

**FDCA Submission to the Education and  
Employment Committee on the Family  
Assistance Legislation Amendment  
(Building on the Child Care Package) Bill 2019  
- September 2019**

**Family Day Care Australia**



# 1. Family day care

## 1.1 About Family Day Care Australia

FDCA is an apolitical, not for profit, national member association representing 13,550 family day care educators and 510 approved family day care services.<sup>1</sup> Our mission is to represent, support and promote the family day care sector in delivering high quality ECEC to more Australian children. Our aim is to ensure the strength and continued growth of the sector in Australia.

## 1.2 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 and is regulated under the National Law and the Education and Care Services National Regulations ("the National Regulations"), thereby meeting the requirements defined in the National Quality Standard (NQS).

Family day care is a significant element of ECEC in Australia that responds to parents' desire for a 'home-based' and 'family-like' environment for their children.<sup>2</sup> Educators work from their own homes 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 family day care sector provides flexible ECEC across both standard and non-standard hours, and 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 is an option of choice for more than 85,610 families across Australia, responding to parents' desire for a 'home-based' and 'family-like' environment for their children. Of the 1,314,470 children who attend approved child care services nationally, approximately 10%, or 126,930 attend family day care settings.<sup>3</sup>

The family day care sector provides much needed ECEC for Australian families in areas of high disadvantage, with 22.6% of educators providing family day care in areas that are ranked in the two highest deciles on the SEIFA index (representing areas of highest socio-economic disadvantage) and over half of educators (51.4%) being located in areas ranked in the first five deciles of the SEIFA index.<sup>4</sup> Furthermore, 24.3% of family day educators operate in regional and remote areas of Australia.<sup>5</sup> In some of these areas, family day care is the only option available for child care.

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<sup>1</sup> FDCA Family Day Care Sector Profile, June 2019

<sup>2</sup> Pascoe, S. Brennan, D. (2017) *Report of the Review to Achieve Educational Excellence in Australian Schools through Early Childhood Interventions*

<sup>3</sup> Department of Education and Training, *Child Care in Australia –December quarter 2018*

<sup>4</sup> FDCA Family Day Care Sector Profile, June 2019

<sup>5</sup> Ibid.

## 2. Overview

FDCA commends the Australian Government, the Department of Education, and the Minister for Education, the Hon Dan Tehan MP, for drafting and subsequently introducing the Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019 ("the Bill").

The Bill represents a clear commitment from the Australian Government to openly and transparently reviewing current and unforeseen issues with the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*. FDCA supports the Australian Government's consultative approach in taking on board feedback from FDCA and the ECEC sector more broadly and providing for a prompt legislative response that addresses some of the major unforeseen issues that have impacted significantly on both services and families since commencement.

FDCA concurs with the Financial Impact Statement and the Statement of Compatibility with Human Rights, as outlined in the Explanatory Memorandum, in that measures in the Bill do not have a discernible financial impact and the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Additionally, FDCA supports the implementation timeframes of all amendments outlined in the Bill.

## 3. Background

On 1 August 2019, the Department of Education undertook a consultation with key ECEC sector stakeholders in relation to refinements to Family Assistance Law to address unintended consequences of the Child Care Package and other technical clarifications and corrections.

The consultation took into account a number of key issues that FDCA had previously presented to the Department of Education since the commencement of the Child Care Package and FDCA, again, commends the Australian Government for taking prompt and decisive action, based on the feedback of FDCA and key stakeholders, that will certainly ease administrative burden and facilitate greater ECEC options for more Australian children, particularly those vulnerable children that may require additional support through the Additional Child Care Subsidy (ACCS).

## 4. Detail

### 4.1 Clarifying sessions of care

FDCA supports further clarification around the definition of when a session of care has taken place, as outlined in sections 4 and 7 of the Amendment Bill which amend *the A New Tax System (Family Assistance) Act 1999*, and further supports sections 6 and 9 of the Amendment Bill which allow for the Minister's Rules to prescribe circumstances whereby the definition may not apply.

FDCA contends, however, that it is necessary for relevant stakeholders to have the opportunity to review any proposed amendment to the Minister's Rules in relation to the exact nature of the aforementioned "prescribed circumstances".

### 4.2 Enrolment cessation period

FDCA commends the Australian Government for responding to FDCA's call for amending the

"8 week enrolment cessation" rule to a period of 14 weeks, through section 88 of the Bill that amends subparagraph 200B(1)(b)(iii) of the A New Tax System (Family Assistance) (Administration) Act 1999. This will significantly reduce administrative burden on services and allow for an appropriate time frame for automatic enrolment cessation that takes into account school holiday periods and/or the majority of cases whereby parents take children overseas for extended holiday periods.

#### **4.3 The 50% ACCS threshold**

FDCA supports section 89 of the Bill that removes the blanket 50% ACCS threshold and believes that it is appropriate for the Secretary to retain the power of specifying an appropriate percentage and duration threshold in certain circumstances.

#### **4.4 Debts in respect of CCS or ACCS for individual—provider at fault**

While the *intent* of Schedule 2, Section 2 of the Bill is appropriate (that is, to specify that a provider is responsible for debt incurred as a result of making false or misleading CCS/ACCS claims, or has failed to comply with family assistance law), FDCA has concerns in relation to the proposed amendment 71F (b) (ii) which seeks to overtly specify the liability of a debt to the provider if they have "failed to comply with family assistance law". It is FDCA's contention that this proposed amendment is far too vague, as it currently stands. The legislation must be more overt in its specification of what constitutes failure to comply with family assistance law. As such, FDCA contends that the Section 2 of Schedule 2 should be more explicit in terms of outlining the nature of a breach of family assistance law under this section.

The secondary reason for this concern is that the family day care sector has experienced significant and ongoing issues in relation to monies being automatically recouped from services, which in turn can be passed on to individual educators, where the debt should actually lie with the parent/family and be reclaimed through the Department of Social Services.

Additionally, FDCA is not confident that the systems that govern the administration of child care family assistance payments, at this time, are able to adequately differentiate between debts incurred as a result of CCSS administrative error, parent/family error in estimating entitlement or service provider error. As such, FDCA requests that more clarification be detailed in the Bill as to what constitutes failure to comply with family assistance law for the purposes of this section. FDCA does not support this section as it currently stands, as the proposed power is too vague and may result in unintended negative consequences for both services and families.

#### **FOR MORE INFORMATION ABOUT THIS SUBMISSION PLEASE CONTACT:**

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