

Submission to the National Children's Commissioner on Australia's progress on children's rights under the Convention on the Rights of the Child (Reporting period June 2012-January 2018)

Early Childhood Australia

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1. Introduction

1.1 About us

Early Childhood Australia (ECA) has been serving the Australian community for 80 years, since our establishment in 1938. We are a federated network with Branches in each State and Territory. Together we have over 4,000 members across Australia.

Our vision is 'every young child is thriving and learning'. To achieve this vision we champion the rights of young children to thrive and learn at home, in the community, within early learning settings and through the early years of school.

Our work builds the capacity of our society and the early childhood sector to realise the potential of every child during the critical early years of their development. ECA specifically acknowledges the rights of Aboriginal and Torres Strait Islander children and their families, and the past and current injustices and realities for them around Australia.

ECA's work is informed by our commitment to children's rights and our knowledge on early childhood development, learning and pedagogy. We have recently revised and updated the ECA Code of Ethics for the early childhood education and care sector, which is based on the principles of the United Nations Convention on the Rights of the Child.

To find out more, please visit www.earlychildhoodaustralia.org.au.

1.2 Introduction

ECA promotes the rights of young children (from birth to eight years of age). We welcome the opportunity to comment on Australia's progress on children's rights under the Convention for the Rights of the Child. In 2016, ECA participated as part of the Australian child rights' Taskforce, in CRC25: Australian Child Rights Progress Report to provide particular expertise on early education and care.

An evaluation of the role that early childhood education plays for children is important in the context of the Convention of the Rights of the Child, both in terms of advancing children's right to a high quality education, as well as their right to be safe and well cared for when in environments away from their parents. These two objectives are realised through children's access to and participation in early education and care settings, and the implementation of the National Quality Framework which sets the standards of education and care in these settings.

The Articles in the Convention on the Rights of the Child¹ directly relevant to early childhood education and care are:

- Articles 2 and 3, addressing the best interests of the child and non-discrimination;
- Article 18 pertaining to child care; and
- Articles 29 pertaining to education, development of potential, enjoyment of culture and the right to leisure, play and creative activities’.

Access and participation to early education and care (ECEC) in Australia has continued to grow since 2012, as has participation in preschool in the year before school, which climbed from 12 per cent in 2008 to 91 per cent in 2015. In spite of this, participation in key groups remains lower, in particular Aboriginal and Torres Strait Islander children – Report on Government Services (ROGS) Data indicates that only 2.9 per cent of Aboriginal and Torres Strait islander children participated in CCB approved early years services despite being 5% of the population of young children.

Since 2012, the early education and care landscape has remained largely constant in regards to governance and policy. The Federal Government continued to provide a Child Care Benefit (means-tested) and a non-means tested Child Care Rebate, which subsidised families 50 per cent of residual child care costs. The National Partnership Agreement on Quality in Early Education and Care continued through the reporting period, and the Commonwealth contributed approximately \$120m between 2012 and 2018 to the states and territories via that agreement. In addition, funding of preschool programs in the year before school continued to be supported by the Federal Government through the National Partnership on Universal Access to early Childhood Education.

On July 2nd 2018, a new Child Care Subsidy (CCS) scheme will be implemented by Government, some three years after it was initially announced. While the implementation of the new scheme sits outside the reporting period for the Convention, much of the policy debate the change to policy setting has occurred inside the reporting period. ECA is concerned that the new CCS scheme will calculate subsidies for families in a way that will impact negatively on some children’s access to early education and care.

¹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

2. Cluster 3: General principles

Relevant Article/s:

Article 2.2 States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3.1 In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The Convention on the Rights of the Child makes clear that states should be working to ensure both that the best interests of children are shall sit at the heart of decision making (Article 3.1), and that they have a commitment to ensure that children develop to the best of their potential (Article 6.2).

These two articles alone set the foundation for government investment in high quality early education and care for young children, even without the focus on ECEC in other sections of the Convention. The first five years are important years in terms of a child's development as they acquire important and lifelong skills for learning. This includes the underlying cognitive skills required for later literacy and numeracy development, as well as social and emotional skills, such as participate in groups, cooperate and negotiate, and regulate their emotions. There is now strong, irrefutable evidence that early childhood development has a lasting impact across the lifespan.

Young children who experience nurturing care and high quality early learning are more likely to make a smooth transition to school, stay engaged with education, and experience social and emotional wellbeing through their adult life. A quality early education system for Australia has the potential to ensure that Australia's young children develop to their full potential and thrive in our society. Participation in high quality early learning has become increasingly important as research now points to the importance of early brain development on future academic and social emotional outcomes for children.

The Australian Government's new Child Care Subsidy (CCS), which replaces the Child Care Benefit (CCB) and Child Care Rebate (CCR), will come into force on July 2nd 2018. ECA supports many aspects of the new subsidy, specifically the additional investment in ECEC, streamlining the subsidy system and improvements to inclusion support. However, while a substantial number of families will receive a higher subsidy from the Government to support children in early education and care, fundamental changes to the subsidy scheme will reduce access for many children.

Importantly, the new subsidy system does not identify children's participation or learning outcomes as a policy objective. Despite strenuous advocacy from early childhood advocates the Australian Government has framed the subsidy as supporting parental workforce participation only and rejected calls to expand the objectives to include participation and/or child outcomes. The Australian Government argues that it makes a separate investment in Universal Access to Early Childhood Education and Care through a National Partnership Agreement which primarily funds preschool programs. The division between these two policy

frameworks is problematic for children, parents and service providers – it would be highly desirable for a unified approach to funding for both workforce participation and early education outcomes.

ECA is significantly concerned that children’s needs or right to participate are given lower priority under the new subsidy system and many will miss out altogether or have access reduced. Under the previous scheme, children have been entitled to a base level of subsidised care of 24 hours/week irrespective of the employment, income or activity of their parents; the new Child Care subsidy scheme reduces this base level of entitlement to 12 hours/week (which generally equates to one full day of ECEC in a long day care centre). In addition, families will be required to regularly demonstrate that they have engaged in, or will engage in, a sufficient number of hours of prescribed activities to qualify for support to access early education and care. Modelling has indicated that up to 127,000 children will miss out on the benefits of early education due to the Activity Test² and that the impact will fall heavily on families with tenuous or irregular engagement with the workforce. In addition, the administrative requirements around the new Child Care Subsidy are more likely to discriminate against disadvantaged families.

The Government has firmly aligned the Child Care Subsidy with workforce participation objectives, and this was overt when it was tabled in parliament as the “Jobs for Families Child Care Package”. By linking children’s access to early education and care to parents’ activities, the government risks discriminating against children who would benefit from access to early education and care based on the activity and status of their parents, in direct contravention of Article 2.2 of the Convention on the Rights of the Child. Regardless of their parents’ workforce participation, there is a very strong case that all children should have access to at least two days a week of early learning to support their best developmental outcomes. Research indicates that two days a week of early learning is the minimum necessary to have an impact on child development outcomes, and that the benefits are significant and ongoing for children from disadvantaged backgrounds in particular.

Article 3.3 highlights that *“institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”* Early education and care services are one such type of service for whom this is especially pertinent.

Australia has a world leading regulatory system for early education and care services in the National Quality Framework (NQF). Giving effect to a decision by Australian governments in December 2009, Australia’s National Quality Framework (NQF) is the primary mechanism for regulating the quality of education and care services. The NQF provides a uniform national system by which early education and care (ECEC) services are measured against standards, so as to ensure children’s safety, health and wellbeing, and deliver educational and developmental benefits for children. The Australian Children’s Education and Care Quality Authority (ACEQA) is the independent statutory authority that guides the implementation and administration of the NQF, while state and territory governments undertakes the regulatory functions in each jurisdiction.

² Phillips, B. (2016). *Distributional Modelling of Proposed Childcare Reforms in Australia*. ANU Centre for Social Research and Methods. Canberra. Retrieved at http://csm.cass.anu.edu.au/sites/default/files/rsss/Childcare_reforms.pdf

At the end of March 2018, 15,766 services had been approved to operate, and 93% of all services had a quality rating. At this time, 77% of services were rated as meeting or exceeding the standards.³

The National Quality Framework has delivered benefits to families and children through improved educator-child ratios, improved educators skills and qualifications, better support for learning through approved learning frameworks, and by providing consistent and transparent information about service providers. ECA fully supports the National Quality Framework as the best mechanism for ensuring the social, emotional, physical and developmental wellbeing of our young children in early education and care settings.

In 2015, the Federal Government re-signed an new three year National Partnership Agreement on the National Quality Agenda with the state and territory governments, in recognition *“that they have a mutual interest in implementing and maintaining the NQA to improve educational and developmental outcomes for children attending services provided under the National Law, and the need to work together to achieve those outcomes.”* The objectives laid out in the Agreement made it clear that all Governments supported *“an integrated a unified national system”* for early education and care services, in the interests of *“ensuring the safety, health and wellbeing of children”*.⁴

The Australian Government recently signalled that it will not be entering into a new National Partnership Agreement on the Quality Agenda for Early Childhood Education with the states and territories when the current agreement expires. It has also withdrawn part of the funding that supported states and territories to undertake the assessment and ratings of early education and care services. These actions put at risk the unified national commitment to quality in the ECEC system. The reduction in funding to states and territories may mean that already delayed assessments will not occur within acceptable timeframes, and new services will not be being assessed within 12 months of opening.

However, all government have recently been alerted to new investment that is required into the regulatory framework. At a Commonwealth Senate Hearing on 31st May 2018, it was revealed that a report to Education Council on the efficient cost of regulation of ECEC indicated that the National Partnership Agreement on the National Quality Partnership should be increased to \$152million per annum, and that Education Council was considering moving towards a 60:40 split in costs between the states/territories and the Commonwealth. ECA believes that an increased investment in the NQF would be justifiable given current concerns with timeliness of the assessment and ratings process.

Without a National Partnership Agreement on Quality, there is a risk that some states and/or territories may reduce their commitment to the NQF over time by amending the National Law, and thereby impose separate systems of quality standards onto the ECEC sector. The direct funding of ACECQA by the Commonwealth may also undermine their independence; currently they are funded via the states / territories through a cost recovery process. There may also be implications for the ECEC workforce, professional development and

³ NQF Snapshot Q4 2017, A quarterly report from the Australian Children’s Education and Care Quality Authority, https://www.acecqa.gov.au/sites/default/files/2018-02/NQFSnapshotQ4_2017.PDF

⁴ <http://www.federalfinancialrelations.gov.au/content/npa/education/national-partnership/National-Quality-Early-Childhood-Education-2018-NP.pdf> at page 3

teacher registration standards. Ultimately this does not bode well for children who may well be negatively affected by different systems and standards, with children in disadvantaged areas most at risk.

It is of ongoing concern that not all early education and care services will be within scope of the National Quality Framework under the new Child Care Subsidy scheme, despite Budget Based Funded (BBF) services being brought into the subsidy scheme. BBF services were made up of services provided in rural and remote area, mobile services and services for Aboriginal and Torres Strait Islander services. As such, they provide services to some of Australia's most disadvantaged children. Ongoing exemptions for Budget Based Funded services transitioning to the Child Care Subsidy scheme to sit outside the scope of the NQF communicate a lack of ambition for the quality of these services and a lack of commitment to the children who rely on them. While there are challenges for many of these services to achieve quality standards, including physical environments, staff qualifications and staff retention, they should be supported by Government to meet these challenges so that over time they are able to deliver the same high quality services that we expect for children living in urban areas of Australia. The inclusion of Budget Based Funded services within the National Quality Framework will specifically provide quality improvements for Aboriginal and Torres Strait Islander children,

3. Cluster 6: Family environment and alternative care

Relevant Article/s:

Article 18.3 States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

The Child Care Benefit and Child Care Rebate system operating in Australia to subsidise and support families with early education and care costs will cease on July 2nd and be replaced by a new Child Care Subsidy. The Child Care Subsidy will provide a significant increase in the rate of subsidised access to child care services for many children and families. Under the new system, families will receive a single means-tested Child Care Subsidy payment, which will meet up to 85% of child care costs for families earning up to approximately \$67,000 per annum, with the rate reducing to 50% for families earning above \$172,000. Further details about the rebate level can be found [here](#). For families earning less than \$186,958 there will no longer be an annual cap on the amount of subsidy, and for families earning more than \$186,958 and under \$351,248, an increased annual subsidy cap of \$10,190 per child, per year will apply, up from the previous cap of \$7500.

The new Child Care Subsidy will also entitle eligible families to access the Additional Child Care Subsidy, for children who are at risk, or for a range of other circumstances that might cause temporary financial hardship. Putting aside some of the potentially onerous processes required to meet the eligibility requirements, the subsidy provides 100 per cent of the actual child care fees for child wellbeing, and 95 per cent of the fees for parents transitioning to work.

The new Child Care Subsidy scheme embeds a system that is geared towards supporting parents and families in their endeavours to return to the workforce, and/or to undertake activities that will increase the workforce participation opportunities. While this is one important objective of the provision of high quality early education and care services, it is not the only objective, and indeed the Convention on the Rights of the Child acknowledges this in Article 28 where it outlines a child's right to an education. While the Australian Government's reforms have delivered likely benefits to those participating in the workforce, through the impost of an Activity Test and cutting the base entitlement from 24 hours to 12 hours a week, the opportunity to ensure the reforms meet early education objectives for young children has not been realised.

4. Cluster 8: Education, leisure and cultural activities

Relevant Article/s:

Article 28.1 States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (Article 28.1)

Article 29.1 States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential

The evidence is now strong that access to high quality early education has a lasting impact across a child's life. Young children who experience nurturing care and high quality early learning are more likely to make a smooth transition to school, stay engaged with education and experience social and emotional wellbeing through their adult life. Participation in high quality early learning has become increasingly important as research now points to the importance of early brain development on future academic and social emotional outcomes for children. As recognised in numerous OECD reports, participation in quality early childhood education has been found to make a significant contribution to improve school readiness and achieving educational outcomes in schools. The OECD finds consistent links between participation in pre-primary education and success in the PISA in mathematics, literacy and science; a child with no pre-primary education is 1.9 times more likely to perform poorly in education than a student who has attended more than a year of pre-primary education, even after controlling for socioeconomic status. Research undertaken in Australia found that children who attended an early education program led by a qualified early education teacher were up to 40 per cent ahead of their peers in Year 3 NAPLAN tests. Children who participate in high quality early childhood education are more likely to complete year 12 and are less likely to repeat grades or require additional support.

High quality early childhood education also has broader impacts; it is linked with higher levels of employment, income and financial security, improved health outcomes and reduced crime. The PWC report '*Putting a value on early childhood education and care in Australia*' (2014) found that the benefits to GDP from children participating in quality early learning stood at more than \$10 billion cumulative to 2050⁵. Additionally, the benefits of increased participation of vulnerable children are estimated to be \$13.3 billion cumulative to 2050. Investing in quality early learning is one of the most valuable investments a country can make, and ensuring access to quality early education for all children must be at the heart of any government's agenda that is committed to advancing the Convention on the Rights of the Child.

The Convention on the Rights of the Child makes clear a child's right to an education in Article 28. Research over the past three decades has demonstrated that starting that education in the first five years of life delivers the best outcomes for children, specifically those from disadvantaged backgrounds. Recognition of the importance of early education is widespread; the OECD makes the value of early education clear⁶, and Sustainable Development Goals set objectives for developing countries with regards to participation in pre-

⁵ PricewaterhouseCoopers (PwC). (2014). *Putting a value on early childhood education and care in Australia*. Australia: PwC.

⁶ Starting Strong

primary education.⁷ That the Convention on the Rights of the Child does not specifically mentioning early education is probably more a feature of when it was drafted rather than an intention for children not to have a right to early education, Irrespective, the Convention should be updated to recognise the research and explicitly acknowledge the right to early education. Children should have their own right to early childhood education, disconnected from their parents work activity.

The Australian Early Development Census (AEDC) 2016 showed that in 2015, one in five Australian children were starting school developmentally vulnerable in one or more domains of child development. Disturbingly, this number is two in five children for Aboriginal and Torres Strait Islander children, as it is for disadvantaged children. It has been found that children who attend some form of early childhood education before starting school are half as likely to have developmental vulnerabilities in one or more domain(s) when they start school, in comparison to children who have not accessed early learning.⁸ Access to high quality early education is an incredibly powerful means of transcending disadvantage and ensuring that all Australian children are given the best start in life.

The *National Partnership Agreement on Universal Access to Early Childhood Education* has funded state and territories to provide children in the year before school with access to a preschool program for up to 15 hours a week or for 600 hours a year, delivered by a degree qualified early childhood teacher. Preschool programs can be made available through long day care services in some jurisdictions and private, government, community, or non-profit preschools or kindergartens, depending on the jurisdiction. There is free provision through government school systems in Western Australia, Tasmania and the Australian Capital Territory, with other jurisdictions requiring a contribution from families.

The proxy measure for universal access is 95 per cent of children enrolled, in the year before full-time school for 600 hours per year. The National Report on the National Partnership Agreement indicates that all states and territories, apart from New South Wales, met the 95 per cent target in 2015.⁹

The Partnership Agreement between the Commonwealth and the state and territories has been extended annually over the past two years, and funding currently extends through to 2019, however no new three year agreement has been negotiated, leaving services delivering preschool programs in an uncertain position.

Despite growing research internationally showing that the delivery of preschool from age three amplifies children's long term educational outcomes when they enter the school system, governments have not yet reached agreement on extending the objectives of the Universal Access National Partnership to children in the two years before school. In Australia, the state of Victoria is the only jurisdiction providing access to preschool to three year olds, with limited coverage in New South Wales for disadvantaged children. Other

⁷ <https://www.un.org/sustainabledevelopment/education/> - By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education

⁸ Brinkman, S.A., Gregory, T.A., Goldfeld, S., Lynch, J.W., & Hardy, M (2014). Data resource profile: The Australian Early Development Index (AEDI). *International Journal of Epidemiology*, 43(4), 1-8.

⁹ Australian Government, (2017) National Report: National Partnership Agreement on Universal Access for Early Childhood Education- 2013-2014. https://docs.education.gov.au/system/files/doc/other/20170113_ua_national_report_2015_-_endorsed_and_web_accessible.pdf

jurisdictions rely on the child care subsidy system for access to early learning at three years, meaning that some children cannot access early learning because of their family circumstances, or other barriers to access such as cost and availability. Compared to other OECD countries, Australia's participation of three year olds is in the bottom third of countries ranked by the OECD, with only 69 per cent of three year olds in early education and care, and 15 per cent of those in what the OECD classified as "pre-primary education" or preschool.

Australia should respond to the research on child development in the first five years of life, by committing to lifting the participation of three year olds in early education programs or "preschool". Better articulating the right to high quality education in the two years before school could underpin a shared commitment from states/territories and the commonwealth to extend universal access to three year olds, whereby children have a right to attend a local, low-cost, high quality preschool program for two days a week, irrespective of their parents' activity.

Improving the participation of Aboriginal and Torres Strait Islander children in early childhood education and care should be a priority for Australian governments. Only 2.9% of children participating in early childhood education and care programs are Indigenous, despite making up 5.5% of the population.¹⁰ Aboriginal and Torres Strait Islander children face a range of barriers to access that include cultural barriers, geographical barriers and service / providers barriers.

The Government's new Child Care Subsidy scheme is intent on bringing services that were specifically targeted to Aboriginal and Torres Strait Islander children, and which were funded through the Budget Based Funding model, into the mainstream subsidy model. While there are opportunities to improve the financial sustainability of services, as well as extend the reach of services to where they may be required, there are also risks that this may increase the barriers for Aboriginal and Torres Strait islander children, firstly by increasing the cost of attending, as well as increasing administrative complexity for parent and families engaging in the system.

The Government's proposed Child Care Assistance Package includes the Community Child Care Fund (CCCF), with designated grant funding for socially or economically vulnerable services, including \$61.8 million per year to support the transition of Budget Based Funded services to a mainstream subsidy model¹¹, which will hopefully ameliorate the impact on families that might be at risk of disengaging from ECEC services.

A strategic approach by Government is required to support increasing participation of Aboriginal and Torres Strait islander children in early education and care. The Australian government, in collaboration with state and territory governments, should consider setting more fine-tuned targets that focus policy attention on building participation in high quality early education for Aboriginal and Torres Strait Islander children, through the provision of culturally suited services, supporting the workforce, and extending the scope of the universal platform to ensure that families are easily able to access early education for at least two years prior to starting school at a dosage that supports each child's best development.

¹⁰ Productivity Commission. (2014). *Child Care and Early Childhood Learning*. Productivity Commission Inquiry Report Volume 2.No. 73. Australian Government, p. 526.

¹¹ Deloitte Access Economics (2016) *Impact of the Child Care Assistance Package on Indigenous Communities*. Melbourne: SNAICC.