

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**CHILD CARE LEGISLATION AMENDMENT BILL 1995**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Human Services and Health,  
the Hon Dr Carmen Lawrence, MP)

## **CHILD CARE LEGISLATION AMENDMENT BILL 1995**

### **OUTLINE**

The schedule to this Bill contains amendments to the Child Care Act 1972, the Childcare Rebate Act 1993 and the Health Insurance Commission Act 1973.

These amendments change the eligibility for Childcare Assistance for occasional care in long day child care services to 12 hours per week. For families using child care for work-related reasons or for other exceptional circumstances (such as children at risk or for families in emergency circumstances) this limit does not apply. From April 1996, these amendments also provide for an independent administrative mechanism to assess families' work-related status for the purpose of gaining priority of access to a Commonwealth funded long day child care service.

Targeting the Government's financial assistance will allow the Program to better meet its primary objective of meeting work-related demand for child care. In addition, it will facilitate a more equitable allocation of places available for occasional care to families with one or both parents outside the work force.

Under ILO 156, the Government is committed to a national policy of enabling workers with family responsibilities to exercise their right to work, without discrimination and to successfully balance, without conflict, their employment and family responsibilities. In addition, the Government recognises that access to affordable child care is a critical factor in enabling entry or re-entry to the labour force.

Amendments to the Child Care Act 1972 in this Bill allow a family's entitlement to Childcare Assistance to be assessed, not only on the basis of economic need, but also on the basis of the work-related status of the family or other special circumstances. Ministerial guidelines will determine the special circumstances to be covered which may include, for example children at risk of abuse or neglect, emergency situations and families with a parent who, for medical or other exceptional reasons, is unable to meet the specified work-related criteria. The amendments also enable the Minister to make guidelines which will set out the process for determining whether a family does have work-related circumstances.

Amendments to the Childcare Rebate Act 1993 will enable the Minister to make guidelines which will assist the Commission in administering sections 29-31 of the Act which define work-related commitments for the purposes of claiming the Childcare Cash Rebate. These guidelines will clearly set out the procedures and evidence required to verify a family's work, study or training commitments and make the process of verification of work-related status more transparent. Decisions made under these guidelines are reviewable.

CORRECTION

**CHILD CARE LEGISLATION  
AMENDMENT BILL 1995**

EXPLANATORY MEMORANDUM

GENERAL OUTLINE

*Second paragraph, first sentence* — add "will enable the Minister to make guidelines that will" after the word "amendments" to provide clarification of the purpose of the Bill after consideration by the Scrutiny of Bills Committee.

(Circulated by authority of the  
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Amendments to the Health Insurance Commission Act 1973 enable families to have their work-related status assessed independently of child care services. This allows service providers to use this information in assessing priority for places in long day child care services.

The amendments to the Health Insurance Commission Act 1973 allow the Commission to provide this independent assessment of work-related status for families who have not had their work-related status verified either by the Commission, under the Childcare Rebate Act 1993 to claim the Childcare Cash Rebate, or by the Department of Social Security, under section 12A of the Child Care Act for Childcare Assistance purposes. Decisions made in respect of a family's work status under the Health Insurance Commission Act 1973 are reviewable under the review provisions in the Childcare Rebate Act 1993.

Amendments to both the Health Insurance Commission Act 1973 and the Childcare Rebate Act 1993 allow the Commission to clarify or confirm information about a family's composition or their work-related status with a Department of the Commonwealth or a Commonwealth funded long day child care service with the written consent of a parental member of the family concerned. This may occur, for example, if the information contained in a family's work-verification document from the Health Insurance Commission is not sufficient to allow the service director or the Department of Social Security, which assesses eligibility for Childcare Assistance, to be clear that it applies to a particular family. These amendments obviate the need for families to seek further documentary confirmation from the Commission.

#### **FINANCIAL IMPACT STATEMENT**

The amendments contained in this Bill provide for program changes which are to take effect from 1 April 1996. These changes are expected to produce savings of \$141m over the four years to 1998-99.

**HUMAN SERVICES AND HEALTH  
LEGISLATION AMENDMENT BILL 1995**

**Notes on Clauses**

**Clause 1 - Short title**

This is a formal provision that specifies the short title of the Act as the Child Care Legislation Amendment Act 1995.

**Clause 2 - Commencement**

This clause provides that the provisions of the Act will commence on the day on which it receives Royal Assent.

**Clause 3 - Schedule**

This is a formal provision that specifies that the Acts specified in the Schedule are amended as set out in the Schedule.

**SCHEDULE**

***Child Care Act 1972***

**Item 1 - Section 12A - Grants for fee relief**

This item amends paragraph 12A(1)(a) by adding additional circumstances, namely the work-related circumstances of families and special circumstances of children, as matters on which the Minister may make guidelines for the purpose of assessing the amount of fee relief (now called Childcare Assistance) payable to the operator of a child care centre. These circumstances may be specified in guidelines determined by the Minister in section 12A of the Act. These guidelines are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

**Item 2 - Section 12A - Grants for fee relief**

This item defines work related circumstances for the purposes of new subparagraph 12A(1)(a)(ia). The definition is the same as the definition of work, work related, study and training commitments in sections 29, 30 and 31 of the Childcare Rebate Act 1993.

### **Item 3 - Section 12A - Grants for fee relief**

This item defines family and parental member for the purpose of determining which adults are required to meet the work related circumstances outlined in subparagraph 12A(1)(a)(ia) and subsection 12A(1A). The definitions are the same as the definitions of family and parental member in the Childcare Rebate Act 1993 however decisions made in accordance with this definition will be made by the person responsible for the verification.

### ***Childcare Rebate Act 1993***

### **Item 4 - Long title**

This item amends the long title of the Childcare Rebate Act 1993 to include other purposes related to child care. This is to more accurately reflect the additional functions given to the Health Insurance Commission relating to the recording of certain information for fee relief purposes and priority of access.

### **Item 5 - New section 31A - Guidelines for assessing work, training and study commitments**

This item allows the Minister to make guidelines with which the Commission must comply for assessing whether a family meets the definitions of work, work related, training and study commitments set out in sections 29, 30 and 31 of the Act. These guidelines are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

### **Item 6 - New section 48A - Recording and disclosure of certain information for fee relief purposes**

This item permits the Commission to record and disclose specified decisions relating to membership of families or to the work status of families and these decisions can later be used for the purposes of section 12A of the Child Care Act 1972 or in the determination of priority of access to places in Commonwealth funded child care services.

Subsection 48A(1) identifies specific information which the Commission may record, the agencies or bodies to which the information may be disclosed and the purposes for which it will be used.

The information to be recorded is information relating to the membership of families and the assessment of parents against the definitions outlined in sections 29, 30 and 31 of the Act.

The agencies or bodies to which the information may be disclosed are Departments of the Commonwealth or the operator of a Commonwealth funded child care service.

The information may be used for the purposes of section 12A of the Child Care Act 1972 and/or in determining priority of access to places in a Commonwealth funded child care service.

Subsection 48A(2) specifies that the information under this section in relation to a family may only be disclosed with the consent of a parental member of the family concerned.

These provisions have been included to obviate the need for families to seek further documentary confirmation from the Commission if original information, which is provided by the Commission as evidence of a family's work-related status, is inconclusive. This might occur if it is difficult to identify the composition of the family concerned or if the original evidence has been misplaced. These provisions also ensure that disclosure of information may only occur with the consent of a parental member of the family concerned.

Subsection 48A(3) defines Commonwealth funded child care service for the purpose of section 48A.

**Item 7 - section 53 - Decisions that may be subject to reconsideration by the Commission**

This item provides that an application may be made to the Commission for reconsideration of a decision about the work related circumstances of a family made by the Commission under paragraph 8BAA(1)(a) of the Health Insurance Commission Act 1973.

The existing provisions in section 53 of the Childcare Rebate Act 1993, which set out the effect of the Commission's reconsideration and further provide that the Commission is to give the applicant a notice of the decision and the reasons for that decision, will also apply to decisions made under paragraph 8BAA(1)(a) of the Health Insurance Commission Act 1973. A decision made by the Commission under paragraph 8BAA(1)(a) is also reviewable by the Administrative Appeals Tribunal under section 58 of the Childcare Rebate Act 1993.

The long title of the Childcare Rebate Act 1993 has been amended in item 4 of this Bill to reflect the inclusion of review provisions relating to decisions made under the Health Insurance Commission Act 1973 in the Childcare Rebate Act 1993.



*Health Insurance Commission Act 1973*

**Item 8 - Part IIAA - CHILD CARE**

This item amends the heading of Part IIAA (formerly 'rebates for child care costs') to cover broader child care functions.

**Item 9 - new sections 8BAA (Verification of families' composition and work status) and 8BAB (Guidelines on the verification process)**

This item inserts two new sections, 8BAA and 8BAB, into Part IIAA of the Health Insurance Commission Act 1973 to allow the Commission to verify the work status of families who are not eligible for, or have not claimed, the Childcare Cash Rebate.

Section 8BAA provides the Commission with an additional function of verifying the composition and work status of a family for the purpose of section 12A of the Child Care Act 1972 in respect of child care for children of that family and/or for the purpose of determining the family's priority of access to a Commonwealth funded child care service.

Subsection 8BAA(1) identifies specific information which the Commission may verify and record, the agencies or bodies to which the information may be disclosed and the purposes for which it will be used.

The information to be verified and recorded is information relating to the membership of families and the assessment of parents ('parental member', as defined in subsection 8BAA(4)) against the definition of work related circumstances outlined in subsection 8BAA(2).

The agencies or bodies to which the information may be disclosed are Departments of the Commonwealth or the operator of a Commonwealth funded child care service.

The information may be used for the purpose of section 12A of the Child Care Act 1972 and/or in determining priority of access to places in a Commonwealth funded child care service.

Subsection 8BAA(2) includes a definition of work related circumstances for the purposes of determining which families can be verified as having work related circumstances under paragraph 8BAA(1)(a). The definition is the same as the definition of work or work related, study and training commitments in sections 29, 30 and 31 of the Childcare Rebate Act 1993.

Subsection 8BAA(3) specifies that the information under this section in relation to a family may only be disclosed with the written consent of a parental member of the family concerned.

Subsection 8BAA(4) defines Commonwealth funded child care service for the purpose of section 8BAA. This subsection also defines family and parental member for the purpose of section 8BAA to assist in determining which adults are required to meet the circumstances outlined in paragraph 8BAA(1)(a) and subsection 8BAA(2). The definitions of family and parental member have the same meaning as they do in the Childcare Rebate Act 1993.

Subsections 8BAB(1) and (2) provide that the Minister may determine guidelines with which the Commission must comply in performing its function of verifying the membership and work related circumstances of a family under section 8BAA. Subsection 8BAB(3), without limiting the matters which can be included in the guidelines, provides that they may specify the kinds of evidence which the Commission must require in order to make a decision about a particular matter. These guidelines are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

