



# **Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997**

**No. 196, 1997**





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**An Act to make consequential amendments, and to  
provide for transitional matters, related to the  
enactment of the *Child Care Payments Act 1997*,  
and for related purposes**



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**An Act to make consequential amendments, and to provide for transitional matters, related to the enactment of the *Child Care Payments Act 1997*, and for related purposes**

*[Assented to 8 December 1997]*

The Parliament of Australia enacts:

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*Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997*      No.  
196, 1997      1

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997*.

### 2 Commencement

- (1) This Act, other than Schedule 1, commences on the commencement of the *Child Care Payments Act 1997*. Schedule 1 commences as provided in subsections (2) to (5).
- (2) Subject to subsections (3) to (5), Schedule 1 commences on the day that is the payment commencement day for the purposes of the *Child Care Payments Act 1997*.
- (3) Items 9 and 10 of Schedule 1 commence on the payment commencement day only if, before that day, subparagraphs (c)(xxivd) and (xxive) of the definition of **personal assistance** in subsection 3(1) of the *Data-matching Program (Assistance and Tax) Act 1990*, as in force on 25 August 1997, have not been repealed by another Act.
- (4) Item 12 of Schedule 1 commences on the payment commencement day only if item 39 of Schedule 1 to the *Health Insurance Commission (Reform and Separation of Functions) Act 1997* has not commenced before that day.
- (5) Items 11, 17, 18, 19, 20, 21 and 41 of Schedule 1 commence on the commencement of the *Child Care Payments Act 1997*.

### 3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the



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Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Part 2—Transitional matters**

### **4 Definitions**

Terms used in this Part have the same meanings as they have in the *Child Care Payments Act 1997*, unless the contrary intention appears.

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

- (1) The Acts specified in Schedule 1 continue to apply, in respect of child care provided before the payment commencement day, as if the amendments and repeals set out in that Schedule had not been made.
- (2) The *Childcare Rebate Act 1993*, as it continues to apply under subsection (1), has effect as if section 36 of that Act also prevented payment of childcare rebate in respect of any claim lodged more than 21 weeks after the payment commencement day.

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

- (1) If, immediately before the payment commencement day, a funding agreement for childcare assistance purposes was in force between the Commonwealth and a service or centre, or the operator of a service or centre, providing child care, the service or centre is an ***approved service*** for the purpose of this section.
- (2) The Secretary may, in writing, determine that a specified approved service, or each approved service in a specified class of approved services, is, during the period specified in the determination, taken to be a child care service that has been approved as a service of a

specified kind under Part 1 of Chapter 6 of the *Child Care Payments Act 1997*.

- (3) A determination has effect, in relation to the specified period and to each approved service to which it applies, as if it were an approval of the service, as a service of the specified kind, properly made under Part 1 of Chapter 6 of the *Child Care Payments Act 1997*.
- (4) For the purposes of applying that Part of that Act to a determination as it has effect in relation to an approved service:
  - (a) references in that Part to cancelling or suspending a service's approval apply as if they were references to cancelling or suspending the determination, so far as it applies to the service; and
  - (b) obligations imposed by the funding agreement, as in force immediately before the payment commencement day, on or in relation to the service or its operator have effect as if they were conditions of the service's approval; and
  - (c) the provisions of that Part relating to conditions of approval, imposition of other conditions, and consequences of breach of conditions, apply in the same way as they apply to services that are actually approved.
- (5) A determination cannot be made more than 6 months after the payment commencement day.
- (6) The following rules apply in relation to the period specified in a determination:
  - (a) it cannot be a period of more than 12 months;
  - (b) it must start on the payment commencement day or a later specified day;
  - (c) subject to paragraph (b), it may start on, before or after the day on which the determination is made.

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

- (1) If, immediately before the payment commencement day, the registration of a person or body under section 49 of the *Childcare Rebate Act 1993* was in force, the person or body is a **registered carer** for the purposes of this section.
- (2) The Secretary may, in writing, determine that a child care service provided by a specified registered carer, or by each registered carer in a specified class of registered carers, is taken to be a child care service that has been registered as a child care rebate service under Part 2 of Chapter 6 of the *Child Care Payments Act 1997*.
- (3) A determination has effect, in relation to each child care service to which it applies, as if it were a registration of the service properly made under Part 2 of Chapter 6 of the *Child Care Payments Act 1997* on the payment commencement day.
- (4) For the purposes of applying that Part of that Act to a determination as it has effect in relation to a child care service:
  - (a) references in that Part to cancelling or suspending a service's registration apply as if they were references to cancelling or suspending the determination, so far as it applies to the service; and
  - (b) the provisions of that Part relating to conditions of registration, imposition of other conditions, and consequences of breach of conditions, apply in the same way as they apply to services that are actually registered.
- (5) A determination cannot be made more than 6 months after the payment commencement day.

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

- (1) The Secretary may, in writing, allocate new child care assistance hours to a centre based long day care service, despite the
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requirements of sections 200, 201 and 202 of the *Child Care Payments Act 1997*, if the Secretary thinks it appropriate to do so having regard to actions taken, before 13 May 1997, for the purpose of:

- (a) building a new child care centre; or
  - (b) extending the facilities (including buildings) of an existing child care centre so that it can provide care for an increased number of children.
- (2) An allocation of hours under subsection (1):
- (a) may only be made if:
    - (i) in the case of building a new child care centre—the centre is completed, and is providing child care, on or before 30 September 1998; or
    - (ii) in the case of extending the facilities of an existing child care centre—the extension is completed, and the centre is providing care for an increased number of children, on or before 30 September 1998; and
  - (b) must be made in accordance with any guidelines in force under subsection (6).
- (3) Hours allocated by the Secretary under subsection (1) must be taken into account when applying the limits specified in section 199 of the *Child Care Payments Act 1997*.
- (4) If the Secretary allocates hours under subsection (1) before the Minister makes a determination under section 200 of the *Child Care Payments Act 1997*, section 200 of that Act has effect, in relation to the calendar year for which the allocation is made, as if the reference to the total number of 1,008,000 hours referred to in section 200 of that Act were instead a reference to that total number, less the number of hours allocated under subsection (1) of this section (when expressed as a fortnightly rate).
- (5) If the Secretary allocates hours under subsection (1) after the Minister makes a determination under section 200 of the *Child Care Payments Act 1997*, the Minister is to make such amendment

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(if any) to the determination, as it relates to the calendar year for which the allocation is made, as the Minister thinks is appropriate having regard to the allocation.

- (6) The Minister may, in writing, determine guidelines for the purposes of subsection (2).
- (7) A determination under subsection (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

- (1) This section applies if:
  - (a) before the payment commencement day, care for a child was being provided by a qualifying care service (see subsection (2)), or 2 or more qualifying care services; and
  - (b) after that day, that service, or one or more of those services, continues to provide care for the child; and
  - (c) the child is a school child on the day before the payment commencement day; and
  - (d) a person makes a claim or claims for child care assistance in respect of some or all of the care that so continues.

- (2) For the purposes of this section:

***qualifying care service*** means:

- (a) in relation to child care provided on or after the payment commencement day—a centre based long day care service or a family day care service; and
- (b) in relation to child care provided before the payment commencement day—a child care service that, on the payment commencement day, is or was a centre based long day care service or a family day care service.

***transitional period*** means the period:

- (a) that starts on the payment commencement day; and

- (b) that ends on the earlier of:
  - (i) the day on which the service, or all of the services, referred to in paragraph (1)(b) have ceased to provide care for the child; and
  - (ii) the day on which the child ceases to be a school child.
- (3) For the purposes of this section, the issue of whether care was being provided for the child before the payment commencement day by a qualifying care service, and the issue of whether, and for how long, that care continues to be provided after that day, is to be determined in accordance with guidelines in force under subsection (6).
- (4) In applying point E1 of Schedule 1 to the *Child Care Payments Act 1997* to care provided for the child during the transitional period by a qualifying care service, that care is taken to be care provided for a non-school child.
- (5) In applying point F7 of Schedule 1 to the *Child Care Payments Act 1997* to:
  - (a) care provided for the child by a qualifying care service during the transitional period; and
  - (b) care provided for any other child who is in a qualifying session of care in relation to the person referred to in paragraph (1)(d), being care provided for that child:
    - (i) by a qualifying care service; and
    - (ii) during the transitional period; and
    - (iii) while that child would otherwise be a school child;that care is taken to be care provided for a non-school child.
- (6) The Minister may, in writing, determine guidelines relating to how the issues mentioned in subsection (3) are to be determined.
- (7) A determination under subsection (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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**10 Power to continue making payments if special childcare assistance was being paid**

- (1) If, immediately before the payment commencement day, a payment known as special childcare assistance was being paid in respect of a child, the Secretary may make a determination in accordance with subsection (2) or (3).
- (2) The Secretary may make a determination under subpoint B4(1) of Schedule 1 to the *Child Care Payments Act 1997* in relation to a person if the child is a dependent child of the person or the person's partner. Paragraphs (a) and (b) of that subpoint do not apply to the making of the determination.
- (3) The Secretary may determine under section 171 of the *Child Care Payments Act 1997* that ECA is payable to the operator of a child care assistance service that provides care for the child. The determination may be made despite the fact that there has been no application for the payment and despite the provisions of Chapter 5 of that Act about when ECA is not payable.
- (4) A determination in accordance with subsection (2) or (3):
  - (a) may be made before, on, or within 6 months after, the payment commencement day; and
  - (b) has effect in respect of the period of 4 weeks starting on the payment commencement day (even if it was not made until after that day).
- (5) In applying the limit imposed by subpoint B4(3) of Schedule 1 to the *Child Care Payments Act 1997*, the period in respect of which a determination in accordance with subsection (2) has effect is not to be counted.
- (6) In applying the limit imposed by section 172 of the *Child Care Payments Act 1997*, the period in respect of which a determination in accordance with subsection (3) has effect is not to be counted.



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

- (1) The Health Insurance Commission may provide childcare rebate information to:
  - (a) the Secretary; or
  - (b) the Chief Executive Officer of the Commonwealth Services Delivery Agency;for the purpose of the administration of the *Child Care Payments Act 1997*.
- (2) In this section:

*childcare rebate information* means information held in the records of the Health Insurance 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***

- (1) The regulations may deal with other matters relating to the transition from the old child care payments scheme to the scheme provided for in the *Child Care Payments Act 1997*.
- (2) The *old child care payments scheme* consists of:
  - (a) fee relief under section 12A of the *Child Care Act 1972* as in force immediately before the payment commencement day; and
  - (b) childcare rebate under the *Childcare Rebate Act 1993* as in force immediately before the payment commencement day; and
  - (c) the other administrative schemes administered by the Department immediately before the payment commencement day that provided for various payments, known generally as childcare assistance.

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- (3) The regulations may also deal with other transitional matters relating to the amendments made by the Schedules to this Act.
- (4) The Governor-General may make regulations for the purposes of this section.

**13 Delegation by Secretary**

The Secretary may by signed instrument delegate to an officer all or any of the Secretary's powers under this Part.

## Schedule 1—Consequential amendments of other legislation

### *Child Care Act 1972*

**1 Subsection 4(1) (definition of *approved child care service*)**

Repeal the definition.

**2 Subsection 4(1) (definition of *fee relief beneficiary*)**

Repeal the definition.

**3 Subsection 4(1) (definition of *partner*)**

Repeal the definition

**4 Subsection 4(1) (definition of *Social Security Secretary*)**

Repeal the definition.

**5 Subsection 4B(1)**

Omit “(other than section 12A)” (wherever occurring).

**6 Subsection 4B(2)**

Repeal the subsection.

**7 Sections 12A, 12B, 12C, 12D and 12E**

Repeal the sections.

### *Childcare Rebate Act 1993*

**8 The whole of the Act**

Repeal the Act.

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

**9 Subsection 3(1) (subparagraphs (c)(xxivd) and (xxive) of the definition of *personal assistance*)**

Repeal the subparagraphs.

**10 Subsection 3(1) (after paragraph (da) of the definition of *personal assistance*)**

Insert:

or (db) a payment of fee relief under the *Child Care Act 1972*, or any other payment known as Childcare assistance (fee relief) dealt with by the Department of Social Security or the Services Delivery Agency; or

(dc) child care assistance or child care rebate under the *Child Care Payments Act 1997*;

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

**11 After subparagraph 47(8)(a)(i)**

Insert:

(ia) a centre based long day care service within the meaning of the *Child Care Payments Act 1997*; or

***Health Insurance Commission Act 1973***

**12 Subsection 3(1) (paragraph (d) of the definition of *recognised class of functions*)**

Repeal the paragraph.

**13 Part IIAA**

Repeal the Part.

**14 Section 33**

Omit “or the child care cash rebate functions”.

Note: The heading to section 33 of the *Health Insurance Commission Act 1973* is replaced by the heading “**Money to be paid to the Commission for the purposes of certain functions**”.

**15 Section 34AAA**

Repeal the section.

**16 Subsection 36(6D)**

Repeal the subsection.

***Income Tax Assessment Act 1936***

**17 Paragraph 16(4)(fa)**

Repeal the paragraph, substitute:

(fa) the Secretary of the Department of Health and Family Services for the purpose of the administration of the *Child Care Payments Act 1997*;

**18 Subsection 159J(6) (after paragraph (aaa) of the definition of separate net income)**

Insert:

(aab) does not include child care assistance or child care rebate paid under the *Child Care Payments Act 1997*; and

***Income Tax Assessment Act 1997***

**19 Section 11-15 (table item headed “social security or like payments”)**

Before the entry relating to disability services payment, insert:

child care assistance .....	52-120
child care rebate .....	52-120

**20 After Subdivision 52-C**

Insert:

**Subdivision 52-D—Exempt payments under the Child Care Payments Act 1997**

**52-120 Child care assistance and child care rebate are exempt**

A payment of child care assistance or child care rebate made to you under the *Child Care Payments Act 1997* is exempt from income tax.

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

**21 After section 52-1**

Insert:

**52-5 Application of Subdivision 52-D of the *Income Tax Assessment Act 1997***

Subdivision 52-D of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.

***Social Security Act 1991***

**22 Section 3 (index)**

Insert the following entry in its appropriate alphabetical position, determined on a letter-by-letter basis:

child care payment decision 23(1)

**23 Section 22 (at the end of the definition of *review*)**

Add:

; or (c) by the SSAT under Part 2 of Chapter 9 of the *Child Care Payments Act 1997*.

**24 Subsection 23(1)**

Insert:

*child care payment decision* means a decision of an officer under the *Child Care Payments Act 1997*.

**25 Subsection 23(1) (after subparagraph (ii) of the definition of Secretary)**

Insert:

- (ia) in the review of a decision under the *Child Care Payments Act 1997*, other than a decision mentioned in subparagraph (i)—the Secretary of the Health Department; or

**26 After paragraph 1228(2)(ca)**

Insert:

- (cb) a child care payment under the *Child Care Payments Act 1997*; or

**27 Paragraph 1234A(1)(a)**

After “*Student and Youth Assistance Act 1973*,” insert “the *Child Care Payments Act 1997*,”.

**28 Subsection 1260(1)**

After “*Student and Youth Assistance Act 1973*,” insert “or the *Child Care Payments Act 1997*”.

**29 Subsection 1261(1)**

Omit “Part 6.2 or under Division 2 of Part 9 of the *Student and Youth Assistance Act 1973*”, substitute “Part 6.2 of this Act, under Division 2 of Part 9 of the *Student and Youth Assistance Act 1973* or under Part 2 of Chapter 9 of the *Child Care Payments Act 1997*”.

**30 After subsection 1261(1A)**

Insert:

- (1B) If an application under Part 2 of Chapter 9 of the *Child Care Payments Act 1997* is sent or delivered to an office of the Health Department, the Secretary must send the application to the National Convenor as soon as practicable, and in any case not later

than 7 days after the application is received at the office of the Health Department.

Note: In this subsection *Secretary* has the meaning given in section 23.

**31 Subsection 1263(1)**

After “*Student and Youth Assistance Act 1973*,” insert “Part 2 of Chapter 9 of the *Child Care Payments Act 1997*,”.

**32 Subsection 1263(2)**

Omit “section 1251 or under section 314 of the *Student and Youth Assistance Act 1973*”, substitute “section 1251 of this Act, under section 314 of the *Student and Youth Assistance Act 1973* or under section 257 of the *Child Care Payments Act 1997*”.

**33 Paragraph 1264(2)(b)**

Omit “section 1260 or under section 322 of the *Student and Youth Assistance Act 1973*”, substitute “section 1260 of this Act, under section 322 of the *Student and Youth Assistance Act 1973* or under section 262 of the *Child Care Payments Act 1997*”.

**34 Subsection 1269(1)**

Omit “or section 343 of the *Student and Youth Assistance Act 1973*”, substitute “, section 343 of the *Student and Youth Assistance Act 1973* or section 221 of the *Child Care Payments Act 1997*”.

Note: The headings to sections 1268 and 1269 of the *Social Security Act 1991* are altered by omitting “**or Employment Secretary**” and substituting “, **Employment Secretary or Health Secretary**”.

**35 Subsection 1269(1) (note)**

Omit “section 1304 of this Act or section 343 of the *Student and Youth Assistance Act 1973*”, substitute “these provisions”.

**36 Paragraphs 1273(2)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) the SSAT is satisfied that the adjournment would be contrary to the objective laid down by section 1246 of this Act,



section 310 of the *Student and Youth Assistance Act 1973* or section 255 of the *Child Care Payments Act 1997*; or

- (c) a declaration under section 1241 or 1251 of this Act, section 305 or 314 of the *Student and Youth Assistance Act 1975*, or section 250 or 257 of the *Child Care Payments Act 1997*, is in force in relation to the decision.

**37 Subparagraph 1274(2)(a)(i)**

After “student assistance benefit decision”, insert “or a child care payment decision”.

**38 At the end of paragraph 1274(2)(a)**

Add:

- (iii) in the withdrawal of an application for the review of a child care payment decision—to an office of the SSAT or an office of the Health Department; or

**39 Paragraph 1279(1)(a)**

After “the *Student and Youth Assistance Act 1973*,”, insert “the *Child Care Payments Act 1997*,”.

**40 After paragraph 1279(5)(aa)**

Insert:

- (aaa) the provisions of the *Child Care Payments Act 1997* or the regulations made under that Act; or

**41 Subsection 1312(1), paragraph 1312(1A)(d), subparagraph 1312A(b)(i), note 2 to section 1312A, paragraph 1312B(b), section 1313, paragraph 1314(1)(a) and subsection 1318(3)**

After “*Student and Youth Assistance Act 1973*” (wherever occurring), insert “, the *Child Care Payments Act 1997*”.

**42 Subsection 1336(2), paragraphs 1336(3)(c) and (d) and subsections 1336(5) and (7)**

Omit “or the *Student and Youth Assistance Act 1973*”, substitute “, the *Student and Youth Assistance Act 1973* or the *Child Care Payments Act 1997*”.

**43 Section 1337**

Omit “or the *Student and Youth Assistance Act 1973*”, substitute “, the *Student and Youth Assistance Act 1973*, the *Child Care Payments Act 1997*”.

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[*Minister's second reading speech made in the House of Representatives on 28 August 1997 Senate on 29 October 1997*]

(122/97)

