



## Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Bill 2008

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## Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Bill 2008

**Date introduced:** 29 May 2008

**House:** House of Representatives

**Portfolio:** Education, Employment and Workplace Relations

**Commencement:** Schedule 1 items 1 to 63 commence on 7 July 2008. Schedule 2 and item 5 of Schedule 5 commence on 1 July 2008. Item 23 of Schedule 5 commences on 1 January 2009. The remainder of the Bill commences on the day the Act receives the Royal Assent.

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

The Bill includes amendments to implement the following 2008-09 Budget Measures:

- The percentage of out of pocket child care expenses claimable under the Child Care Tax Rebate (CCTR) is to increase from 30 to 50 per cent.
- The maximum amount that can be claimed for each child in care under the CCTR is to increase from \$4 354 to \$7 500 per annum.
- The CCTR is to be paid quarterly rather than annually.
- The minimum rate of Child Care Benefit (CCB) is to be removed so that a person's rate of CCB may reduce to zero.
- CCTR is to be available to those who claim CCB and receive a zero rate of CCB.

The Bill also includes amendments that provide for:

- Changes to debt recovery provisions for CCB and CCTR.
- The expansion of a civil penalties scheme for child care services.
- The expansion of entry powers for authorised officers undertaking on-site inspections of approved child care services.
- Other minor amendments relating to child care assistance

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## Background

### Basis of policy commitment

The changes to the CCTR that form the heart of this package of amendments have their origins in the child care policy announced by the ALP during the 2007 election campaign.<sup>1</sup> The abolition of the minimum rate of CCB was added in the 2008-09 Budget.

### Child Care Tax Rebate (CCTR)

The original model

During the 2004 election campaign the Howard Government announced, that it would introduce a 30 per cent CCTR for out-of-pocket child care costs.<sup>2</sup> The CCTR was designed to complement the already existing CCB, which was the main form of child care subsidy.<sup>3</sup>

The CCTR was available to families who were:

- in receipt of the CCB,
- used approved child care, and
- who met the CCB work/study/training test (or were otherwise eligible for up to 50 hours of CCB per week).

Families were able to claim 30 per cent of their out-of-pocket costs (that is, costs in excess of CCB payments received) for approved child care up to a maximum of \$4 000 per child per annum. This amount was indexed on an annual basis in line with movements in the Consumer Price Index. It is currently \$4 354.

Originally, out-of-pocket child care costs could be claimed at the end of the financial year after the costs were incurred. So costs during the first year of operation from 1 July 2004 for the 2004-05 year could not be claimed until the 2005-06 tax year. This delay was due to the need to establish out of pocket costs, after CCB entitlements had been finalised in October of each year by the Family Assistance Office.

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1. The Australian Labor Party, Labor's Affordable Child Care Plan, *Election 2007 Policy Document*, Canberra, 22 October 2007, pp. 6-7, [http://www.alp.org.au/download/102107\\_affordable\\_child\\_care\\_plan.pdf](http://www.alp.org.au/download/102107_affordable_child_care_plan.pdf)
  2. Out-of-pocket expenses are the total fees paid for child care expenses for approved care, less the amount of Child Care Benefit received.
  3. Thomas John, Greg McIntosh, Dale Daniels, Taxation Laws Amendment (2005 Measures No. 4) Bill 2005, *Bills Digest No. 22 2005-06*, Parliamentary Library, Canberra, 10 August 2005. at: <http://www.aph.gov.au/Library/pubs/bd/2005-06/06bd022.pdf>

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The other problem with the CCTR was that it was a non-refundable tax offset. It could only reduce a person's tax liability to zero. Once a person's basic income tax liability had been reduced to nil, the tax payer could not receive the excess as a refund. However the remaining rebate could be transferred to the taxpayer's spouse. Likewise, where the child care user didn't have enough income to have a tax liability, they didn't benefit from a tax rebate.

The 2007 improvements

The 18 month to two year delay between incurring costs and receiving the rebate was an obvious problem and was addressed in the 2007-08 Budget. The Government changed the CCTR into a direct payment administered by Centrelink. It became a tax rebate in name only and was paid at the end of the year in which the costs were incurred after the correct entitlement to CCB had been established. In 2007 claimants received two years worth of CCTR in one payment shortly before the 2007 election.

This change also meant that the CCTR could now be paid in full, regardless of the tax liability of the claimant.

2007 Election Commitments

The ALP included the increased rebate level and maximum payments in their 2007 election policy.<sup>4</sup>

Recognising the delivery problems of the CCTR as originally implemented, both sides of politics offered enhancements to the delivery of CCTR in the 2007 election campaign. The ALP promised to implement the change in this bill to quarterly payments, with this added promise:

New information systems enable out of pocket costs to be calculated faster and in office, a Rudd Labor Government will fast track the introduction of the new Child Care Management System with the goal of paying the 50 per cent rebate every fortnight.<sup>5</sup>

The Coalition policy promised that:

From April 2008, a re-elected Coalition Government will pay the 30 per cent Child Care Tax Rebate directly to child care services so that they can pass on this benefit to parents immediately, when they need it most. This will have the effect of cutting by

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4. The Australian Labor Party, *Labor's Affordable Child Care Plan*, op. cit.

5. *ibid.*

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30 per cent the amount parents have to pay upfront to their child care service each week.<sup>6</sup>

#### Objective of the CCTR changes

The Government rationale for the changes to the CCTR is provided in the Ministers' Budget press release:

The Government recognises that the early years are critical. As part of an ambitious reform agenda that will provide affordable and accessible quality child care and universal access to preschool, the increased CCTR is a substantial contribution to the Education Revolution.

The increase will reduce the burden of child care costs for parents, helping them get back into the workforce or further training. Greater workforce participation builds extra capacity in Australia's economy, helping to ease inflationary pressures.

Moving to more frequent, quarterly payments will help families meet their regular child care expenses, providing more assistance closer to the time that costs are incurred.

These changes to the rate and frequency of the CCTR are a key part of the Rudd Government's commitment to improving the affordability of child care.<sup>7</sup>

#### Reaction to the CCTR changes

The main issue arising in media coverage of the CCTR changes concerns the impact on fees charged by child care services. There are fears that child care fees will increase at a greater rate than usual now that families have greater capacity to pay due to the increased government subsidy provided by the CCTR.<sup>8</sup>

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6. The Liberal Party, Election Policy 2007, *Better Child Care For Families*, November 2007.  
<http://www.liberal.org.au/about/documents/ChildCarewebversion.pdf>
  7. The Hon. Maxine McKew MP, Parliamentary Secretary for Early Childhood Education and Child Care, "Child care Tax Rebate initiative to reduce financial burden on working families", *media release*, Canberra, 13 May 2008.  
<http://mediacentre.dewr.gov.au/mediacentre/AllReleases/2008/May/ChildCareTaxRebateinitiativetoreducefinancialburdenonworkingfamilies.htm>
  8. For example see: Erik Jensen, "Parents brace for child care fee explosion", *Sydney Morning Herald*, 3 June 2008.  
[http://parlinfoweb.parl.net/parlinfo/view\\_document.aspx?id=1477897&table=PRESSCLP](http://parlinfoweb.parl.net/parlinfo/view_document.aspx?id=1477897&table=PRESSCLP)  
Alexander Symonds and Nabila Ahmed, "Child care sector put on notice", *Australian Financial Review*, 4 June 2008.  
[http://parlinfoweb.parl.net/parlinfo/view\\_document.aspx?id=1474894&table=PRESSCLP](http://parlinfoweb.parl.net/parlinfo/view_document.aspx?id=1474894&table=PRESSCLP)  
(both accessed on 6 June 2008)

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Unlike other programs to subsidise child care costs such as the Child Care Cash Rebate (superseded in 2000) and the CCB, the CCTR pays 50 per cent of out of pocket child care costs. Those costs can expand as fees increase. Other programs effectively capped the subsidy they provided by having a maximum hourly or weekly benefit. CCTR has quite high annual maximum rebate levels that will probably only benefit higher income families using full-time care. So there is potentially more scope for fee increases to drive up CCTR rebate levels due to the proposed more generous structure of the rebate; 50 per cent rather than 30 per cent, and the amount that can be claimed; up from \$4 354 to \$7 500.

However CCTR has been in place for child care cost incurred since July 2004. Child care costs as measured by the Child Care Component of the Consumer Price Index (CPI) have grown well above inflation since 2003 before the CCTR was announced. Over the last four years increases have been between 12 and 13 per cent per annum. This measure gives no clear guidance as to the impact of the CCTR's arrival on child care costs as opposed to other drivers of costs such as wages and demand for limited places.<sup>9</sup>

#### The minimum rate of Child Care Benefit (CCB)

CCB was introduced in July 2000 by merging two pre existing child care fee relief programs: Child Care Assistance and the Child Care Cash Rebate.<sup>10</sup> The merger of the two programs produced a payment structure that tried to preserve certain of the features of the previous programs so that no one would be disadvantaged.

The minimum rate of CCB was put in place so that families who had formerly claimed the Child Care Cash Rebate would continue to get some assistance regardless of their family income. The Cash Rebate had provided families with a payment equal to 20 or 30 per cent of their child care costs after they had paid a basic fee component and deducted any Child Care Assistance. The minimum rate of CCB preserved this non-means tested basic component in a similar form to that paid by the cash rebate before 2000.

With the introduction of CCTR in July 2004, the rationale for the minimum rate of CCB began to be eroded, because there was now another means test free method of providing assistance with child care fees. However it did not provide immediate assistance because of the long wait between paying child care costs and receiving CCTR. It also didn't provide assistance to those who didn't have a tax liability. Now that the payment of CCTR

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9. Australian Bureaus of Statistics, *Consumer Price Index, Australia*, 6401.0, tables 7A to 7L. <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6401.0Mar%202008?OpenDocument> (accessed on 6 June 2008). The index shows movements in child care costs after CCB has been received. From Sept 2007 it considers costs after CCB and CCTR have been received.
  10. Lesley Lang, Dale Daniels, Peter Yeend, A New Tax System (Family Assistance) Bill 1999, *Bills Digest No. 175 1998-99*, Parliamentary Library, Canberra, 10 May 1999, <http://www.aph.gov.au/Library/pubs/bd/1998-99/99bd175.htm>

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is to be made quarterly and also to those who do not have a tax liability, the function of the minimum CCB rate as a mechanism to provide a basic rate of fee relief to all families has been taken over by CCTR.

## Financial implications

Enhancements to the CCTR are estimated to cost \$1.571 billion over four years.<sup>11</sup> However, the abolition of the minimum rate of CCB is estimated to save \$224.1 million over four years.<sup>12</sup>

## Main provisions

### Schedule 1 – Removal of the minimum rate of CCB

**Item 1 of Schedule 1** substitutes a **new paragraph 57F(1)(b)** in the *Family Assistance Act 1999* (FAA) to ensure that CCTR can be paid to families where a determination has been made that their rate of CCB is zero.

**Items 7 to 10 of Schedule 1** provide for amendments to the FAA for the minimum rate of CCB to be removed. This means that the existing income test will reduce a families' entitlement to CCB to zero rather than reducing it to the minimum payment that is currently \$0.564 per hour of care.

The table below compares the thresholds at which the minimum rate is paid at present with the estimated thresholds at which no CCB will be paid after 1 July 2008.<sup>13</sup>

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11. Australian Government, 2008-09 Budget Paper No. 2 - Budget Measures, *Child Care Tax Rebate – Increase from 30 per cent to 50 per cent*, Canberra, 13 May 2008, p. 144.  
<http://www.apf.gov.au/budget/2008-09/content/bp2/html/index.htm>
  12. *ibid.*, Child Care Benefit – remove the minimum rate, pp. 376–377.
  13. Centrelink, *Guide to Australian Government Payments 20 March to 30 June 2008*, p.6.  
<http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm> (accessed on 3 June 2008) Hon Maxine McKew, “Changes to Child Care Benefit and Child Care Tax Rebate – Budget 2008-09”, *Media Release*, 19 May 2008.

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Number of children in care	Threshold where Minimum rate cuts in 2007-08	Threshold where minimum rate would have cut in 2008-09	Threshold where zero rate will cut in 2008-09
one	\$108 434	\$111 000	\$126 000
two	\$115 900	\$119 000	\$131 000

Note: incomes shown are family incomes that include the income of both parents.

An estimated 571 900 families were eligible for CCB in 2007. About 94 per cent of them (about 538 000) claimed CCB and about 24 per cent of that group (about 129 000) received the minimum rate. So this group will lose some or all of their CCB entitlement but benefit rather more from the increase in the CCTR to a 50 per cent rebate.<sup>14</sup>

**Items 14 to 62 of Schedule 1** amend various provisions of the *Family Assistance (Administration) Act 1999* (FAAA) to ensure that the removal of the minimum rate of CCB does not cause any unintended consequences for the payment of CCB by fee reduction or by lump sum for past periods.

## Schedule 2 - Child Care Tax Rebate changes

**Item 1 of Schedule 2** changes the amount of rebate available from 30 per cent to 50 per cent in **Section 84A** of the FAA.

**Item 2 of Schedule 2** sets a maximum rate of CCTR for the 2008-09 year at \$7 500 in **Subsection 84F(1)** of the FAA.

Government estimates in the table below indicate that families with a child in full-time child care will benefit by between \$1 195 and \$2 486 per annum from these changes. Families using part-time and out of school hours care will receive lesser benefits in line with the number of hours used.<sup>15</sup>

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14. Department of Education, Employment and Workplace Relations, 2008-09 Budget, *Portfolio Budget Statements 2008-09*, Canberra, 13 May 2008, p. 38.

<http://www.deewr.gov.au/deewr/publications/budget/2008-09/>

15. The Hon. Maxine McKew MP, Parliamentary Secretary for Early Childhood Education and Child Care, "Child Care Tax Rebate initiative to reduce financial burden on working families", op. cit.

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<b>One child family having full time child care (LDC 50 hrs) - per week</b>			
<b>Family Income</b>	<b>Total subsidies last year</b>	<b>Total subsidies this year</b>	<b>How much you will save</b>
40k	\$9,826.28	\$11,021.66	<b>\$1,195.38</b>
50k	\$9,125.95	\$10,521.68	<b>\$1,395.73</b>
60K	\$8,425.98	\$10,021.70	<b>\$1,595.72</b>
70k	\$7,726.00	\$9,521.72	<b>\$1,795.72</b>
80K	\$7,026.03	\$9,021.74	<b>\$1,995.71</b>
90K	\$6,322.42	\$8,521.76	<b>\$2,199.34</b>
100K	\$5,626.09	\$8,021.78	<b>\$2,395.69</b>
110K	\$5,035.68	\$7,521.54	<b>\$2,485.86</b>
120K *	\$5,035.68	\$7,021.56	<b>\$1,985.88</b>
130K *	\$5,035.68	\$6,682.00	<b>\$1,646.32</b>
140K *	\$5,035.68	\$6,682.00	<b>\$1,646.32</b>
150k *	\$5,035.68	\$6,682.00	<b>\$1,646.32</b>

**Items 3 and 4 of Schedule 2** provide for the indexation of the new maximum rate of CCTR.

**Part 2 of Schedule 2** makes amendments to the FAA and the FAAA to provide for the quarterly payment of CCTR. Quarterly payments will be available to claimants who claim CCB by fee reduction. Those who make CCB claims for past periods will not be able to claim quarterly payments of CCTR.

The quarterly payments will be paid directly to the claimant. They will be calculated where Centrelink receives one or more fortnightly reports from an approved child care service that include child care usage by the claimant's child.

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### Schedule 3 – Recovery of Debts

**Schedule 3** contains amendment to the FAAA to clarify certain debt recovery provisions and to allow the recovery of CCTR debts from CCB entitlements.

### Schedule 4 – Civil penalties regime and expanded powers of entry

**Schedule 4** contains amendments to expand the civil penalties regime to regulate approved child care services. Currently, mainly criminal offence provisions and an infringement notice scheme are used to enforce compliance with obligations under the family assistance law by Australia's approximately 11,200 approved child care service providers. According to the Explanatory Memorandum the civil penalties regime will provide the Government with a wider range of options to encourage compliance.<sup>16</sup>

Civil penalties are imposed by courts in circumstances where the relevant court is satisfied that a person, company or other entity has contravened the particular civil penalty provision. The court need only be satisfied of the contravention on the 'balance of probabilities', rather than the more rigorous 'beyond reasonable doubt' standard of proof applying to criminal offences.

In most cases, the situations for which Schedule 4 civil penalty provisions are proposed are currently only covered by criminal offences. The new provisions will create over 20 new civil penalty provisions, making it easier to apply a sanction for contraventions in these situations. **Item 79** of Schedule 4 will also increase the maximum penalty for most (but not all) civil penalty provisions to 200 penalty units (\$22 000) for persons and 400 penalty units (\$44 000) for companies.

### Schedule 5 – Minor amendments

**Schedule 5** contains clarifications to the legislation and other minor amendments.

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16. Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Bill 2008, Explanatory Memorandum, p. 3.

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