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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CHILD CARE PAYMENTS (CONSEQUENTIAL AMENDMENTS  
AND TRANSITIONAL PROVISIONS) BILL 1997**

EXPLANATORY MEMORANDUM

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



## **CHILD CARE PAYMENTS (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 1997**

### **GENERAL OUTLINE**

This Bill compliments the Child Care Payments Bill 1997. It implements a number of transitional arrangements designed to facilitate a smooth transfer from the existing Child Care Assistance and Childcare Rebate schemes to the new payment arrangements set out in the Child Care Payments Bill. It also includes a number of amendments to other pieces of legislation as a consequence of passage of the Child Care Payments Bill 1997.

This Bill covers the transitional arrangements for the changes outlined in the Child Care Payments Bill 1997. The regulation impact statement which deals with these changes is attached to the explanatory memorandum accompanying the Child Care Payments Bill .

The Bill contains the following transitional provisions:

- the continued operation of the current child care subsidies until the first payment day under the agency;
- the approval of current Child Care Assistance services to continue for a limited period;
- the registration of current Childcare Rebate services to continue;
- an exemption from the locational requirements of the new planning controls for long day care centres during 1998 and 1999, where the proposed operator had taken certain actions before the 1997 Budget was announced to build or extend a child care centre;
- a grandfather clause exempting children attending school and already using a long day care centre or family day care scheme for before or after school care or vacation care from the new school child rate of Child Care Assistance; and
- arrangements whereby children who were in receipt of special Child Care Assistance because of hardship, or risk of abuse or neglect, immediately before the payment commencement date, will continue to receive additional assistance through either Emergency Child Care Assistance or Hardship Child Care Assistance for the first four weeks of the new scheme.

These arrangements are designed specifically to benefit families and operators by ensuring that the transition between schemes is seamless.

### **FINANCIAL IMPACT**

The financial impact of transferring the payment and administration of Child Care Assistance to the Commonwealth Service Delivery Agency is discussed in the Explanatory Memorandum which accompanies the Child Care Payments Bill 1997.

## **CHILD CARE PAYMENTS (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL - OVERVIEW**

### **Part 1 Preliminary**

Deals with the commencement of the Bill and the Schedule of consequential amendments.

### **Part 2 Transitional matters**

Deals with definitions and transitional matters about approval of services and child care assistance hours, school aged children, special Child Care Assistance, regulations and delegations.

### **Schedule 1 Consequential amendments of other legislation**

Deals with consequential amendments to the *Child Care Act 1972*, the *Childcare Rebate Act 1993*, the *Data-matching Program (Assistance and Tax) Act 1990*, the *Fringe Benefits Tax Assessment Act 1986*, the *Health Insurance Commission Act 1997*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997* and the *Social Security Act 1991*.

## **CLAUSES INVOLVED IN THIS MEASURE**

### **Part 1 - Preliminary**

#### **1 Short title**

This clause sets out the short title of the Act.

#### **2 Commencement**

This clause specifies the date on which the transitional provisions and consequential amendments come into effect.

#### **3 Schedule(s)**

This clause directs that consequential amendments are to be made according to the terms set out in the Schedule.

## Part 2 - Transitional matters

### 4 Definitions

This clause advises that the definition of terms used in this Bill is the same as terms used in the *Child Care Payments Act 1997*.

### 5 Continued operation of current legislation in respect of child care provided before the payment commencement day

Sub-clause (1) provides for the continued operation of the Acts listed in Schedule 1 in respect of child care provided before the payment commencement day. (The term payment commencement day is defined in section 12 of the *Child Care Payments Act 1997*.) This ensures there is no lapse in Child Care Assistance payments and Childcare Rebate payments for child care provided before the payment commencement day.

Subclause (2) means that claims for Childcare Rebate for care rendered before the payment commencement day must be lodged within 21 weeks of that day.

### 6 Determinations taking services or centres to be approved under the *Child Care Payments Act 1997*

Subclause 6(1) provides that services and centres which are parties to a funding agreement with the Commonwealth for the purposes of Child Care Assistance immediately before the payment commencement day under the *Child Care Payments Act 1997* are approved services

Subclause 6(2) allows the Secretary to determine in writing that an approved service or a class of approved services will be taken to be an approved service under the new arrangements, for a specified period.

Subclause 6(3) deals with the effect of a determination under subclause 6(2). It provides that services so approved will be regarded as a service properly approved under Part 1 of Chapter 6 of the *Child Care Payments Act 1997*.

Subclause 6(4)(a) provides that references in the *Child Care Payments Act 1997* to the cancellation or suspension of a service's approval will be taken to apply to services approved under subclause 6(2).

Subparagraph 6(4)(b) provides that the obligations imposed by the funding agreement referred to in subclause 6(1) continue to have effect as if they were conditions of the service's approval under the new arrangements.

Subparagraph 6(4)(c) provides that the provisions contained in Part 1 of Chapter 6 of the *Child Care Payments Act 1997* relating to the imposition of other conditions of approval and the relevant consequences for breaches of conditions will apply as if the service were actually approved under the *Child Care Payments Act 1997*.

Subclause 6(5) effectively imposes a sunset clause on the making of determinations under subclause 6(2) by providing that determinations cannot be made more than 6 months after the payment commencement date.

Subclause 6(6) imposes 3 rules on the period which may be specified in a determination. First, a determination cannot be for longer than 12 months. Second, it must commence on the payment commencement day or later. And third, determinations can start on, before or after the date a determination is made (but cannot start before the payment commencement day).

## **7 Determinations taking carers to be registered under the *Child Care Payments Act 1997***

Subclause 7(1) provides that carers registered under section 49 of the *Childcare Rebate Act 1993* immediately before the payment commencement day are registered carers for the purposes of this clause.

Subclause 7(2) provides that the Secretary may determine that child care services operated by such carers are taken to be registered child care rebate services under part 2 of Chapter 6 of the *Child Care Payments Act 1997*.

Subclause 7(3) provides that a determination under subclause 7(2) has effect as if it were a registration of a child care rebate service made under Part 2 of Chapter 6 of the *Child Care Payments Act 1997* on the payment commencement day.

Subclause 7(4) provides that references in Part 2 of Chapter 6 of the *Child Care Payments Act 1997* to suspension of registration, cancellation of registration, conditions of registration and the consequences of breaches of conditions of registration will apply to child care rebate services approved through a determination under subclause 7(2) in the same way they apply to services that are actually registered under the *Child Care Payments Act 1997*.

Subclause 7(5) effectively imposes a sunset clause on the making of determinations under subclause 7(2) by requiring that determinations cannot be made more than 6 months after the payment commencement date.

## **8 Secretary may allocate new child care assistance hours despite sections 200 to 202 of the *Child Care Payments Act 1997***

Subclause 8(1) empowers the Secretary to allocate new Child Care assistance hours despite sections 200, 201 and 202 of the *Child Care Payments Act 1997* (in effect, this empowers the Secretary to exempt centres from the locational requirements of the new planning arrangements which are imposed by these sections) where the Secretary thinks that this is appropriate having regard to actions taken before 13 May 1997 (ie the day on which the 1997 Budget decision relating to new planning limits was announced) for the purpose of building a new child care centre or extending an existing child care centre.

The circumstances under which the Secretary will allocate hours under subclause 8(1) will be spelt out under guidelines made under subclause (6).

Subclause 8(2) places restrictions on the Secretary's power to allocate new child care assistance hours under subclause 8(1) by requiring that, in the case of a new child care centre, the centre must be completed and providing child care on or before 30 September 1998 and in the case of an extension to a centre, the extension is completed and care is being provided for an increased number of children on or before 30 September 1998. In both cases, the number of hours allocated must be made in accordance with any guidelines made under subclause (6).

Subclause 8(3) provides that hours allocated by the Secretary under subclause 8(1) must be taken into account when applying the limits specified in section 199 of the *Child Care Payments Act 1997*. This means that although the child care centre is exempt from the locational requirements of the planning criteria set out in sections 200, 201 and 202 of the *Child Care Payments Act 1997*, the hours allocated count towards the total allocation for the 1998 and 1999 calendar years.

Subclause 8(4) provides that if the Secretary allocates hours under subclause 8(1) before the Minister has made a determination under section 200 of the *Child Care Payments Act 1997* (the Minister is required under this section to allocate the total number of child care assistance hours which will be available for allocation to new services in 1998 and 1999), the number of hours allocated by the Secretary are to be subtracted from the total number of 1,008,000 hours referred to in section 200 of that *Child Care Payments Act 1997*.

Clause 8(5) says that if hours are allocated to regions under section 200 and the Secretary later allocates hours under this section, then the Minister will need to reduce the allocation of hours to the regions to take account of the hours allocated under this section.

Subclause 8(6) provides that the Minister may make written guidelines for the purposes of decisions made under subclause 8(1). These guidelines are a disallowable instrument under the terms of subclause 8(7).

## **9 Provisions relating to school children continuing in care**

Clause 9 deals with provisions designed to ensure that children attending school and using a long day care or family day care service for before or after school care or for vacation care immediately before the payment commencement day are not disadvantaged by the change in Child Care Assistance levels for school aged children for so long as the child receives care from that service. It is effectively a grandfather clause.

Subclause 9(1) deals with the conditions which must be met in order for a child to be covered by this clause.

Subclause 9(2) defines terms used in subclause 9(1).

Subclause 9(3) provides that determinations relating to subparagraphs 9(1)(a) and (b) will be made in accordance with guidelines in force under subclause 9(6).

Subclause 9(4) provides that the hourly rebateable fee payable in respect of a school child covered by the transitional arrangements will be the higher non-school child rate.

Furthermore, subclause 9(5) provides that in applying the multiple child percentage rate, where a child covered by the transitional arrangements has a sibling in long day care both will be entitled to the higher Child Care Assistance for families with more than one child in the same form of care.

Subclause 9(6) allows the Minister to make guidelines as to how determinations are to be made about whether care was being provided before the payment date commenced, whether care was provided by a qualifying child care service, and the issue of whether, and for how long, that care continues to be provided.

Subclause 9(7) provides that the guidelines made under subclause 9(6) are a disallowable instrument.

#### **10 Power to continue making payments if special Child Care assistance was being paid**

Subclause 10(1) provides that families who immediately before the payment commencement date were in receipt of special Child Care Assistance in respect of a child may continue to receive additional assistance. This assistance will be limited to 4 weeks from the payment commencement day and will allow families sufficient time to apply for these forms of additional assistance under the new arrangements.

Subclause 10(2) provides that the Secretary may determine that a higher level of Child Care Assistance is payable due to hardship under the terms of Schedule 1, Point B4(1) without applying the normal criteria.

Subclause 10(3) provides that the Secretary may determine that Emergency Child Care Assistance is payable under the terms of Section 171 of the Child Care Payment Act 1997 despite the fact that there has been no application for Emergency Child Care Assistance made as required by Chapter 5 of the *Child Care Payments Act 1997*.

Subclause 10(4) directs that determinations made in respect of hardship or Emergency Child Care Assistance under subclauses 10(2) or (3) may be made at any time before, on or within 6 months after the payment commencement date. Such determinations have effect for 4 weeks starting on the payment commencement date.

Subclause 10(5) provides that the 4 weeks of Child Care Assistance granted under subclause 10(2) will not count towards the annual limit on hardship Child Care Assistance imposed by subpoint B4(3) of Schedule 1 to the *Child Care Payments Act 1997*, which is, unless exceptional circumstances exist, 13 weeks.

Subclause 10(6) provides that the 4 weeks of Emergency Child Care Assistance granted under subclause 10(3) will not be counted for the purpose of the annual limit on emergency Child Care Assistance set out in section 172 of the *Child Care Payments Act 1997*.

#### **11 Health Insurance Commission may provide childcare rebate information**

Subclause 11(1) provides that the Health Insurance Commission may provide Childcare



Rebate information to the Secretary or to the Chief Executive Officer of the Commonwealth Services Delivery Agency. This information is necessary for the administration of the *Child Care Payments Act 1997*.

Subclause 11(2) defines Childcare Rebate information as information held by the Commission in connection with its functions under the *Childcare Rebate Act 1993*.

## **12 Regulations may deal with other matters relating to the transition to the scheme in the *Child Care Payments Act 1997***

Clause 12 provides that regulations may be made to deal with other matters relating to the transition from the old scheme of child care payments to the scheme established under the *Child Care Payments Act 1997* and specifies the components of the old child care payments scheme.

## **13 Delegation by Secretary**

Clause 13 provides that the Secretary may delegate to an officer all or any of his powers.

## **Schedule 1 - consequential amendments of other legislation**

### ***Child Care Act 1972***

The *Child Care Act 1972* currently provides for the payment of Child Care Assistance (Fee Relief). From January 1998, this payment will be administered by the Commonwealth Services Delivery Agency under the *Child Care Payment Act 1997*. Therefore, references to fee relief in the *Child Care Act 1972* are redundant.

**Items 1 - 4** The definitions of approved child care service, fee relief beneficiary, partner and Social Security Secretary contained in subsection 4(1) of the *Child Care Act 1972* are no longer required and are repealed.

**Item 5** The words "other than section 12A" appearing in subsection 4B(1) are no longer required and are omitted.

**Item 6** Subsection 4B(2) deals with determinations that centres are eligible to participate in the old Child Care Assistance scheme under section 12A of the *Child Care Act 1972* and is therefore redundant. It is repealed.

**Item 7** Sections 12A, 12B, 12C, 12D and 12E of the *Child Care Act 1972* deal exclusively with the old Child Care Assistance scheme and are redundant. They are repealed.

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

- Item 8** From January 1998 the Childcare Rebate will be paid under the *Child Care Payments Act 1997* therefore the whole of this Act is repealed.

### ***Data-matching Program (Assistance and Tax) Act 1990***

- Items 9 & 10** Subsection 3(1) subparagraphs (c)(xxivd) and (xxive) refer to Child Care Assistance and fee relief under the old scheme so they are repealed. New subparagraphs (db) and (dc) ensure that child care fee subsidies are included in the definition of personal assistance for the purposes of data matching.

### ***Fringe Benefits Tax Assessment Act 1986***

- Item 11** Subsection 47(8) of this Act provides that residual benefits provided by an employer to enable employees' children to obtain priority of access to specified kinds of child care services are exempt from fringe benefits tax. Item 11 amends paragraph 47(8)(a) to also include a centre based long day care service within the meaning of the *Child Care Payments Act 1997*. This is purely a consequential amendment as a result of the restructuring of child care payment provisions and does not represent an expansion of the exemption of residual benefits in respect of child care.

### ***Health Insurance Commission Act 1973***

- Items 12-16** Sections of this Act which allocate responsibility for administration of the Childcare Rebate Act 1993 to the Commission are repealed.

### ***Income Tax Assessment Act 1936***

- Item 17** Item 17 amends paragraph 16(4)(fa) of this Act to reflect the transfer of administrative responsibility for the registration of child care rebate services from the Health Insurance Commission to the Department of Health and Family Services. Subsection 16(4) provides for certain persons being authorised to receive information from the Commissioner of Taxation, or a person authorised by him, for certain specific purposes.
- Item 18** Item 18 amends the definition of "separate net income" in subsection 159J(6) of this Act to ensure that neither child care assistance nor the child care rebate are included in calculations of a taxpayer's dependant's "separate net income" for the purposes of certain tax rebates in respect of the taxpayer's dependants.

### ***Income Tax Assessment Act 1997***

- Item 19** Item 19 provides that child care assistance and child care rebate are exempt from income tax.

- Item 20** Item 20 inserts a new subdivision (52-D) listing the payments under the *Child Care Payments Act 1997* that are exempt from income tax. The relevant payments are child care assistance and child care rebate.

***Income Tax (Transitional Provisions) Act 1997***

- Item 21** Item 21 provides that the exemption of child care assistance and child care rebate from income tax applies to assessments for the 1997-98 income year and later income years.

***Social Security Act 1991***

- Item 22** This item amends section 3 of the *Social Security Act 1991* to include child care payment decisions in the index to the Act.

**Items 23, 24, 28 - 40, 42 and 43**

This item amends subsections 23 (1), 1260(1), 1261(1), 1261(1A), 1263(1), 1263(2), 1264(2)(b), 1269(1), 1269(1)(note), 1273(2)(b) and (c), 1274(2)(a)(i), 1274(2)(a), 1279(1)(a), 1279(5)(aa), 1336(2), 1336(3)(c) and (d) and subsections 1336(5) and (7), and section 1337 of the *Social Security Act 1991* to include decisions about child care payments in the appeal mechanisms of the Social Security Appeals Tribunal (Chapter 9 of the *Child Care Payments Act 1997* refers).

- Item 25** This item amends the definition of Secretary so that, decisions other than those mentioned in subparagraph 23(1)(i), are reviewable by the Secretary of the Health Department.

**Items 26 and 27**

These items insert a new subparagraph 1228(2)(cd) and amend subparagraph 1234A(1)(a) allow overpayments of child care subsidies to be recovered from other payments made under the *Social Security Act 1991*.

- Item 41** This item amends subsection 1312(1), subparagraphs 1312(1A)(d) and 1312A(b)(i), note 2 to section 1312A, paragraph 1312B(b), section 1313, paragraph 1314(1)(a) and subsection 1318(3) to include the *Child Care Payments Act 1997* in the provisions relating to confidentiality (Part 2 of Chapter 7 of the *Child Care Payments Act 1997* refers).











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