

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

CHILDCARE REBATE BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Family
Services, Senator the Honourable Rosemary Crowley)



CHILDCARE REBATE BILL 1993

GENERAL OUTLINE

The purpose of the Childcare Rebate Bill 1993 is to provide for the payment of rebates for expenses incurred for work-related child care as announced by the Prime Minister on 9 February 1993.

This Bill is intended to establish the rebate; set conditions for eligibility; set conditions and procedures for claiming the rebate; set the amounts which may be paid via the rebate; and deal with the administration of the rebate by the Health Insurance Commission.

The Childcare Rebate recognises that the cost of child care is a legitimate expense for parents earning an income. The rebate will significantly improve the affordability of child care for working parents.

From 1 July 1994, parents using child care while in employment, training, studying or looking for work will be able to claim a rebate for part of their child care expenses.

The rebate will be paid for any work-related child care expenses for children aged up to and including twelve years. Child care expenses incurred in formal child care (eg long day care centres, Family Day Care, Outside School Hours Care) and in informal care arrangements (eg relatives, nannies) will be eligible for the rebate.

Child care expenses incurred in informal care have been included in recognition of the fact that almost two thirds of working families use informal care, either by choice or because formal care is not available.

The rebate will not be income tested. This means that the cash rebate will also provide assistance to working families not benefiting from targeted Child Care Fee Relief.

Families will be able to claim the rebate by mail or in person at one of 240 Medicare offices around Australia. To enable the Health Insurance Commission to begin preparations for the rebate, the Health Insurance Commission Amendment Act 1993 was passed during the Autumn sittings earlier this year.

FINANCIAL IMPACT STATEMENT

The Childcare Rebate is estimated to cost \$151.8m in 1994/95.

The administrative costs of implementing the scheme is \$5.94m in 1993/94 and \$14.1m in 1994/95.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This clause is a formal provision which specifies the short title of the Act as the Childcare Rebate Act 1993.

Clause 2 - Commencement

This clause provides that the Act will commence on a date to be proclaimed, and asserts that if the Act does not commence within the period of 6 months beginning on the day on which this Act receives Royal Assent, it commences on the first day after the end of that period.

Clause 3 - Outline of this Act

This clause outlines the contents of the Act.

Clause 4 - Definitions

This clause provides definitions for terms used in this Act unless a statement to the contrary is made.

Clause 5 - Definition of family

This clause specifies that for the purposes of this Act, a family means a group of people that is made up of a person and any dependent children of the person and the partner (if any) of the person and any dependent children of the partner. It also provides definitions of partners, directions on forming an opinion about the relationship between two people and states that a person can only be treated as a member of more than one family if the person is a child, cared for and controlled by more than one family.

Clause 6 - Act to bind the Crown

This clause provides that the Act will bind the Crown in each of its capacities.

Clause 7 - Extension to external Territories

This clause asserts that this Act extends to the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

**PART 2 - ELIGIBILITY OF FAMILIES TO REGISTER FOR THE CHILDCARE
REBATE**

Clause 8 - Outline of this Part

This clause provides an outline of this Part of the Act, listing each Division in order.

Division 1 - Parental responsibility

Clause 9 - Parental responsibility requirements for registration

This clause provides that a family is not eligible for registration unless the family includes at least one person who is a parent within the meaning of clause 10, and at least one other person who is a dependent child of that parent within the meaning of clause 11.

Clause 10 - Definition of parent

This clause defines the term parent for the purpose of establishing eligibility to register for the childcare rebate.

Clause 11 - Definition of dependent child

This clause defines the term dependent child for the purpose of establishing eligibility to register for the childcare rebate.

Clause 12 - Dependent children may have more than one family

This clause provides that a child is not prevented from being considered as a dependent of more than one family.

Division 2 - Residency

Clause 13 - Residency requirements for registration

This clause specifies that a family is not eligible to register for the childcare rebate unless one of the parents is an Australian resident or is taken to be an Australian resident.

Clause 14 - Australian Residents

This clause defines which people can be considered as Australian residents and how residency status is determined.

**Clause 15 - Certain overseas students are to be treated as
Australian residents**

This clause provides that a person who is not an Australian resident within the meaning of clause 14 but is undertaking a course of study in Australia and is receiving Commonwealth

financial assistance for that study is to be considered an Australian resident for the purposes of this Act.

Clause 16- Other people may be treated as Australian residents

This clause provides that the Commission can determine in writing, on the grounds of hardship or because of the special circumstances of the particular case, that a person who is not an Australian resident within the meaning of clause 14 be taken as an Australian resident. It further provides that a person may apply in writing to the Commission for such a determination.

Clause 17 - Guidelines for making determinations

This clause provides that the Minister may issue guidelines about making determinations under clause 16, which the Commission must comply with. It further provides that such guidelines are to be treated as disallowable instruments for the purpose of section 46A of the Acts Interpretation Act 1901.

Division 3 - Registration of families

Clause 18 - Applying for registration

This clause provides that a person may apply in writing, in the approved form, to the Commission to have their family registered for the Childcare Rebate and that the family may be required, if the Minister's determinations so require, to provide a statement or evidence of the kind specified in the determinations. The Minister's determinations are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

Clause 19 - Registration by the Commission

This clause provides that a person's family must be registered if and only if the Commission is satisfied that the family meets the requirements of Division 1 and 2 and must then issue the family with a Family Registration Number and notify the applicant in writing of the number. This clause also specifies the circumstances under which the Commission must reject an application.

Clause 20 - Variation of registration

This clause provides that a person may apply to the Commission, to have the family registration varied to add a person who has become a member of the family or delete the name of a person who ceases to be a member of the family. The application may be made by the person involved or any member of the family.

Clause 21 - Variation of registration without application

This clause provides that if the Commission is satisfied that a person is no longer a member of a family and the family still meets the requirements of Division 1 and 2 then the Commission must vary the registration accordingly.

Clause 22 - Cancellation of registration

This clause specifies the circumstances under which the Commission must or may cancel a family's registration.

Clause 23 - Procedure for variation or cancellation

This clause specifies the process the Commission must follow if it intends to vary or cancel a family's registration and that any written submission made by the family regarding their registration must be taken into account by the Commission in making its decision.

Clause 24 - Automatic variation or cancellation of registration as children turn 13

This clause states the procedure the Commission must follow in relation to a family's registration when a dependent child turns 13.

PART 3 - CLAIMING THE CHILDCARE REBATE

Clause 25 - Outline of this Part

This clause provides an outline of this Part of the Act, listing each Division in order.

Division 1 - Child Care

Clause 26 - Child care requirements for the rebate

This clause details the requirements of child care that are needed for a family to be eligible to claim the rebate.

Clause 27 - Definition of child care

This clause provides a definition of what constitutes child care for the purposes of the rebate. For the purposes of paragraph 1 (d), the Minister is empowered to make certain determinations. These determinations are disallowable instruments for the purpose of section 46A of the Acts Interpretation Act 1901.

Division 2 - Work, training or study commitments

Clause 28 - Work, training or study requirements for the rebate

This clause provides that a family is not eligible for the Childcare Rebate, in respect of a particular period, unless during the whole of that period, each parental member of the family is a person who has recognised work or work-related commitments (within the meaning of clause 29), or recognised training commitments (within the meaning of clause 30) or recognised study commitments (within the meaning of clause 31).

Clause 29 - Recognised work or work related commitments

This clause sets out the criteria by which a person is considered to have work or work related commitments, including receipt of a carer pension or domiciliary nursing care benefit or registration with the Commonwealth Employment Service in an allowance category as being unemployed.

Clause 30 - Recognised training commitments

This clause sets out the criteria by which a person is considered to have a training commitment for the purpose of establishing eligibility for the Childcare Rebate.

Clause 31 - Recognised study commitments

This clause sets out the criteria by which a person is considered to have a study commitment for the purpose of establishing eligibility for the Childcare Rebate.

Division 3 - Claims

Clause 32 - Claims for payment of the rebate

This clause provides that a parental member of a registered family may lodge a claim with the Commission for the Childcare Rebate in respect of amounts paid to registered carers for providing child care to dependent children who are members of the family. The claim may relate to expenses incurred for a period of one or more weeks, but must not relate to child care in respect of which the Childcare Rebate is not payable under clause 36. This claim must be in writing, in the approved form.

Clause 33 - Information etc. to be provided in claims

This clause details information which must be contained in claims for the Childcare Rebate.

Clause 34 - Receipts

This clause specifies the details required by the registered carer when producing receipts for a Childcare Rebate claim.

PART 4 - PAYMENT OF THE CHILDCARE REBATE

Division 1 - Determining whether the rebate is payable

Clause 35 - Claims in respect of which the rebate is payable

This clause specifies that a rebate is payable in respect of a claim if the claimant and each child in the claim are in the same registered family, the claim complies with clause 33, and the information within that claim is correct.

Clause 36 - Claims in respect of which the rebate is not payable

This clause states that the Childcare Rebate is not payable if the claim relates to care that has not been provided, if the claim is more than two years old or if the claim relates to the carer's claim for his/her care of his/her dependent children.

Clause 37 - Child care provided before 1 July 1994

This clause provides that the Childcare Rebate will not be paid in respect of care provided before 1 July 1994.

Clause 38 - Children who are members of more than one family

This clause provides that claims for the Childcare Rebate may be made for a child who is a member of more than one family by more than one family, providing the claims do not relate to provision of child care to the same child during the same hours on the same day.

Clause 39 - Paying the Rebate

This clause states that if the rebate is payable, the Managing Director must, on behalf of the Commonwealth, pay the claimant the amount calculated under Division 2 in a way to be determined by the Managing Director.

Division 2 - The amount of the rebate

Subdivision A - General

Clause 40 - Overall calculation of the amount payable

This clause provides for a claim to be payable in one sum even though the Commission works out the amounts payable on a week by week basis.

Subdivision B - Working out the weekly child care expenditure

Clause 41 - Weekly child care expenditure

This clause sets out formulae enabling a claimant's entitlement for care to be established.

Clause 42 - Expenditure covered by other claims

This clause states that the weekly child care expenditure worked out in respect of the claim is increased by the amounts of previous claims for care provided during the same week by any other family member of the same family.

Subdivision C - Working out the amount of the rebate for a week

Clause 43 - The minimum weekly threshold

This clause provides that payments are unable to be made to a claimant if the claimant's weekly child care expenditure does not exceed the minimum weekly threshold.

This clause also defines 'minimum weekly threshold'.

Clause 44 - The maximum claimable amounts

This clause defines the term maximum claimable amount with regard to one or more children and defines the term fee relief ceiling.

Clause 45 - Claims up to the maximum claimable amount

This clause sets out the formula for establishing the amount claimable if expenditure exceeds minimum weekly threshold and is less than maximum claimable amount and how previous payments/claims relating to child care may reduce the amount of Childcare Rebate to be paid.

Clause 46 - Claims equal to or exceeding the maximum claimable amount

This clause sets out the formula for establishing the amount of Childcare Rebate payable if the claim is equal to or exceeds the maximum claimable amount for the week and how previous payments/claims relating to child care may reduce the amount of Childcare Rebate to be paid.

PART 5 - ADMINISTRATION

Division 1 - General

Clause 47 - General administration of this Act

This clause provides that the Health Insurance Commission has general administration of the Act.

Clause 48 - Additional functions of the Commission

This clause provides that the Health Insurance Commission is to have such additional functions conferred on it by this Act in addition to the Commission's functions under the Health Insurance Commission Act 1973.

Division 2 - Registered carers

Clause 49 - Registration of carers

This clause provides that a person or body may apply in the approved form to the Commission for registration as a carer. The applicant must satisfy the Commission that they are eligible for registration. The Commission will supply the applicant with a Child Care Provider Number and notify the carer, in writing, of the number and the day on which the registration takes effect.

Clause 50 - Eligibility for registration

This clause sets out the requirements for an applicant to become eligible as a carer under the Childcare Rebate scheme and provides that an applicant will not be eligible if they do not have a tax file number (unless the Commission is satisfied that the applicant is a body whose income is exempt from income tax). This section does not authorise the Commission to require or request an applicant to quote the applicant's tax file number, or to seek or obtain, in any other way, an applicant's tax file number, or to record an applicant's tax file number. Further, it states that the Commission may ask the Commissioner of Taxation to provide information on whether an applicant or a registered carer has a tax file number, and that the Care Provider Number will not be provided to the Commissioner of Taxation.

Clause 51 - Cancellation of registration

This clause specifies the circumstances under which the Commission must or may cancel a carer's registration.

Clause 52 - Procedure for cancellation

This clause specifies the process the Commission must follow if it is intended to cancel a carer's registration and that any written submission made by the carer regarding their registration must be taken into account by the Commission in making a decision.

Division 3 - Review of decisions

Clause 53 - Decisions that may be subject to reconsideration by the Commission

This clause lists the decisions that can be made by the Commission which are open to an application for reconsideration.

Clause 54 - Deadline for reaching decisions

This clause provides that the Commission must make a decision within the relevant period after it receives the application and/or give the applicant a written request for further information within the 28 day period and then make a decision, within 28 days, after receiving further information. If the Commission has not responded to the applicant in writing, within the relevant period the Commission is to be taken to have refused the application. In this clause "application" includes a claim.

Clause 55 - Applications for reconsideration of decisions

This clause provides that a person affected by a reviewable decision who is dissatisfied with the decision may apply to have the Commission reconsider the decision. This clause also sets out the period within which the written application must be made and that an approved form of application may provide for verification by statutory declaration of statements in applications.

Clause 56 - Reconsideration by the Commission

This clause provides that upon receiving an application for reconsideration, the Commission must reconsider the decision, and affirm, vary or revoke it. The clause further sets out the effect of the Commissions' reconsideration and further provides that the Commission is to give to the applicant a notice of the decision and the reasons for that decision.

Clause 57 - Deadline for reconsiderations

This clause provides a period of 28 days after receiving an application to reconsider a decision, in which the Commission must make its decision and inform the applicant. This clause also provides that the original decision is confirmed if the applicant is not notified of the decision from the reconsideration before the deadline expires.

Clause 58 - Review by the AAT

This clause provides that applications may be made to the AAT for a review of a reviewable decision if the Commission has confirmed or varied the decision under clause 56.

Division 4 - False or misleading statements

Clause 59 - References to making statements

This clause specifies that, within this Division, "making a statement" may include issuing or presenting a document.

Clause 60 - Making false or misleading statements

This clause prohibits the making (or authorising the making) of false or misleading statements capable of being used in connection with a claim or an application under this Act. It also specifies actions that would constitute an offence and the penalty that applies.

It is a defence if a person charged with an offence under this section relating to a statement made by that person if the person did not know, and could not reasonably be expected to have known, that the statement was false or misleading and capable of being used in connection with a claim or an application under this Act.

Clause 61 - Knowingly making false or misleading statements

This clause sets out the penalty for knowingly making false or misleading statements.

Clause 62 - Recovery of amounts paid because of false statements

This clause provides that excess rebate payments are a debt due to the Commonwealth if the over payments were due to false or misleading statements. This clause also provides that interest may be payable as part of the debt to be recovered.

Clause 63 - Offsetting overpayments against future payments of the rebate

This clause provides that, if the claimant agrees, the Managing Director of the Commission may offset unrecovered over payments of the rebate to that person by reducing future payments of the rebate by a corresponding amount.

PART 6 - MISCELLANEOUS

Clause 64 - Appropriation

This clause specifies that payments of the Childcare Rebate under this Act must be made out of a special appropriation.

Clause 65 - Regulations

This clause provides that the Governor-General may make regulations prescribing matters that are required or permitted by the Act, or that are necessary or convenient for carrying out or giving effect to this Act.

