to better learning and developmental outcomes for more of Australia's children and support increased workforce participation.

FDCA believes that the Bill supports many of the priority objectives outlined in the Productivity Commission's report on Childcare and Early Childhood Learning, including improving flexibility, affordability and accessibility, and will also assist in streamlining what is currently an overly complex and administratively burdensome subsidy system, which will significantly benefit both providers and families.

Recently the Government introduced three new Determinations under Family Assistance Law that are designed to tighten eligibility for Commonwealth fee assistance, amend suitability criteria and provide additional guidance on notifiable events, which reflect some proposed measures presented within the Bill. FDCA supports these Determinations and also supports a number of measures within the Bill that seek similar outcomes, that is, to ensure greater compliance with Commonwealth fee assistance provision structures, provide more comprehensive guidance around the administration of associated systems and provide a more comprehensive framework around the suitability of ECEC providers.

FDCA commends the Australian Government on the commitment of additional investment through the Bill and the ongoing commitment to developing an ECEC system that strives for increased ECEC participation and therefore better learning and developmental outcomes for children. As such, FDCA supports the passage of the Jobs for Families Child Care Package Bill with relatively minor, albeit important, amendments outlined herein.

Additional Powers, Eligibility and Suitability

As outlined in the Overview, FDCA notes that since January 2016, a number of measures (relating to changes to additional powers, criteria surrounding suitability of providers and eligibility for CCB approval and notifiable events) have been introduced through legislative instruments that reflect some of the aims outlined in the Jobs for Families Package Bill[3]. These Determinations include:

- *Child Care Benefit (Children in respect of whom no-one is eligible) Amendment Determination 2016;*

- *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2016; and*

- *Child Care Benefit (Session of Care) Determination 2016.*

FDCA supports all of the above Determinations as these amendments (as with a number of compliance-oriented measures throughout the Bill) represent reasonable, proportionate and appropriate compliance mechanisms. In particular, FDCA commends the additional measures introduced through the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2016* as they aim to "*provide clearer grounds for delegates to have regard to factors that might affect suitability*"[4] and allow for "*compliance action to be taken where services do not satisfy these criteria*".[5] As such, FDCA supports measures outlined in the Bill with a similar intent, including the proposed criterion for *fit and proper person considerations*[6] which strengthen the current 'suitability of applicant' criterion for CCB approval purposes and supports the reassessment of continued approval[7] (as detailed in Appendix A, p.15).

Additionally, FDCA provides in principle support for Schedule 1, Section 197A (Immediate suspension) as there may be a need to act immediately in relation to unforeseen 'urgent circumstances' where it is no longer appropriate to provide care or administer payments. However, FDCA recommends clear guidance as to 'urgent circumstances', as proposed in Schedule 1, Sections 197A(c) and (d) of the Bill, to be further detailed. This guidance may be informed by the suitability criteria and notifiable events outlined in the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2016*.

However, FDCA must reiterate concerns expressed in Appendix A (p.15 – p.18), namely that while FDCA supports providers being subject to increased oversight, FDCA does not support the powers that allow for arbitrary application of undefined and potentially restrictive operating conditions or blanket growth restriction mechanisms.

3 *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2016*, Explanatory Statement.
4 Ibid.
5 Ibid.
6 Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016, Schedule 1, Section 194E - Fit and proper person considerations.
7 Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016, Schedule 1, Section 195G and Schedule 3, Section 199A – Reassessment of Continued Approval

Such proposed measures include:

- Schedule 1, Section 198A-C - Allocation of child care places to approved child care services

- Schedule 3, Items 3, 4 and 6

FDCA cannot support measures that provide for significant and undefined Ministerial powers to limit applications arbitrarily. FDCA believes the intended (compliance) benefits of these proposed powers do not outweigh the costs, which could see legitimate service delivery severely restricted under discretionary growth restriction mechanisms.

These compliance objectives can successfully be achieved through other mechanisms as has been demonstrated by the cooperation between FDCA and the Government throughout the past 18 months to inform proportionate, targeted and reasonable policy and regulatory solutions.

Additionally, the Bill retains measures from the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015 that are unclear in their scope (including Schedule 1, Section 202A (Requirement to make records) – as detailed in Appendix A, p.16-17) and have not been amended from their original structure to provide further guidance.

Therefore, FDCA must reiterate Recommendations 2.1 and 2.2 within Appendix A (p.18) that:

- Schedule 1, Section 198A - Allocation of child care places; and Items 3 and 4[8] of Schedule 3 be repealed; and

- In the case of Schedule 1, Section 197A - Immediate suspension and Schedule 1, Section 202A - Requirement to make records, FDCA recommends that the Government provide clear specific guidance on the meanings of terms specified within these provisions such as, "urgent circumstances, and "complying written agreement."

8 This recommendation should be amended to include Item 6, Schedule 3.

Child Care Subsidy, Additional Child Care Subsidy and the Activity Test

While FDCA supports the introduction of the Child Care Subsidy (CCS) and the Additional Child Care Subsidy (ACCS) in general, our members have expressed concern in relation to the proposed fee cap (relating specifically to family day care) and the delay of its implementation to 1 July 2018.

FDCA recognises that the current child care subsidy system is complex and unwieldy and, in some cases, unaffordable. As such, FDCA recognises the need to streamline the current child care subsidy system and to ensure that the reforms benefit children, families and communities that need it most. The proposed CCS system remains as first outlined within the original Jobs for Families Child Care Package Bill 2015. Consequently, FDCA must maintain our original recommendations as detailed in Appendix A (p.10-13).

FDCA remains concerned that the proposed CCS does not provide adequately for families that access family day care on a part-time basis or outside of standard hours. By fixing the hourly fee cap for family day care at $10.70, there is no recognition that family day care is the only regulated early childhood education and care service offering care outside of standard hours or on a part-time basis. As a result, the Government will limit families' choice to access affordable outside of standard hours care as the fixed hourly fee cap may render this type of care unaffordable. FDCA also maintains our position regarding the indexation of the proposed subsidy system, and recommends reconsidering indexing only the lower income threshold in order to ensure an equitable subsidy entitlement over time.

In the second reading of the Bill, Minister for Social Services the Hon. Christian Porter MP noted that "there will be ongoing monitoring and review of the package... An integral part of the strategy will be post-implementation review and an impact evaluation"[9]. We commend the Government for recognising the significant nature of these reforms and the need to assess the impacts of their implementation. However, given the fact that the cap price and income thresholds remain fixed within the legislation, FDCA maintains the recommendation to undertake a review of the CCS *prior* to implementation.[10]

Since the introduction of the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015, the Government has delayed the proposed implementation date of the CCS until 1 July 2018. FDCA is concerned that this delay will have a negative effect on the affordability (and hence accessibility) of all ECEC service types and thus requests that interim fee assistance reform measures be considered.

9 Commonwealth of Australia 2016, Parliamentary debates: House of Representatives: Proof Hansard, Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016, Second Reading, 1 September 2016, p. 36.
10 Noting that 2013-14 data was used to calculate the legislated cap prices (2015-16 Budget Estimates Hearings, SQ15-000466).

FDCA must reassert Recommendation 1.1 and Recommendation 1.2 within Appendix A (p.12) that:

- A review of the Child Care Subsidy should be undertaken prior to implementation. The review process should be undertaken at arm's length from Government (by an independent statutory body) and be provided for in the governing Act of the subsidy. The review should assess the impacts on accessibility, affordability and quality of early education and care and should consider possible improvements to the methodology for deriving the cap price.

- The Australian Government reconsider indexing only the lower income threshold in order to ensure an equitable subsidy entitlement over time.

Schedule 1, Section 85CE - Determination for ACCS (child wellbeing)

As detailed in Appendix A, FDCA maintains concerns regarding the lack of accountability that extends to government decision making as contained within Schedule 1 s85CE regarding determination of risk of serious of abuse or neglect. The proposed s85CE(4) in the Bill allows for the Secretary not only to fail to make a decision regarding an application for a child at risk of serious abuse or neglect, but that if the Secretary does not make a decision, the application is deemed to be refused and the Secretary is not required to give notice of the refusal.

As such, FDCA reasserts Recommendation 1.4 and 1.5 within Appendix A (p.13) that:

- The Australian Government should provide clear, specific guidance as to the usage and timeframe stated under s85CE (4) due to the serious nature of the 'at risk of serious abuse or neglect' category in order to safeguard the most vulnerable children.

- The overall regulatory and administrative burden associated with the new ACCS (at risk) should be tested against the existing process for children at risk and should be less burdensome on families and services and should have increased flexibility compared to the current process.

Schedule 2 of the Bill, Part 5 - Activity test

As detailed in Appendix A (p.13) FDCA does not support the proposed activity test as it currently stands and is particularly concerned with the negative effects that disengagement with the ECEC system will have on vulnerable children as a result of limiting access to ECEC fee assistance through a parental activity test. The proposed activity test does not align with international best practice, with several comparable OECD countries providing free or low-cost early childhood education to all families, regardless of employment status.[11]

It is also possible that the proposed three tier system may even act as a disincentive for services to accept children on lower tiers of fee assistance in favour of those with higher hours, which potentially excludes the most vulnerable children.

Therefore, FDCA continues to support Recommendation 1.3 within Appendix A (p.13) that:

- There should be minimum hours of access to subsidised care that is not subject to an activity test in ECEC funding.

11 Deborah Brennan, Elizabeth Adamson, Baby Steps or Giant Strides?, The McKell Institute, June 2015 p.55.

Conclusion

As outlined above and detailed in Appendix A, FDCA recognises the need to reform the child care subsidy system and appreciates the complexity of the multiple policy problems that this Bill attempts to solve. The guiding principles set out in the recommendations from the Productivity Commission's Report on Childcare and Early Childhood Learning of affordability, accessibility and flexibility informing the Bill are well-considered and if achieved, will benefit families, children, communities and the economy as a whole.

FDCA implores the Government to consider the proposed amendments presented by FDCA and other major ECEC interest groups in the interest of delivering an Act that not only delivers the key outcomes of "*a simpler, more affordable, more flexible and more accessible child care system for families*"[12] but also provides the best possible learning and developmental outcomes for Australian children.

12 Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016, Explanatory Statement.

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Appendix A

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Submission to
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January 2016

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Foreword

About Family Day Care Australia

Family Day Care Australia (FDCA) is the national peak body for family day care. Our role is to promote, support and advocate for family day care services and educators. Our aim is to ensure the strength and continued growth of the sector in Australia and to support high quality learning and developmental outcomes for children.

FDCA has approximately 26,000 members, representing over 700 approved service members and over 25,000 educators.[1] FDCA takes a rights-based approach to all research, policy development and advocacy work it undertakes, underpinned by a strong commitment to the UN Convention on the Rights of the Child.

About family day care

Family day care is a form of regulated Early Childhood Education and Care (ECEC) that takes place in the educator's home. Family day care educators are ECEC professionals, registered with a family day care `approved service,' which is responsible for registering, supporting, training, monitoring and advising its educators. The approved service administers a `coordination unit', which employs administrative staff as well as coordinators; field staff who actively support and monitor educators in their work.

Family day care operates under the National Quality Framework for Early Childhood Education and Care (NQF); incorporating national regulations, quality and qualification standards, educational frameworks and an assessment and ratings process. Family day care services are Child Care Benefit (CCB) approved under Family Assistance Law, making it eligible for Federal Government CCB and Child Care Rebate (CCR) subsidies.

The family day care sector provides flexible ECEC across both standard and non-standard hours, and is regulated under the Education and Care Services National Law and Regulations, thereby meeting the requirements defined in the National Quality Standard (NQS). Family day care is provided across Australia, including in rural and remote communities where in some instances, family day care is the only approved form of ECEC available to families. Family day care provides early childhood education and care services for children, providing experiences that reflect the diversity of the communities in which they operate. Educators work with small groups of no more than four children under school age with the option to care for an additional three school aged children outside of school hours. The majority of family day care educators are self-employed, working as sole traders, with a small percentage engaged as employees of the approved service.

Educators are required, under the Education and Care Services National Regulations, to hold (or be actively working towards) a Certificate III in Early Childhood Education and Care (or equivalent) and coordinators are required to have a Diploma in Children's Services (or equivalent), as a minimum qualification.

Family day care supports more than 116,190 families across Australia, providing early childhood education and care for 203,790 children. This accounts for approximately 17 per cent of the ECEC sector. The number of families using family day care has increased by 22.5 per cent since the September quarter 2013.[2]

Consultation with the sector

In its capacity as the National Peak Body for family day care, FDCA has engaged its stakeholders in a diverse and broad range of consultative processes on the ongoing reforms across the ECEC sector.

In July 2015, FDCA and its members participated in several consultations on the Draft Regulation Impact Statement for the Child Care Assistance Package. FDCA conducted multiple surveys with our members on the Package over the last year[3] including surveys conducted throughout December 2015 to clarify our position on the draft Inclusion Support Programme Guidelines 2016-2017 to 2017-2018 (`the Guidelines')[4] and elements of the Child Care Subsidy under the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015 (`the Bill').[5]

FDCA obtained regular feedback from FDCA's Network Support forums (open to both educators and services) and through our Service Reference Group (SRG) which provided vital services feedback regarding issues such as non-compliance. This consultation has informed the positions presented within this paper.

1 FDCA administrative data, figures as at 12 January 2016.

2 Department of Social Services, *Child Care and Early Learning in Summary*, September Quarter 2014.

3 Throughout July 2015, FDCA undertook widespread sector consultation issuing three online surveys to family day care services and educators ((total) n= 250) convening an FDCA Service Reference Group meeting and holding discussions with state and territory peak bodies.

4 Online survey of a sample of FDCA members regarding the proposed Inclusion Support Programme, 8 - 16 December 2015 (n=86).

5 Online survey of a sample of FDCA members regarding the proposed Child Care Subsidy, 16 - 23 December 2015 (n=111).

Executive summary

Overall, FDCA recognises the need to reform the child care subsidy system and appreciates the complexity of the multiple policy problems that this Bill attempts to solve. The guiding principles of affordability, accessibility and flexibility driving the reforms are timely and if achieved, will benefit families, children and communities enormously.

1. Child Care Subsidy and 'cap'

FDCA recognises the need to streamline the current child care subsidy (CCS) system. As the Government has identified, the current system is complex and unwieldy and in some cases, unaffordable. But the proposed cap subsidy system as it currently stands is not acceptable and can be improved upon. Modelling undertaken by FDCA, shows that parents who access family day care on a part-time basis or outside of standard hours will not be significantly better off and some middle income earners will be worse off under the proposed CCS.[6] The hourly fee cap of $10.70 does not adequately take non-standard hours or part-time care into consideration and will certainly disincentivise this type of care by making it unaffordable. The families using this type of care are often shift workers: nurses, police, students or those working part-time. These are the families that require flexible and affordable care and the proposed CCS in its current format will not achieve this.

Recommendation 1.1
FDCA recommends undertaking a review of the Child Care Subsidy prior to implementation. The review process should be undertaken at arm's length from Government (by an independent statutory body) and be provided for in the governing Act of the subsidy. The review should assess the impacts on accessibility, affordability and quality of early education and care and should consider possible improvements to the methodology for deriving the cap price.

Recommendation 1.2
FDCA recommends reconsidering indexing only the lower income threshold in order to ensure an equitable subsidy entitlement over time.

Activity test

FDCA does not support the proposed activity test and is particularly concerned with the negative effects that disengagement with the ECEC system will have on vulnerable children as a result of limiting access to ECEC fee assistance through a parental activity test.

Recommendation 1.3
FDCA maintains the recommendation that there should be minimum hours of access to subsidised care that is not subject to an activity test in ECEC funding.

Additional Child Care Subsidy

FDCA is concerned about the lack of accountability the proposed s85CE in the Bill extends to Government regarding decisions (or lack of decision) relating to children that are likely to be at risk of serious abuse or neglect. FDCA believes that the safety of children is paramount and this proposed legislation appears not to guarantee that decisions will be made, and made in a timely manner, to safeguard the most vulnerable children.

Recommendation 1.4
FDCA strongly recommends that the Government provide clear, specific guidance as to the usage and timeframe stated under s85CE(4) due to the serious nature of the 'at risk of serious abuse or neglect' category.

Recommendation 1.5
FDCA recommends that the overall regulatory and administrative burden associated with the new ACCS (at risk) should be tested against the existing process for children at risk and should be less burdensome on families and services and should have increased flexibility compared to the current process.

2. Additional Powers

FDCA understands the need for increased oversight and recognises, throughout the Bill, a number of reasonable, proportionate and appropriate compliance measures. FDCA supports the proposed

6 See section 1. Child Care Subsidy and 'cap'. p.10.

criterion *for fit and proper person considerations* which strengthen the current 'suitability of applicant' criterion for CCB approval purposes and supports the reassessment of continued approval. Providers should be subject to increased oversight as opposed to the arbitrary application of restrictive operating conditions and the responsible Department should have sufficient resources to provide that additional oversight.

In its response to the Competition Policy Review (Harper Review)[7], the Government stated that it will "expand its Regulatory Reform Agenda to incorporate a competition regulation review to remove unnecessary regulatory barriers to competition."[8] Under several additional powers contained within the Bill, FDCA believes the intended (compliance) benefits to the community as a whole do not outweigh the costs, which could see services severely restricted under onerous operational conditions and discretionary growth restriction mechanisms. These compliance objectives can successfully be achieved through other mechanisms as has been demonstrated by the cooperation between FDCA and the Government throughout the past year to inform proportionate and reasonable policy and regulatory solutions.

Recommendation 2.1

FDCA recommends to repeal Item 202, Schedule 1 of the Bill, s195E and F (Condition for continued approval—compliance with conditions imposed by Minister and Secretary), s198A (Allocation of child care places) and Items 3 and 4 of Schedule 3 of the Bill (freezing applications) due to the potential serious impacts on the ECEC sector.

Recommendation 2.2

In the case of Item 88, Schedule 1 of the Bill – s197A (Immediate suspension) and Item 202, Schedule 1 of the Bill – s202A (Requirement to make records), FDCA recommends that the Government provide clear specific guidance on the meanings of terms specified within these provisions such as, "urgent circumstances, and "complying written agreement."

In the case of item 202, Schedule 1 of the Bill - s200B(3) When a child is enrolled, FDCA recommends clear, specific guidance as to the meaning of the term "event," beyond what the Department has already provided or, should this not be possible to further clarify, to repeal this section.

3. Child Care Safety Net

FDCA maintains the view that the apparent exclusion of family day care from elements of the Community Child Care Fund (CCCF) stands in contradiction to the Government's own guiding principles of accessibility and flexibility underpinning the Package. However, FDCA is pleased to see that issues of eligibility criteria and detailed application guidance in applying for funding under the CCCF were raised by stakeholders and acknowledged by the Government. FDCA looks forward to continued engagement with the Department and stakeholders to refine the design of the CCCF. FDCA looks forward to providing further feedback on the CCCF eligibility criteria to ensure they are more consistent with an outcomes based approach.

Recommendation 3.1

FDCA strongly urges the Government to heed stakeholders' views and explicitly recognise family day care services as eligible to receive funding under the Community Child Care Fund.

7 Commonwealth of Australia, *Competition Policy Review Final Report,* Professor Ian Harper, Peter Anderson, Su McCluskey, Michael O'Bryan QC March 2015.

8 See section 2. Additional Powers, *Conclusion: Contradicting the Competition Policy Review*. p.18.

FDCA would like to take this opportunity to champion the many high quality family day care services throughout the country who work hard every day, often outside of standard hours, to provide exceptional quality education and care. These services which provide care for 203,790 children are often the most flexible and affordable (as recognised by stakeholders throughout this consultation).[9] The expectation to maintain these high standards of quality in adverse policy and regulatory conditions is unrealistic. Should the current trend of increasing operational requirements while decreasing operational funding continue, one questions the overall future viability of the family day care sector as a whole.

FDCA ultimately believes the Bill can be improved upon and moving forward would urge the Government to consider family day care service providers in a fair light. FDCA will continue to work with the Government to provide informed input on better regulatory solutions, to ensure the best outcomes for educators, services, families and children.

Submission structure

This submission is divided into four sections, including several appendices:

- Section one examines the proposed Child Care Subsidy (CCS) including the Activity Test and Additional Child Care Subsidy (ACCS).
- Section two, on additional powers contained within the Bill, highlights a number of specified sections in the legislation and as a result it was necessary to quote these sections (in some cases extensively).
- Section three deals with two non-legislative programmes, the *Inclusion Support Programme* (ISP) and the *Community Child Care Fund* (CCCF) which while not detailed in the Bill, form an integral part of the Jobs for Families Child Care Package ('the Package') as a whole.
- Section four concludes FDCA's submission.

Throughout the text, the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015* will be referred to as the 'The Bill', unless otherwise stated.

9 See section 3. Child Care Safety Net, p.20.

1. Child Care Subsidy and 'cap'

Item 41, Schedule 1 of the Bill – s1 - Amounts of Child Care Subsidy

The proposed Child Care Subsidy is a single, income-tested subsidy paid directly to approved ECEC providers, based on a cap price that is different for each service type. At the time of implementation (2017) the cap will be $11.55 for centre based long day care, $10.70 for family day care, and $10.10 for outside school hours care. The cap has been based on the projected mean price at the time of implementation of the subsidy plus 17.5% for long day care and out of school hours care and 5.75% for family day care.

Complex

In its current format, FDCA is not convinced that the proposed CCS and hourly fee cap ('the cap') will achieve the combined aims of reducing complexity and increasing affordability for families and services.

The maximum subsidy is 85% of the cap and paid to those families with a household income of under $65,710. The model then tapers down and plateaus with families earning between $170,710 – $250,000 eligible for 50% of the cap. This decreases to 20% for those earning $340,000 and above.

With three different cap prices for service types, a tapering model with an added plateau and complex formulas to establish income thresholds, the system is not simple for families and services to navigate.

Restrictive

The cap and subsidy system may also disadvantage those parents who access family day care. Currently families accessing family day care are eligible to receive the 1.3333 loading available to family day care and in-home care.[10] These higher hourly rates were included in the original *A New Tax System (Family Assistance) Act 1999* in recognition of the fact that hourly fees for care outside of standard hours or on a part-time basis were higher than standard hours or full time care.[11]

Modelling undertaken by FDCA shows that parents who access family day care on a part-time basis or outside of standard hours will not be significantly better off and some middle income earners will be worse off under the proposed CCS.

For instance, families accessing family day care on a part-time basis who earn above $115,000 per annum and paying child care fees at the hourly fee cap will not be significantly better off. Furthermore, families who access family day care on a part-time basis or outside of standard hours and pay one or two dollars above the cap will be, on average, worse off.[12]

10 A higher standard hourly rate applies to children attending family day care and in home care services for less than 37.5 hours a week; and a higher non-standard hourly rate applies to children attending family day care and in home care services for any hours outside the service's standard hours. Department of Social Services, *What is Child Care Benefit, Information for families using child care: Fact Sheet 2*, July 2015.

11 In relation to the 10 per cent loading for part-time care in long day care centres, the Government stated (at the time of implementation), "The 10 per cent loading will be particularly beneficial to those families who pay a higher fee for part-time usage." It can therefore be assumed that the 33 per cent loading for non-standard hours and part-time care for family day care was similarly justified. Commonwealth Department of Family and Community Services, *Government Response to the Senate Community Affairs References to the Committee Report on Child Care Funding*, 9 December 1999. p. 1.

12 FDCA estimates the CCS cap price for family day care in 2015/16 terms to be approximately $9.51 per hour. See Appendix 1 for a detailed overview of the modelling undertaken by FDCA.

Fig 1. Are families $1,500 better off per week?

Example 1:		Example 2:		Example 3:
A couple earn $115,000 annually.		A single father earns $43,727 annually.		A family earns $167,500 annually.
They have one child in family day care 24 hours per week.		He has one child who attends family day care 24 hrs per week.		They have 3 children in family day care 20 hrs per week.
They pay $11.51 per hour (2 dollars above the FDC fee cap).		The fee is $10.51 per hour (1 dollar above the FDC fee cap).		The fee is $9.51 per hour (the FDC fee cap).
Subsidy entitlement under proposed CCS (p/yr)	$8,011.22	Subsidy entitlement under proposed CCS (p/yr)	$10,083.84	
Current CCB/CCR entitlement (p/yr)	$8,374.08	Current CCB/CCR entitlement (p/yr)	$10,033.92	
Difference p/yr	-$362.86	Difference p/yr	$49.92	Their child care subsidy entitlement will remain the same under proposed CCS

Based on a survey undertaken by FDCA, 27 per cent of educators surveyed stated that their families who currently access family day care pay over the fee cap.[13] Furthermore, 38 per cent of educators surveyed provide outside of standard hours or part-time care and a further 61 per cent of educators surveyed stated that families pay more to access care outside of standard hours.[14]

The Government has previously stated that "with the reforms commencing on 1 July 2017, the Department estimates that the hourly fee caps will be in the range of the 70th to the 87th percentiles. This is after the removal of the highest 5% of fees and taking into account disproportionate expenditure due to fee growth for children attending Family Day Care."[15]

Based on this statement and FDCA's own survey data, it can be assumed that the fee cap for family day care is towards the lower end of that range.

This will mean that potentially 30% of families may be paying above the fee cap to access family day care at the time of implementation of the new subsidy.

FDCA believes the proposed CCS should be equitable for all families accessing all service types. This will not be the case for those parents accessing family day care on a part-time basis or outside of standard hours who pay fees at or above the cap. FDCA also rejects the Government's claim that, "families using child care in 2017, on family incomes between $65,710 to $170,710 will be on average around $1,500 a year better off under this Package."[16]

By fixing the hourly fee cap for family day care at $10.70, the Government is neglecting the fact that family day care is the only regulated, uncapped early childhood education and care service offering care outside of standard hours or on a part-time

13 Op. Cit. Note 5.
14 Ibid.
15 Senate Community Affairs Committee, 2015-16 *Budget Estimates Hearings*, SQ15-000524.
16 *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015*, Mr Hartsuyker, (Minister for Vocational Education and Skills and Deputy Leader of the House), Second Reading.

basis. FDCA believes that the fixed cap neglects to take these policy considerations into account. In doing so, the Government will limit families' choice to access care outside of standard hours, for instance to facilitate early morning, evening or weekend care because the fixed hourly fee cap will make this type of care unaffordable. The families using this type of care are often shift workers: nurses, police, students or those working part-time.[17] These are the families that require flexible and affordable care and the proposed CCS in its current format will not achieve this.

Income threshold indexation disparity

FDCA has concerns regarding the indexation of the proposed subsidy system. Item 41 of the Bill states that only the lower income threshold will be indexed.[18] This ensures that, over time, the subsidy model will breakdown and increasingly disadvantage earners above the lower income threshold, whose salaries will continue to rise by Consumer Price Index (CPI), but the proposed income thresholds will only increase by the CPI of the lowest threshold.

For instance, in 2017/18 a family earning a combined income of $140,000 is entitled to receive 60% of the cap price. Five years later (as their salary increases by CPI) this drops to 57%, in ten years to 55% and in 15 years (2032/33) to 52% and so on.

This drop in subsidy entitlement becomes even more pronounced at the higher end of the scale with a family earning $250,000 in 2017/18 being eligible for 50% of the cap price but dropping by 14% over the next ten years.[19]

No scope for review

The complexity and restrictive nature of the system is further compounded by the fact that the cap price and income thresholds are fixed legislatively without a review mechanism. To alter the cap prices, income thresholds or the annual cap of $10,000 (for family incomes over $120,000 over the lower income threshold) the Government will have to amend the legislation.

FDCA's Submission on the Child Care Assistance Package Regulation Impact System ('RIS Submission')[20] states, "FDCA is concerned that the RIS has omitted the assessment of the impact of the proposed Child Care Subsidy hourly fee cap on children, families and the early childhood education and care sector. Our concerns around the omission are further heightened by Departmental responses to recent 2015-16 Budget Estimates questions on notice relating to the impact of the cap on families; which indicate that the Department is yet to assess the impact and has no plans to do so." [21]

These concerns have not been allayed and have only been further heightened in the face of detailed modelling.

Recommendation 1.1
FDCA recommends undertaking a review of the Child Care Subsidy prior to implementation. The review process should be undertaken at arm's length from Government (by an independent statutory body) and be provided for in the governing Act of the subsidy. The review should assess the impacts on accessibility, affordability and quality of early education and care and should consider possible improvements to the methodology for deriving the cap price.

Recommendation 1.2
FDCA recommends reconsidering indexing only the lower income threshold in order to ensure an equitable subsidy entitlement over time.

17 Op. Cit. Note 5.

18 Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015, Item 41, Schedule 1 of the Bill – Schedule 2 – Amounts of child care subsidy and additional child care subsidy, p. 40.

19 Based on an estimated CPI of 2% per annum. For further details on FDCA's modelling related to CCS income thresholds indexation see Appendix 2.

20 Family Day Care Australia, *Submission to the Commonwealth Government of Australia (Department of Social Services) on the Regulation Impact Statement Child Care Assistance Package*, 31 July 2015.

21. Senate Community Affairs Committee, 2015-16 Budget Estimates Hearings, SQ15-000458, SQ15-000530.

Item 41, Schedule 1, Part 5 of the Bill - s11 - Individuals Activity Test Result

FDCA does not support the proposed activity test, which is overly complicated and may exclude some of the most vulnerable children from accessing ECEC.

FDCA is particularly concerned with the negative effects that disengagement with the ECEC system will have on vulnerable children as a result of limiting access to ECEC fee assistance through a parental activity test. The proposed activity test goes against international best practice, with several comparable OECD countries providing free or low-cost early childhood education to all families, regardless of employment status.[22] Such a trend has developed in recognition of the fact that early childhood education is likely to result in substantial benefits for the child, society and the economy many years into the future.

Over 60 per cent of family day care educators and services surveyed believe that the existing activity test is fair and should be maintained.[23] Furthermore, the proposed three tier system may disincentivise services to accept children on lower tiers of fee assistance in favour of those with higher hours, potentially excluding the most vulnerable children.

Recommendation 1.3
FDCA maintains the recommendation that there should be minimum hours of access to subsidised care that is not subject to an activity test in ECEC funding.

Item 41, Schedule 1 of the Bill – s5 - Amount of ACCS (at risk), ACCS (temporary financial hardship) or ACCS (grandparent) for an individual

FDCA welcomes the continuance of the `at risk' and `financial hardship' categories, as well as the higher subsidy rate of child care for parents transitioning to work.

FDCA advocates for broad definitions for the `at risk' and `financial hardship' categories, supported by clear guidance material in how to practically apply the definitions.

Item 40, Schedule 1 of the Bill – s85CE - Determination of risk of serious of abuse or neglect

"(4) If the Secretary neither makes a determination nor refuses the application by the end of 28 days after the day the application was made, the Secretary is taken at that time to have refused the application. Subsection 27A(1) of the AAT does not apply to such a refusal.

Note: This means the Secretary is not required to give notice of the refusal."[24]

FDCA is concerned about the lack of accountability that s85CE(4) extends to Government regarding decisions (or lack of decision) relating to children that are likely to be at risk of serious abuse or neglect. The proposed s85CE(4) in the Bill allows for the Secretary not only to fail to make a decision regarding an application for a child at risk of serious abuse or neglect, but that if the Secretary does not make a decision, the application is deemed to be refused and the Secretary is not required to give notice of the refusal.

FDCA believes that the safety of children is paramount and this proposed legislation appears not to guarantee that decisions will be made, and made in a timely manner, to safeguard the most vulnerable children.

Recommendation 1.4
FDCA strongly recommends that the Government provide clear, specific guidance as to the usage and timeframe stated under s85CE (4) due to the serious nature of the 'at risk of serious abuse or neglect' category.

The proposed application requirements for ACCS (at risk) under the Bill include additional check points compared to the current process under the Special Child Care Benefit (SCCB). While FDCA understands the need to safeguard public funds, additional administrative burden when dealing with children at risk may result in adverse unintended consequences.

Recommendation 1.5
FDCA recommends that the overall regulatory and administrative burden associated with the new ACCS (at risk) should be tested against the existing process for children at risk and should be less burdensome on families and services and should have increased flexibility compared to the current process.

22 Deborah Brennan, Elizabeth Adamson, *Baby Steps or Giant Strides?*, The McKell Institute, June 2015 p.55.
23 Op. Cit. Note 3.
24 Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015, p. 20.

2. Additional Powers

Throughout the Bill and its associated documents, the Explanatory Memorandum and Regulation Impact Statement, it is evident that compliance issues and sharp practices are a key consideration in driving reform. FDCA supports increased compliance activity and the need for increased oversight and recognises certain limitations of the current legislation in enforcing compliance activity.

However, the proposed legislation contains a number of additional powers resulting in serious Government overreach. As outlined in the National Partnership Agreement on the Quality Agenda for Early Childhood Education and Care, states and territories are tasked with the primary regulatory function surrounding early childhood education and care service delivery.[25] FDCA would like to highlight that any additional regulatory oversight or mechanisms in the new subsidy's legislative framework should be for the purpose of administrating the subsidy and safeguarding public funds; and not to duplicate state and territory regulatory functions.

Item 88, Schedule 1 of the Bill – s197A - Immediate suspension

FDCA supports in principle, the need to deal with unforeseen 'urgent circumstances' where it is no longer appropriate to provide care or administer payments, for example, where an approved provider or key staff have been convicted of offence. However, FDCA recommends clear guidance as to 'urgent circumstances' in proposed s197A(c) and (d) of the Act to be further detailed.

Item 202, Schedule 1 of the Bill, s194E- Fit and proper person considerations

FDCA supports the proposed criterion *for fit and proper person considerations* which strengthen the current 'suitability of applicant' criterion for CCB approval purposes under section 7 of the Child *Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000*. As stated previously, FDCA recognises the need for increased compliance mechanisms and notes the importance of the fit and proper persons considerations in achieving this.

Item 202, Schedule 1 of the Bill, s195E - Condition for continued approval—compliance with conditions imposed by Minister;

"allows the Minister to prescribe further conditions of continued approval by legislative instrument. This power is intended to ensure that additional conditions of continued approval may be imposed in the future, to deal with unforeseen changes affecting the child care sector."[26] and;

s195F - Condition for continued approval—compliance with conditions imposed by Secretary

"gives the Secretary the ability to impose specific conditions in relation to a particular provider or service (for example, where these are required because of the particular characteristics of the provider or service). Such conditions might include restrictions on a provider from operating in a particular geographical location, or a requirement in relation to particular alterations to the facilities provided at an approved service."[27]

FDCA does not support the introduction of additional discretionary operational conditions on services without a non-compliance event. Currently, all state and territory regulatory authorities impose a range of operational conditions on new services. As at 22 July 2015, over 55 per cent of family day care services are subject to an operational condition on their service approval, i.e. minimum educator to coordinator ratios and educator caps.[28] It would be onerous and potentially duplicative if the Australian Government was to then add additional operational conditions on top of the relevant regulatory authorities' from the outset.

25 Council of Australian Governments, *National Partnership Agreement on the Quality Agenda for Early Childhood Education and Care*, Clause 23a.

26 Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015, Explanatory Memorandum p. 52.

27 Ibid.

28 As outlined in the Australian Children's Education and Care Quality Authority's National Register. Note this figure does not include family day care services that only have conditions related to operating in a bushfire risk area as at 15 Jan 2016.

Item 202, Schedule 1 of the Bill, s198A - C Allocation of child care places to approved child care services

"allows the Minister to prescribe rules dealing with the matters listed with respect to the allocation of child care places. If a condition of a service's approval is that they are subject to these rules, section 198B provides that the Secretary must allocate places in accordance with them and allows approved providers to apply for additional places."[29]

FDCA does not support the introduction of additional discretionary operational conditions without further guidance as to their purpose. The RIS identifies several policy problems to be solved including, complex Government involvement, affordability and accessibility for parents.[30] Introducing yet another set of operational conditions administered by the Australian Government under Family Assistance Law ignores the first problem of complex government involvement and will do little to alleviate the fact that, "some service providers report that due to existing regulatory restrictions they are finding it impractical to start up or operate viable services in certain circumstances."[31] Furthermore, it is questionable whether such conditions should reside with the Australian Government when state and territory regulatory authorities already have a number of similar regulatory mechanisms in place.

These restrictive conditions are a deliberate attempt to restrict the growth of child care services at a time when accessibility and affordability are key issues for parents and such additional restrictive conditions will do little solve these dual policy aims.

Item 202, Schedule 1 of the Bill - s200B(3) When a child is *enrolled*

"For the purposes of the notification obligation in section 200A, section 200B sets out when a child is taken to be enrolled. Importantly, (unless subsection (4) applies because the child is at serious risk of abuse or neglect) a child is only enrolled where the individual and the provider of the service enter into a complying written arrangement that complies with the requirements in the Secretary's rules referred to in subsection (3). An arrangement can only be varied in writing in accordance with section 200C."[32]

The legislation fails to detail the nature of requirements that will be prescribed by the Secretary's Rules for a 'complying written arrangement' as referred to in s200B(3) of the Bill. The meaning of this term is unclear, however, the Department of Education and Training has informed FDCA that this will be defined in subordinate legislation.[33] FDCA awaits the definition of 'complying written arrangement' in this subordinate legislation and looks forward to the appropriate consultation on the matter.

Item 202, Schedule 1 of the Bill – s202A Requirement to make records

"imposes on (sic) obligation to make written records where an approved provider (who would not otherwise have a record) becomes aware of an event that relates to or impacts on eligibility for CCS or ACCS, compliance with conditions for continued approval or other prescribed matters. Although a penalty of strict liability applies, the fact that the offence is only made out where the provider becomes aware of relevant events imports a knowledge element into the offence. It is not intended that the offence would be prosecuted in respect of honest or reasonable mistakes. There is also a civil penalty and an option to issue infringement notices for less serious breaches of the obligation. A similar obligation applies in relation to keeping records (s202B) for the period specified in subsection 202B(2)."[34]

FDCA does not support this requirement as neither the Bill, nor the Department, have provided satisfactory guidance regarding the definition of 'event' for the purposes of the proposed s202A(1)(i) of the Act.[35] This is particularly inappropriate as not recording the 'event' is an offence and may incur a civil penalty.

29 Op. Cit. Note 26, p. 54.
30 Commonwealth of Australia (Department of Social Services), *Regulation Impact Statement, Child Care Assistance Package*, November 2015 pp. 17-21.
31 Ibid. p.21.
32 Op. Cit. Note 26, p.55.
33 Correspondence between Family Day Care Australia and the Department of Education and Training, received 8 January, 2016.
34 Op. Cit. Note 26, p.57.
35 Op. Cit. Note 33.

Furthermore, FDCA does not consider it appropriate for child care providers to be compelled in a punitive manner to report an individual's eligibility for CCS as required in proposed s202A(1)(b)(i). Eligibility for CCS is a determination based on information exchanged between the individual and the Department of Social Services and the Australian Taxation Office.

FDCA does not support s202A(2), the offence of strict liability, which is, "not intended that the offence would be prosecuted in respect of honest or reasonable mistakes."[36] FDCA therefore contends that an offence of 'strict liability', which is defined as an offence for which *mens rea* (intention or knowledge of wrongdoing) does not have to be proven, is inappropriate.

FDCA does not support offence s202A(3) due to lack of definition of 'event' and the inappropriateness of a provider assessing the eligibility of an individual for CCS in s202A(1) to which this offence relates. Finally, FDCA does not support the powers conferred to the Secretary in s202A(1)(iv).

Items 3&4, Schedule 3 of the Bill – Freezing Applications

"allow the Minister to prescribe circumstances in which applications (made after 1 July 2016) for approval of a child care service are taken to not have been made. This rule making power is intended to be used to limit applications to address excessive growth within a particular child care service type, specifically where there are concerns about proven or alleged non-compliance with family assistance law."[37]

FDCA does not support this provision, which provides for significant Ministerial power to limit applications based on, for instance, geographical scope, by service type, operational requirements, or service size.[38] Furthermore, the Government has not provided clear guidance as to the level of consultation that sector stakeholders could expect if the Minister were to make a Determination under this section.[39] This power may have far-reaching implications for services acting to their detriment by applying for state or territory approval in the first instance, only then to not have their CCB approval application recognised because a determination is in place.

Items 7&8, Schedule 3 of the Bill – Reassessment of continued approval

"allows the Secretary to reassess whether a child care service continues to meet the conditions of continued approval. Where a service has been identified as no longer meeting their conditions of continued approval, the service's approval may be cancelled. This provision ensures that sanction action in relation to non-compliant existing services can occur in the lead up to the new CCS system. This provision also aligns with the ability of the Secretary, following the commencement of Schedule 1 of this Bill, to review the approval of approved providers."

FDCA supports the reassessment of continued approval. Providers should be subject to increased oversight as opposed to the arbitrary application of restrictive operating conditions and the responsible Department should have sufficient resources to provide that additional oversight. Ensuring that this provision is legislated in the Bill is in line with FDCA's previous recommendation which stated, "it would be practical (throughout the probationary period) for the Department to have the power to reassess the suitability of the applicant at any time."[40]

36 Op. Cit. Note 34.

37. Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015, Item 202, Schedule 1 of the Bill – 202A Requirement to make records, p.171.

38 Op. Cit. Note 33.

39 Ibid.

40 Op. Cit. Note 20, p. 15.

Conclusion: Contradicting the Competition Policy Review

It is evident that a number of these additional powers are intended to strengthen oversight and compliance mechanisms, however, FDCA believes that the Bill provides for a suite of discretionary and ministerial powers that, if used, may result in restrictions throughout the ECEC market and be to the detriment of families and children.

On 24 November 2015, the Government released its response to the Competition Policy Review (Harper Review) which noted:

"Legislation (including Acts, ordinances and regulations) should be subject to a public interest test and should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition."[41]

The Government supported this recommendation and stated it will "expand its Regulatory Reform Agenda to incorporate a competition regulation review to remove unnecessary regulatory barriers to competition."[42] The intended (compliance) benefits to the community as a whole do not outweigh the costs, which could see services severely restricted under onerous operational conditions and discretionary growth restriction mechanisms. These compliance objectives can successfully be achieved through other mechanisms, as has been demonstrated by the cooperation between FDCA and the Government throughout the past year to inform proportionate and reasonable policy and regulatory solutions.

In its first major legislative initiative since the Harper Review, it appears that certain powers contained within the Bill are contrary to the Government's stated support and commitments to remove unnecessary barriers to competition.

Recommendation 2.1

FDCA recommends to repeal Item 202, Schedule 1 of the Bill, s195E and F (Condition for continued approval—compliance with conditions imposed by Minister and Secretary), s198A (Allocation of child care places) and Items 3 and 4 of Schedule 3 of the Bill (freezing applications) due to the potential serious impacts on the ECEC sector.

Recommendation 2.2

In the case of Item 88, Schedule 1 of the Bill – s197A (Immediate suspension) and Item 202, Schedule 1 of the Bill – s202A (Requirement to make records), FDCA recommends that the Government provide clear specific guidance on the meanings of terms specified within these provisions such as, "urgent circumstances, and "complying written agreement."

In the case of Item 202, Schedule 1 of the Bill - s200B(3) When a child is enrolled, FDCA recommends clear, specific guidance as to the meaning of the term "event," beyond what the Department has already provided or, should this not be possible to further clarify, to repeal this section.

41 Commonwealth of Australia 2015, *Australian Government Response to the Competition Policy Review*, November 2015, p. 9.
42 Ibid.

3. Child Care Safety Net

FDCA recognises that elements of the Child Care Safety Net will not be legislative programmes, such as the Inclusion Support programme (ISP) and the CCCF. Despite this, it is important to mention them here because these elements form an integral part of the Package and will affect the most vulnerable children – those from disadvantaged communities and/or with additional needs.

Inclusion Support Programme

In December 2015, FDCA provided feedback on the draft Inclusion Support Programme Guidelines 2016-2017 to 2017-2018, released on 10 December 2015.[43] Despite time constraints and limited consultation opportunities, FDCA largely welcomed this programme and noted that "if well-implemented, (it) will address many of the shortcomings of the current system and ensure that a greater number of children with additional needs can be included in the activities and learning opportunities enjoyed by other children in family day care." FDCA's detailed, formal response to The Guidelines can be found in Appendix 3.[44]

FDCA would like to reiterate that the Department of Education and Training closely monitor the transition of children who are currently eligible for capacity payments under the IPSP to the new ISP to ensure that all children with additional needs accessing family day care are not worse off under the proposed programme.

FDCA's submission on the Child Care Assistance Package Regulation Impact System advocated for the inclusion of family day care in this programme stating that, "FDCA would like to see family day care explicitly recognised in the Decision RIS as being eligible to receive this support and resources under the new Inclusion Support Programme, including funding through the Inclusion Development Fund."[45]

FDCA is pleased that family day care has now been explicitly recognised and that those other elements identified in its RIS Submission as being problematic in the current system have been addressed.

The Community Child Care Fund

FDCA recognises the importance of lowering community-level barriers for disadvantaged children to access child care and appreciates many of the elements put forth in the CCCF.

FDCA is pleased to see that issues of eligibility criteria and detailed application guidance in applying for funding under the CCCF were raised by stakeholders and acknowledged by the Government. The RIS accompanying the legislation stated that through consultation, "(i)t was particularly noted that family day care services, due to their size and flexibility, are well suited to provide care in disadvantaged communities. As such, there was support for the eligibility criteria for the Community Child Care Fund to focus on the intended outcome of the grant funding, and that family day care be included as an eligible care type."[46]

FDCA maintains the view that the apparent exclusion of family day care from elements of the CCCF stands in contradiction to the Government's own guiding principles underpinning the Package of accessibility and flexibility. Furthermore, it limits the Government's own perceived net benefit of this programme of "increased access to quality education and care by children from disadvantaged backgrounds (through a greater focus on supporting services cater to these children) (...)."[47]

Two-thirds of family day care services surveyed undertake outreach and integration activities in communities and such activities can include playgroups, mothers' groups, community events

43 *Australian Government, Department of Education and Training, Inclusion Support Programme Guidelines 2016-2017 to 2018-2019, December 2015.*
44 Appendix 3, *Family Day Care Australia Submission on the draft Inclusion Support Guidelines,* 17 December 2015.
45 Op. Cit. Note 20.
46 Commonwealth of Australia (Department of Social Services), Regulation Impact Statement, Child Care Assistance Package, November 2015, p. 85.
47 Commonwealth of Australia (Department of Social Services), Regulation Impact Statement, Child Care Assistance Package, June 2015, p 67.

and parent information seminars (amongst others). However, 72 per cent of family day care services surveyed would like more funding to specifically engage in community activities in disadvantaged areas. According to our members, these types of activities directly contribute to increased participation of children in disadvantaged communities and it is clear that services see the value of community outreach as a mechanism to engage some of the most vulnerable families.[48]

Family day care services also face similar viability issues, capital and affordability challenges in relation to market fluctuation as centre-based services. It is unrealistic to argue that centre-based services alone require the streams of funding specified in the CCCF.

FDCA looks forward to continued engagement with the Department and stakeholders to refine the design of the CCCF. FDCA looks forward to providing further feedback on the CCCF eligibility criteria to ensure they are more consistent with an outcomes based approach.

Recommendation 3.1

FDCA strongly urges the Government to heed stakeholders' views and explicitly recognise family day care services as eligible to receive funding under the Community Child Care Fund.

48 Op. Cit. Note. 3.

4. Conclusion

Overall, FDCA recognises the need to reform the child care subsidy system proposed by the Government and appreciates the complexity of the multiple policy problems that this Bill attempts to solve. The guiding principles of affordability, accessibility and flexibility driving the reforms are timely and if achieved, will benefit families, children and communities enormously.

FDCA recognises the need to streamline the current child care subsidy system. As the Government has identified, the current system is complex and unwieldy and, in some cases, unaffordable. But the proposed cap subsidy system as it currently stands is not acceptable and can be improved upon. A review of the cap prior to implementation and detailed modelling as to how this will affect families accessing different service types would be welcomed and a fairer indexation of income thresholds is necessary.

The cap calculation and its governance are the keystones of the subsidy model and the integrity of the system, which relies upon them. Sector and parent confidence in the proposed hourly fee caps needs to be established through processes that are open and transparent, but to date this has not occurred. FDCA strongly advocates that this requires an institutional and governance framework around the process for implementing and updating the cap that is rigorous and independent.

FDCA further understands the need for increased oversight and recognises, throughout the Bill, a number of reasonable, proportionate and appropriate compliance measures. However, this Bill also contains a number of mechanisms that extend beyond the remit of the Australian Federal Government and will intentionally curb the natural growth of the ECEC sector. The restriction of competition within the ECEC sector through the use of these powers, will do little to aid parents' choices when it comes to affordable and accessible early childhood education and care. Furthermore, some of these measures are deliberately aimed at family day care service providers[49] and require much clearer guidance as to the extent of these powers.

This singling out of family day care in the legislation through a number of inequitable and disproportionate compliance measures is disappointing, particularly when viewed against the backdrop of the many changes the sector has had to endure throughout the past eighteen months. FDCA unquestionably supports the push towards increased compliance within the ECEC sector and the eradication of unscrupulous family day care operators, and is entirely supportive of well-considered, proportionate and reasonable policy or regulatory proposals.

However, the push towards increased operational requirements (and operational restrictions) in conjunction with a dramatic decrease in operational funding have and will continue to have significant impacts on the viability of high quality services.

The Package does not answer the question of whether family day care will be eligible for operational funding components under the CCCF and proposes to implement increasingly onerous operational requirements. The proposed lower fee cap puts family day care 'on the back foot' and will result in a real and perceived market disadvantage for families who want to access family day care. The hourly fee cap of $10.70 does not take non-standard hours or part-time care into consideration and will certainly disincentivise this type of care by making it unaffordable.

FDCA would like to take this opportunity to champion the many high quality family day care services throughout the country who work hard every day, often outside of standard hours, to provide exceptional quality education and care. These services, which provide care for 203,790 children, are often the most flexible and affordable (as recognised by stakeholders throughout this consultation) and we have included several case studies to underline this point in Appendix 4.[50] The expectation to maintain these high standards

49 Op. Cit. Note 26. p. 16.
50 Appendix 4. Family day care case studies.

of quality in such adverse policy and regulatory conditions is unrealistic. Should the current trend of increasing operational requirements while simulataneously decreasing operational funding continue, one questions the overall future viability of the family day care sector as a whole.

FDCA ultimately believes the Bill can be improved upon and moving forward would urge the Government to consider family day care service providers in a fair light. FDCA will continue to work with the Government to provide informed input on better regulatory solutions, to ensure the best outcomes for educators, services, families and children.

Appendices

Appendix 1: Overview of FDCA's modelling of current and proposed Child Care Subsidy eligibility

FDCA undertook modelling to compare the current 2015-16 early childhood education and care subsidies, Child Care Benefit (CCB) and Child Care Rebate (CCR), to the proposed Child Care Subsidy (CCS).

It should be noted that a key difference between the proposed CCS and current CCB and CCR system is that CCS eligibility is based solely on income, whereas CCB and CCR have a number of different components built into them including, for example, the 1.33 loading for family day for part-time and non-standard hours care (less than 37.5 hours per week). In practice, this means that regardless of actual fees or hours used the amount of CCS an individual will receive will remain fixed at the relevant percentage of the cap based on their income. Currently an individual claiming CCB and CCR will be eligible for subsidies based on fees charged e.g. CCR covers half of out of pocket expenses. And the amount of CCB an individual can receive depends on: the individual's income and their partner's income; the type of care used (CCB approved or registered); the amount of care used; the reason care is used; and the number of children the individual has in care.[1] The amount of CCR an individual can receive is also capped at $7,500 per annum. Hence FDCA has modelled various hours of family day care used and at different fee prices, i.e. at the cap , one and two dollars above the cap and one dollar below the cap to demonstrate how much better or worse off families accessing family day care will be under the new system.

CCB and CCR rates were estimated using Centrelink's rate estimator, which was accessed over the period from 1 December 2015 – 20 January 2016.[2]

FDCA estimated the proposed CCS fee cap for family day care to be **$9.51**, based on information provided by Department of Social Services at the 2015-16 Budget Estimates Hearings.[3]

- The CCS fee cap of $9.51 is based on the current mean price at the time of implementation plus 5.75% for Family Day Care.[4]

  The mean in 2013/14 terms is estimated to be $7.71.

  The mean in 2015/16 terms is estimated to be $8.98, using estimated rates of fee growth (using LOCMOCC) provided by the Department (7.71 * 1.06 * 1.098)[5]

- Modelled income thresholds are based on the proposed CCS formula and have been adjusted downwards by 2% (estimated) CPI growth to reflect 2015-16 incomes.[6]
- The individual's applicable percentage for a session of care provided to a child in a CCS fortnight is based on the proposed CCS formula.[7]
- The modelling is based on one child accessing family day care.

Family Day Care Australia recognises that all figures are estimated based on the parameters described above.

1 Department of Social Services, *What is Child Care Benefit, Information for families using child care: Fact Sheet 2*, July 2015.

2 Centrelink rate estimator

3 "The proposed fee caps in 2013-14 dollars would be $9.20 for long day care, $8.15 for family day care, and $7.75 for out of school hours care." Senate Community Affairs Committee, 2015-16 Budget Estimates Hearings Question No: SQ15-000790.

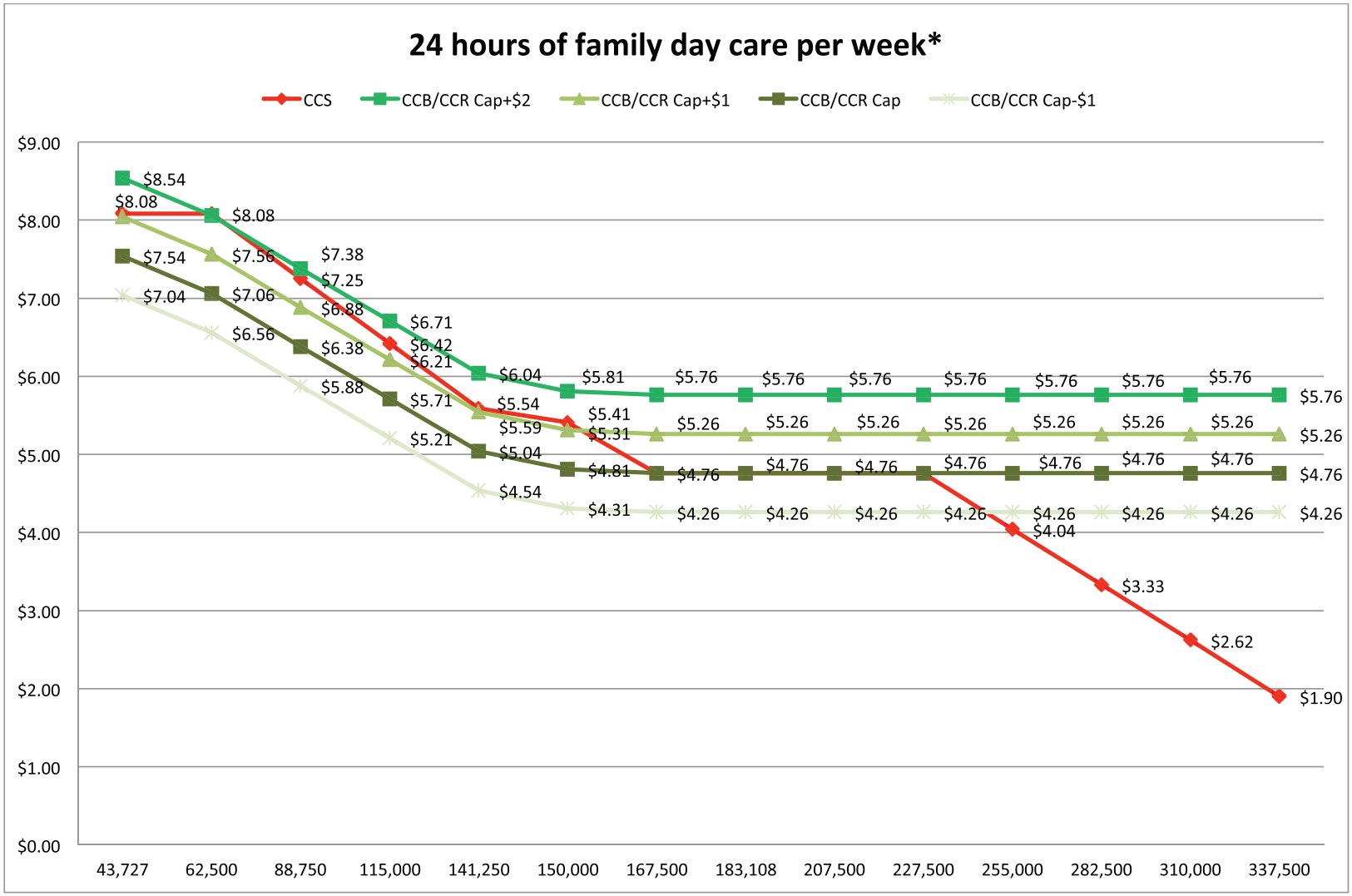
4 *"Jobs for Families Child Care Package Delivers Choice for Families,"* The Hon. Tony Abbott MP, Prime Minister, The Hon. Scott Morrison MP, Minister for Social Services, 10 May 2015.

5 Senate Community Affairs Committee, 2015-16 Budget Estimates Hearings Question No: SQ15-000467.

6 Items 41, Schedule 1 of the Bill – Schedule 2 – Amounts of child care subsidy and additional child care subsidy, p. 40.

7 Ibid.

Figure 1. Comparing current and proposed early childhood education and care subsidies for family day care*



*The fee cap for family day care is estimated at $9.51 per hour 2015/16

Figure 1. Comparing current and proposed early childhood education and care subsidies for family day care*

			Child Care fees per hour			
Combined Family (Taxable) Income ($)	CCS %	CCS	CCB/CCR @ $11.51	CCB/CCR @ $10.51	CCB/CCR @ $9.51	CCB/CCR @ $8.51
43,727	85%	$8.08	$8.54	$8.04	$7.54	$7.04
62,500	85%	$8.08	$8.06	$7.56	$7.06	$6.56
88,750	76.25%	$7.25	$7.38	$6.88	$6.38	$5.88
115,000	67.50%	$6.42	$6.71	$6.21	$5.71	$5.21
141,250	58.75%	$5.59	$6.04	$5.54	$5.04	$4.54
150,000	56.90%	$5.41	$5.81	$5.31	$4.81	$4.31
167,500**	50%	$4.76	$5.76	$5.26	$4.76	$4.26
183,108	50%	$4.76	$5.76	$5.26	$4.76	$4.26
207,500	50%	$4.76	$5.76	$5.26	$4.76	$4.26
227,500	50%	$4.76	$5.76	$5.26	$4.76	$4.26
255,000	42.50%	$4.04	$5.76	$5.26	$4.76	$4.26
282,500	35%	$3.33	$5.76	$5.26	$4.76	$4.26
310,000	27.50%	$2.62	$5.76	$5.26	$4.76	$4.26
337,500	20%	$1.90	$5.76	$5.26	$4.76	$4.26

* Based on one child using 24 hours of family day care per week.

Figure 2. The difference between CCS and CCB/CCR

Combined Family (Taxable) Income ($)	CCS	CCB/CCR $11.51	CCB/CCR $10.51	CCB/CCR $9.51	CCB/CCR $8.51
43,727	$8.08	-$0.46	$0.04	$0.54	$0.19
62,500	$8.08	$0.02	$0.52	$1.02	$0.67
88,750	$7.25	-$0.13	$0.37	$0.87	$0.61
115,000	$6.42	-$0.29	$0.21	$0.71	$0.53
141,250	$5.59	-$0.45	$0.05	$0.55	$0.46
150,000	$5.41	-$0.40	$0.10	$0.60	$0.53
167,500**	$4.76	-$1.00	-$0.50	$0.00	$0.50
183,108	$4.76	-$1.00	-$0.50	$0.00	$0.00
207,500	$4.76	-$1.00	-$0.50	$0.00	$0.00
227,500	$4.76	--$1.00	-$0.50	$0.00	$0.00
255,000	$4.04	-$1.72	-$1.22	-$0.72	-$0.64
282,500	$3.33	-$2.43	-$1.93	-$1.43	-$1.28
310,000	$2.62	-$3.14	-$2.64	-$2.14	-$1.92
337,500	$1.90	-$3.86	-$3.36	-$2.86	-$2.56

Notes : A higher standard hourly rate applies to children attending family day care and in home care services for less than 37.5 hours a week or outside of standard hours care. The 33% loading is included in the dataset above, using figures exported from the centelink rate estimator. **In 2015/16, Child Care Benefit is not paid to families with one child earning above $152,147 per year.

Appendix 2. Income threshold indexation

Figure 1. Percentage of subsidy entitlement over fifteen years taking into account CPI increases (2% p/a)*

Income = $140,000 in 2017/18	Income	Subsidy entitlement %
2017/18	$140,000	60.24
2022/23	$154,571	57.66
2027/28	$170,659	54.81
2032/33	$188,422	51.67

Income = $250,000 in 2017/18	Income	Subsidy entitlement %
2017/18	$250,000	50
2022/23	$276,020	43.61
2027/28	$304,748	36.55
2032/33	$336,467	28.75

Figure 2. Income thresholds modelled from 2017/18 up to and including 15 years.

	2017/18	2022/23	2027/28	2032/33
Lower income threshold	$65,710	$72,549	$80,100	$88,437
Second income threshold	$170,710	$177,549	$185,100	$193,437
Third income threshold	$250,000	$256,839	$264,390	$272,727
Upper income threshold	$340,000	$346,839	$354,390	$362,727

*As stated in the Bill, only the the Lower Income Threshold is indexed.

Figure 3. Lower income thresholds modelled over 15 years using an estimated CPI of (2% p/a)

Year (CPI = 2%)	Amount	Lower Income threshold
CPI 18/19	1314.20	$67,024.20
CPI 19/20	1340.48	$68,364.68
CPI 20/21	1367.29	$69,731.98
CPI 21/22	1394.64	$71,126.62
CPI 22/23	1422.53	$72,549.15
CPI 23/24	1450.98	$74,000.13
CPI 24/25	1480.00	$75,480.14
CPI 25/26	1509.60	$76,989.74
CPI 26/27	1539.79	$78,529.53
CPI 27/28	1570.59	$80,100.12
CPI 28/29	1602.00	$81,702.12
CPI 29/30	1634.04	$83,336.16
CPI 30/31	1666.72	$85,002.89
CPI 31/32	1700.06	$86,702.95
CPI 32/33	1734.06	$88,437.00

Appendix 3: Family Day Care Australia Submission on the draft Inclusion Support Guidelines, 17 December 2015

Mr Bryan Palmer
Group Manager – Early Childhood Initiatives
Department of Education and Training
GPO Box 9880
CANBERRA ACT 2601

By email: inclusionsupportprogramme@education.gov.au

17 December 2015

Dear Mr Palmer

Thank you for providing Family Day Care Australia (FDCA) with the opportunity to provide feedback on the *draft Inclusion Support Programme Guidelines 2016-2017 to 2017-2018* ('the Guidelines'), released on 9 December 2015.

FDCA has always championed family day care, with its small numbers, home environment and continuity of care, as providing an ideal setting and model to include children with additional needs. I am therefore pleased to see family day care explicitly recognised as being eligible to receive support and funding in the new Inclusion Support Programme ('ISP').

Family Day Care Top-Up

Recommendation 1 – (Section E of the Guidelines):

FDCA recommends that the Department of Education and Training closely monitor the transition of children who are currently eligible for capacity payments under the IPSP to the new ISP.

In our Submission on the Child Care Assistance Package Regulation Impact System ('RIS Submission')[1], FDCA supported retaining the two tier capacity payment subsidy of the Inclusion and Professional Support Program (IPSP).[2] However, we welcome the proposed single tier system with the Top-Up payment set at $10.20 for 2016/2017 and at 100 per cent of the cap price for family day care in out-years.

Funding for an additional worker to accompany children on outings

Recommendation 2 – (Section F of the Guidelines):

FDCA recommends, in light of the inclusion objectives of the Programme, that an additional worker or support is required to allow for a programme of excursions including a child with additional needs be eligible for funding under the Innovative Solutions Support component of the Inclusion Development Fund.

Inclusion support aims to ensure that children with additional needs can, as far as possible, participate in the day-to-day activities of early childhood education and care (ECEC) along with their typically developing peers. Excursions are an integral part of ECEC. While we acknowledge a low uptake of this subsidy, a survey of our educators is overwhelmingly (89 per cent) in favour of retaining this element; citing administrative burden, not knowing this was available and significant time lags for approval as reasons for not applying to access the fund.[3] We therefore contend that a low uptake does not, in this instance, necessarily correlate with a low demand.

1 Family Day Care Australia, Submission to the Commonwealth Government of Australia (Department of Social Services) on the Regulation Impact Statement Child Care Assistance Package, 31 July 2015.

2 Ibid., p 22.

3 Online survey of a sample of FDCA members regarding the proposed Inclusion Support Programme, 8 - 16 December 2015 (n=86).

Financial implications for services enrolling children with additional needs

Recommendation 3 – (Section E):

FDCA recommends that in order for the FDC Top Up to be fiscally neutral for services and for it not to be financially disadvantageous for services to enroll children with additional needs, that a levy should be paid to family day care services that pass on a Top Up capacity payment to educators.

While we acknowledge the incentive for educators to provide services to children with additional needs through the capacity payment, the family day care service that contracts the educator is financially disadvantaged in two respects by enrolling a child with additional needs.

Firstly, the service is responsible for administering the system, preparing the Strategic Inclusion Plan, and providing professional development and increased support for and monitoring of an educator who has a child with additional needs in care. With the recent cessation of operational funding for services, the impact of additional operational costs such as these is heightened.

Secondly, family day care services generally charge a levy to parents per child to offset the costs of service administration and meeting their requirements under the National Quality Framework. With the lower child-to-educator ratio due to the capacity payment, the service is potentially losing income when a child with additional needs is enrolled, as they do not receive a levy for the place that is subsidized. Noting that Section E5 of the Guidelines states "The FDC service is required to pass the payment directly on to the relevant FDC educator."

Streamlining the system, evidence and frequency of approvals

FDCA is pleased that those elements identified in its RIS Submission as being problematic in the current system have been addressed, with the new Guidelines allowing for longer periods between assessments, an expanded range of professionals who are able to provide a diagnosis, the exemption from reassessment of children with permanent disabilities and NDIS participant children.[4]

Regional/ remote presence

Recommendation 4 (5.2 Evaluation of the ISP):

FDCA recommends that the measures of success include outreach into regional and remote areas, and increased uptake of inclusion support in regional and remote areas.

As stated in our RIS Submission, FDCA encourages adequate resourcing in regional and remote areas and that in contracting the administration of the new ISP, the contractor is assessed not only on their capacity to provide services in the regions, but be audited on their actual facilitation and outreach activities in rural and remote areas as the programme is implemented.[5]

Please be aware that due to the short (seven days) time frame allowed for consultation, FDCA has not had the opportunity to undertake the rigorous consultation that would usually be carried out by the national peak body for family day care when presented with significant programme changes. FDCA's feedback is therefore largely informed by previous consultation on the Child Care Assistance Package Regulation Impact Statement (RIS) and conversations with those members of our Service Reference Group with whom we were able to engage at short notice.

4 Family Day Care Australia, Op. cit., Note 1, p 23.
5 Ibid.

Finally, I would like to congratulate you on developing a Programme that, if well-implemented, will address many of the shortcomings of the current system and ensure that a greater number of children with additional needs can be included in the activities and learning opportunities enjoyed by other children in family day care.

Should you have any questions regarding this feedback, or require further information, please do not hesitate to contact FDCA's National Policy and Advocacy Manager, Scott Rollason by email at scott.rollason@fdca.com.au or on 0448 501 543.

Yours sincerely,

Carla Northam, Chief Executive Officer

Appendix 4: Family Day Care Case Studies

Case study 1:

Miss Krystie Khan
Uranagan, QLD
Student
Glynis' Place Family Day Care, Kids at Home

With few employment prospects in her local area and even fewer flexible child care options, Krystie Khan is thankful her child has a place in family day care.

Currently studying to gain qualifications in aged care, Krystie is casually employed in the hospitality industry which requires her to work weekends and late nights.

"With already limited employment options in aged care and hospitality, I need to be able to work nights, weekends and on short notice none of which daycare centres or community care centres can cater for," she said.

"Family day care's flexibility is the only option I have to be able to work and provide for my family."

Case study 2:

Miss Hilary Holliday
Mt Hawthorn, WA
Finance Broker
Nectar Family Day Care

As a single parent running her own business, creating a suitable work-life balance is a constant juggling act for Hilary Holliday.

The mortgage broker utilises the flexible weekend options offered by her family day care educator to meet with those clients who are not available during standard office hours.

"Family day care is a life line to the working single mum without family support. My life changed dramatically once I secured a place for my two year old son in family day care," Ms Holliday said.

"It would be impossible to run my mortgage broking business as I would have no time outside business hours to see clients.

"My son really enjoys the stimulation and love he receives from family day care. When I pick him up he is always happy."

Case study 3:

Ms Tania Bell
Scarness, QLD
Travel Consultant
Kids at Home family day care

As a grandparent with fulltime care of her grandchildren with special needs, the golden years of retirement didn't quite turn out as planned for Tania Bell.

The travel consultant says she wouldn't have it any other way though and is thankful for the flexible care and support that her family day care educator provides.

"Family day care educators cater for individual needs and support so much better than centres or other programs that the children feel valued and protected," Ms Bell says.

"The educators become extended family and all kids need that.

"Family Day Care is available when other services are not including evenings, public holidays and weekends. If you need care for your child they can be available 24/7. If I wasn't able to access family day care it would be devastating - I wouldn't be able to work and I wouldn't be able to care for my grandchildren."

Case study 4:

Mrs Kristy Barnes
Springfield Lakes, QLD
General Manager
Choices Family Day Care

Kristy Barnes understands first hand why there cannot be a "one size fits all" option when it comes to early childhood education and care.

The mother of two chose different forms of care for each child based on their individual socialisation, developmental and learning needs.

Her daughter attended centre-based care from two and a half years of age and flourished in that environment. Her son however did not do as well and was moved into family day care where he is now progressing and thriving.

Family day care is also perfectly suited to Kristy Barnes' children as both her and her husband work long and varied hours.

"We like the loving environment and attention given in the home environment, as opposed to a centre," she said.

"Our educator is available to start earlier and finish later where required. She can collect or drop off our children if required as I travel interstate and internationally for work regularly.

"My husband leaves for work at 5am and at times we need to access care earlier than most centres open. Our educator also changes days around where possible with other children as my work varies a lot."

"The key benefit for us is the loving environment of a home for our young children. It is also a smaller group than a centre, so they get the chance to be heard and learn with the focused attention of their educator. The kids get to experience interaction with other family day care children as well as regularly visiting parks, kids exercise sessions, and story time and other learning in parks and libraries. It is fantastic!"

Family DAY CARE AUSTRALIA