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HOUSE OF REPRESENTATIVES

CORRECTION

CHILD CARE LEGISLATION AMENDMENT BILL 1996

EXPLANATORY MEMORANDUM

FINANCIAL STATEMENT

Second line - omit '\$118.4m', substitute '\$108.8m' to correct an error in the Explanatory Memorandum.

(Circulated by the authority of the Minister for Family Services, the Hon. Judi Moylan, MP)

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CHILD CARE LEGISLATION AMENDMENT BILL 1996

GENERAL OUTLINE

Schedule 1 of the *Child Care Legislation Amendment Bill 1996* proposes an amendment to the *Child Care Act 1972* to implement a 1996 Government budget decision to discontinue payment of operational subsidy to community based long day care centres from 1 July 1997.

Schedule 2 of this Bill will amend the *Childcare Rebate Act 1993* in accordance with changes announced in the 1996 Budget. These changes will establish a link between the family income cut-offs under Part A of the Family Tax Initiative, which was also announced in the 1996 Budget and the level of entitlement to the Childcare Cash Rebate

The Bill will also introduce amendments aimed at clarifying eligibility issues and compliance requirements consistent with the intentions of the Commonwealth Childcare Cash Rebate scheme.

Operational Subsidy payments

Operational subsidy is currently paid under Section 11 of the *Child Care Act 1972* for child care places provided by community based services (but not for places provided by the private sector). The amendment will mean that from 1 July 1997 operational subsidy will no longer be paid to community based long day care centres.

Childcare Cash Rebate - Income Testing for Rate of Benefit

The Bill implements changes to the calculation of the Childcare Cash Rebate which will reduce the rate of benefit for some families.

The amendments to the *Childcare Rebate Act 1993* will introduce a lower rate of benefit for the Childcare Cash Rebate for some families from 1 April 1997. The actual date of effect, due to the administrative arrangements under the Childcare Cash Rebate scheme, is the following Monday, 7 April 1997. This will mean that families with a taxable income in the current year lower than the family income cut offs for Part A of the Family Tax Initiative (currently \$70,000 for one child families plus \$3,000 for each additional dependent child) will have their benefit maintained at 30% of their claimable child care costs, while families with a taxable income in the current year greater than these cut offs will be entitled to a rate of benefit of 20% of their claimable child care costs.

If a family has claimed the Childcare Cash Rebate at either the 20% or 30% rate for a particular week, but updated income advice shows that they were paid at the incorrect rate, the *Childcare Rebate Act 1993* provides for the entitlement to be recalculated in accordance with the new advice. This may result in recoveries if an overpayment had occurred or additional payments if an underpayment of the Childcare Cash Rebate had been made originally.

Childcare Cash Rebate - Eligibility issues

The Bill includes amendments to the *Childcare Rebate Act 1993* which will allow more families to gain financial assistance to support the costs of their work related child care by:

- clarifying the eligibility for the Childcare Cash Rebate for foster parents and persons with informal parenting responsibilities, such as grandparents caring for their grandchild because the child's parents are temporarily unable to provide care themselves;
- enabling families to claim the Childcare Cash Rebate against two sets of child care fees for the same period in certain circumstances. For example, in some cases parents are required to pay child care costs for care provided for say an illness or other extenuating circumstances which prevent that child from attending their usual child care service, and child care costs to hold a usual child care place for the same period of time. It is intended that parents should not be penalised under the Childcare Cash Rebate scheme because of this; and
- amending the definition of a family for the purposes of the Childcare Cash Rebate according to amendments made to the *Family Law Act 1975* which replace the concept of “custody” of a child with the concept of “care and responsibility” for a child.

The Bill also makes consequential amendments and amendments of a machinery nature to the *Childcare Rebate Act 1993*.

Childcare Cash Rebate - Compliance issues

The Bill includes amendments to the *Childcare Rebate Act 1993* which will improve compliance and reduce the risk of fraud under the Childcare Cash Rebate scheme. These amendments will have the effect of:

- allowing the Health Insurance Commission to suspend payment of a claim for the Childcare Cash Rebate while it is in the process of investigating matters relevant to the claim or registration if a problem with the claim or the registration of the family or child care provider has been identified. This will prevent recovery action if the identified problem is confirmed;
- preventing payment of the Childcare Cash Rebate for care provided by a parent of a family, or partner of a parent, to a dependent child of that family. The Childcare Cash Rebate will not be claimable for care provided by a partner in a child care business to the dependent child of another partner in that business;
- requiring registered Childcare Cash Rebate child care providers to notify the Health Insurance Commission of changes to their circumstances which may affect their eligibility to be registered. This will prevent persons from remaining registered as Childcare Cash Rebate child care providers if they no longer meet the eligibility criteria for registration; and

clarifying the definition of child care to ensure that the Childcare Cash Rebate is only payable for child care and not tuition or other non-child care services. It is the intention under the Childcare Cash Rebate scheme that, to be considered child care, a service providing care for school aged children should provide a range of activities for children and allow children to choose which activities they will participate in. The amendment therefore defines child care on the basis of the nature of the service rather than the premises at which the service is provided.

FINANCIAL IMPACT

The amendment to the *Child Care Act 1972* to no longer pay operational subsidy to community based long day care centres will achieve net savings of \$118.4m over the first four years, taking account of the \$10m per year for support for children with “high” additional needs, especially children with disabilities, \$8.3m over 2 years for advice to services and the \$4.1m per year for supplementary grants for severely disadvantaged areas.

The amendments to the *Childcare Rebate Act 1993* arising from the 1996 Budget are anticipated to result in savings of \$34.7m over the first four years.

The amendments to allow parents to claim the Childcare Cash Rebate against two sets of child care fees in specified circumstances may allow the Rebate to be claimed under a wider range of circumstances, which may result in a slight increase in expenditure. This increase is estimated to be minimal.

Other amendments reduce the risk of fraud and increase the power of the Health Insurance Commission to suspend payment of the Rebate, reducing the need for recovery action.

CHILD CARE LEGISLATION AMENDMENT BILL 1996

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 1996*.

Clause 2 - Commencement

This clause provides that the Act will commence on the date of Royal Assent, except Schedule 1 which commences on 1 July 1997.

Clause 3 - Schedules

This is a formal provision that specifies that the Acts and other items specified in the Schedules are amended or repealed as set out in the Schedules.

SCHEDULE 1

Amendment of the Child Care Act 1972 (“the Act”)

Item 1 - Section 11 - Grants for recurrent expenditure

This item repeals Section 11 of the Act.

Item 2 - Section 20

This item omits reference to subsection 11(19) under subsection 20(6) of the Act, which deals with conditions relating to grants. This is because section 11 of the Act has been repealed.

Item 3 - Section 24

This item omits reference to subsection 11(19) under section 24 of the Act, which deals with money to be appropriated for the purposes of grants.

SCHEDULE 2

Amendment of the Childcare Rebate Act 1993 (“the Act”)

Item 1 - Section 3 - Outline of the Act

This item corrects a typographical error in the placement of a comma in subsection 3(4).

Items 2 and 3 - Section 4 - Definitions

These items add references in section 4 to new definitions relating to the meanings of “partner” and “business partner” for the purposes of the Act.

Item 4 - Section 4 - Definition of Parental Member

This item amends the definition of “parental member” under section 4 to omit reference to the current definition of “partner” under subsection 5(2). This is because the definition of “partner” has been revised to ensure that the distinction between de facto partners and business partners is clear within the Act.

Item 5 - Section 5 - Definition of Family

This item expands the application of the definition of “partner” to apply to the whole Act, instead of only subsection 5(2).

Item 6 - Section 5 - Definition of Family

This item amends paragraph 5(4)(b) to bring the definition of a family into line with amendments to the *Family Law Act 1975* which replaces the concept of “care and control” and “custody” with the concept of “parental responsibility”.

Item 7 - Section 10 - Definition of Parent

This item amends section 10 of the Act to make it clear that foster parents and other persons caring for a child or children in a long term informal parenting arrangement (eg grandparents caring for grandchildren because the children's parents are temporarily unable to provide that care) are eligible for the Childcare Cash Rebate. The definition of “parental member” under section 4 of the Act also applies to families which are eligible under this amendment.

Item 8 - Section 11 - Definition of Dependent Child

This item amends subsection 11(1) to ensure that a person must meet the requirements of the whole section (formerly only subsection (2)) in order to be considered a dependent child for Childcare Cash Rebate purposes.

Item 9 - Section 11 - Definition of Dependent Child

This item amends the definition of a dependent child under section 11 to include a child where a determination has been made under clause 10(2) of the Bill, which allows for long term informal parenting arrangements to be eligible.

Item 10 - Section 16 - Other People may be Treated as Australian Residents

This item incorporates a requirement in section 16 that determinations made in relation to treating persons who are not Australian residents as residents for Childcare Cash Rebate purposes must be made in compliance with any guidelines made under section 62AA, thereby streamlining the Act by placing the guideline making power of the Minister in one section.

Item 11 - Section 17 - Guidelines for Making Determinations

This item repeals section 17 as a consequence of the amendment made by Item 10.

Item 12 - Section 27 - Definition of Child Care

This item replaces subsections 27(1), (2) and (3) which define child care for the purposes of the Act. Much of the definition remains the same as that which is provided in the existing section. However, paragraph (27)(1)(d) of the Act had the effect of defining child care by reference to the nature of the premises at which the care is provided. This amendment removes the reference to premises and provides for the Health Insurance Commission to make a determination (subject to Ministerial guidelines) stating the type of care considered as child care.

Item 13 - Section 36 - Claims in Respect of which the Rebate is not Payable

This item restricts the range of child care arrangements against which the Childcare Cash Rebate may be claimed by ensuring that it cannot be claimed for care provided by a registered child care provider to dependent children of that person or that person's partner or business partner (as defined in the Act) under section 36.

Item 14 - Section 36 - Claims in Respect of which the Rebate is not Payable

This item amends section 36 to confer power on the Minister to determine circumstances under which the Childcare Cash Rebate will be payable in respect of two sets of fees for the one period of care. This serves the purpose of allowing the Childcare Cash Rebate to be paid if two sets of child care fees have been paid for the same period of care because, for example, an alternate child care provider has been required because the child could not attend the usual child care (eg due to illness) and the fees for that usual care were still payable to hold the child's place.

Item 15

This item inserts two new sections, 36AA and 36AB, which give power to the Health Insurance Commission to suspend payment of a claim where a problem with the claim or the registration of the family or child care provider has been identified. Section 36AA allows the Health Insurance Commission to defer the making of a decision on a claim for a period of up to 28 days to allow them to investigate the problem. Section 36AB allows the Commission to suspend payment of a claim for 28 days to enable them to make inquiries into the registration of the family or child care provider to which the claim relates.

Item 16 - Section 38 - Children Who Are Members of More Than One Family

This item amends section 38 to enable the Minister to make a determination that the Childcare Cash Rebate is payable in respect of children who are members of more than one family, in respect of claims for two sets of fees for the one period of care. This ensures consistent treatment of families by making section 38 consistent with section 36.

Item 17 - Section 38 - Children Who Are Members of More Than One Family

This item provides that a determination under section 38(1) is a disallowable instrument.

Item 18 - Sections 45 (Calculation of rebate) and 46 (Family Payment notices and family income notices)

This item repeals the existing sections 45 and 46 of the Act and replaces them with new sections which restrict the 30% rate of benefit for the Childcare Cash Rebate to families in which either parental member has been issued a notice from the Department of Social Security stating either that the person is receiving Family Payment or satisfies the family income test under Part A of the Family Tax Initiative. A rebate percentage of 20% will apply to all other families.

Under subsection 46(4), it is intended that matters taken into account by the Secretary in issuing notices under section 46 will relate to qualification for and payability of Family Payment or whether the person to whom the notice applies satisfies the family income test.

A review under section 46 will be subject to the provisions available under the *Social Security Act 1991*. This will enable people to appeal against a decision by the Department of Social Security to issue or not issue a notice under the *Childcare Rebate Act 1993*.

Item 19 - Section 48 - Additional Functions of the Commission

This item inserts a new subsection (1A) to clarify that anything done under the Act by the Managing Director of the Commission, or by a member of the Commission's staff in the name of the Managing Director, is to be taken to have been done by the Commission.

Item 20 - Section 49 - Registration of Carers

This item substitutes a new paragraph 49(4)(b). This paragraph includes much of what was in the previous paragraph but includes an additional requirement that, where the Commission registers an applicant as a carer, it must notify the applicant of those matters which the applicant is required to notify the Commission under section 50A. These are matters directly affecting the carer's eligibility to be registered.

Item 21 - Section 50 - Eligibility for Registration

This item amends section 50 to prevent payment of the Childcare Cash Rebate for care provided by a registered child care provider to dependent children of that person or that person's partner or business partner (as defined in the Act).

Item 22

This item inserts section 50A which places a requirement on registered carers to notify the Health Insurance Commission of any changes in their circumstances which may effect their eligibility to be registered. The Commission must determine the matters of which registered carers are required to notify it. While a child care provider must meet certain criteria in order to register for Childcare Cash Rebate purposes under the current legislation, there are no requirements for child care providers to advise the Health Insurance Commission if they no longer meet these criteria. This amendment places the onus on the child care provider to inform the Health Insurance Commission of matters relevant to their status as a registered child care provider.

Item 23 - Section 53 - Decisions That May Be Subject to Reconsideration by the Commission

This item clarifies that decisions relating to issues as included under section 53 are reviewable decisions. The amendment omits the previous reference to applications for review to be made in writing to the Health Insurance Commission which enables the Health Insurance Commission to instigate review of decisions without the need for clients to apply for review.

Item 24 - Section 53 - Decisions That May Be Subject to Reconsideration by the Commission

This item amends section 53 to include decisions relating to the definition of a parent for Childcare Cash Rebate purposes as decisions that are reviewable. This means that a refusal to consider a person to be a parent of a child for Childcare Cash Rebate purposes on the part of the Health Insurance Commission may be subject to review.

Item 25 - Section 53 - Decisions That May Be Subject to Reconsideration by the Commission

This item amends section 53 to incorporate decisions made on the suspension of payment of Childcare Cash Rebate claims as decisions that may be subject to review.

Item 26 - Section 61 - Recovery of Amounts Paid

This item amends subsection 61(4) to refer to the "Managing Director", rather than to the "Managing Director of the Commission".

Item 27

This item inserts a new section 62AA to provide a guideline making power for the Minister. This replaces section 17 which previously served this purpose and is repealed by Item 11.

Item 28

This item is a saving provision to provide for guidelines made under section 17 of the Act to continue to be in force as if it had been made under section 62AA, which replaces section 17 in allowing for guidelines for making determinations. This amendment also allows for determinations made in respect of a child care service under section 27 of the Act to continue to be in force as if it had been made under the revised section 27.

Item 29

This item provides that the application of amendments relating to the percentage rate of benefit under the Childcare Cash Rebate scheme applies for the week starting on 7 April 1997, and for all later weeks.

