



Social Security Legislation Amendment (Improved Support for Carers) Bill 2009

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Contents

Purpose	2
Background	2
Review of Carer Payment for carers of children	3
Changes in this Bill.	4
Disability Care Load Assessment (Child) Determination	4
Basis of policy commitment	5
Committee consideration	5
Financial implications	5
Main provisions	6
Qualification for Carer Payment when caring for a child.	6
Basic requirements	7
Requirements in more complex situations	8
Qualification for Carer Allowance if receiving Carer Payment when caring for a child	8
Savings provisions	8

Social Security Legislation Amendment (Improved Support for Carers) Bill 2009

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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

To broaden the eligibility criteria for access to Carer Payment for people caring for disabled children.

Background

Carer Payment (CP) is an income support payment for people who provide constant care to a disabled adult or a child with a profound disability. It is targeted at carers who cannot support themselves through employment due to the demands of their caring role. CP is only available to full-time carers who have low enough incomes to qualify under the pension income test. If they have a partner their combined private income must be below about \$68 000 for even a small part payment to be possible. The care must be provided in the home of the person being cared for.

CP was first introduced in December 1983 but it was only available to people caring for adults until July 1998¹. At that time eligibility was extended to people caring for a narrowly defined category of profoundly disabled children aged under 16 years. Carers could also qualify if caring for two or more children with a disability who individually would not qualify them for a payment.

1 For more detail see: S. Downing, 'Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Bill 1997', *Bills digest, no. 138, 1997-98*, Parliamentary Library, Canberra, 1997. Full text at: <http://www.aph.gov.au/Library/pubs/bd/1997-98/98bd138.htm> accessed 28 April 2009.

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In July 2006 eligibility for CP was broadened to carers of children with severe intellectual, psychiatric or behavioural disabilities who required constant care or supervision². However, even with this change only 7 000 children are presently being cared for by CP recipients. This is quite a small number considering that there were 113 549 carers receiving Carer Allowance to assist them with the costs involved in the care they provided to a child (or children) with a disability in June 2008.

However, the care requirements for Carer Allowance are far less rigorous than the care requirements for CP. The care requirements for CP, caring for an adult are also less rigorous than the CP care requirements, caring for a child. The origin of this is the concern that in many cases the care required by a child can be present just because the child is very young. Governments have been wary about providing CP to a parent fulfilling a normal parenting role. CP, caring for a child, has been targeted at carers of severely disabled children and the care arising from the illness or disability.

Review of Carer Payment for carers of children

In 2007 the Howard Government introduced a Carer Adjustment Payment (CAP) of up to \$10 000. The CAP was available where a family had a child aged up to 6 years who was diagnosed with a major disability due to accidental injury or severe illness. CAP was an interim payment available while a review of CP for carers of children was being conducted and it was to terminate on 30 June 2008.³ Funding was provided in the 2008 Budget for CAP to continue to be available past that date.

This trial payment represented a significant departure from existing policy on assistance to carers. It appears to have been prompted by the case of a young eye cancer sufferer from Melbourne. In March 2007 the then Prime Minister announced on Melbourne radio that the child's family would receive an ex-gratia payment of \$10 000 to help with the costs of adjusting to their son's disability.⁴

2 For more detail see P. Yeend, *Family, Community Services and Indigenous Affairs and Other Legislation Amendment (2006 Budget and Other Measures) Bill 2006*, bills digest, no. 151, 2005-06, Parliamentary Library, Canberra, 2005. Full text at: <http://www.aph.gov.au/Library/pubs/bd/2005-06/06bd151.htm>

3 M. Brough (Minister for Families, Community Services and Indigenous Affairs), *Financial support for carers of young children in exceptional circumstances*, media release, 8 May 2007, viewed on 8 April 2009 http://www.facs.gov.au/Internet/Minister3.nsf/content/budget07_financial_support_carers.htm

4 J. Metlikovec, 'Mum wins \$10,000 for battling carers', *Herald Sun*, 24 March 2007, http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=pressclp&Criteria=CI TATION_ID:Z6LM6%3B, viewed on 8 April 2009.

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A Review Taskforce headed by Anthony Blunn was established in March 2007 to examine the effectiveness of CP as a safety net for carers of children with profound disabilities or severe medical conditions. The report of the review released in early 2008 concluded that CP did not provide such a safety net and recommended changes that are now the subject of this Bill.⁵

Changes in this Bill

The changes essentially seek to broaden the qualification criteria and base them on the level of care required. The new Disability Care Load Assessment (Child) Determination to be introduced by this Bill is intended to provide an objective tool for assessing the care requirements of care recipients. When dealing with children, the task of assessing care requirements is complicated by the fact that all children need a certain level of care appropriate to their age and level of maturity. A child can require a lot of care just because it is very young. It is the extra care that a child with a disability needs, over and above a child of the same age without that disability, that is to be assessed.

At present the number of children whose carers are eligible for CP is about 7 000. It is anticipated that the changes in the Bill will allow another 19 000 carers of disabled children to qualify for CP.⁶

Disability Care Load Assessment (Child) Determination

The Bill contains amendments that propose to delete the existing method of determining eligibility for CP, caring for a child, with a new method. The existing method is based on medical criteria relating to the child's disability or medical condition. The new method bases eligibility on the level of care required. The Bill provides for the Secretary to devise a disallowable legislative instrument called the Disability Care Load Assessment (Child) Determination. This will include:

- a test for assessing the functional ability, behaviour and special care needs of a child that includes a section to be completed by a treating health professional.
- a method of rating the child's care needs, and
- a method of providing a qualifying rating for the carer that takes account of the care provided by the carer and the assessment of the health professional.

5 A. Blunn *Carer Payments (child): a new approach - report of the Carer Payment (child) Review Taskforce*, report prepared for Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, 2008. Full text at: http://www.facs.gov.au/carers/carers_payment_review_report/ viewed 8 April 2009.

6 J Macklin, 'Second reading speech: Social Security Legislation Amendment (Improved Support For Carers) Bill 2009, House of Representatives, *Debates*, 18 March 2009, pp. 3027-8.

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The proposed movement away from focussing on the child's actual medical condition to the care requirements is consistent with the application of care requirements for qualification for Carer Allowance. The previous focus on the child's medical condition was probably driven by the desire to confine access to CP, caring for a child, to those cases where the child had a very profound and serious condition.

The test to be devised by the Secretary will probably be like other tests used in determining qualification to payments. To assist with assessing the child care requirements, the Carer Allowance payment uses the Child Disability Assessment Tool (CDAT). CP, caring for an adult, uses the Adult Disability Assessment Tool (ADAT). Both names of these tools are a bit misleading as they do not just assess the medical condition or disability but involve assessments of the care requirements and needs arising from the care receiver's medical condition/disability. The use of such tools is beneficial as it provides for consistent assessments of care needs and care requirements between cases. No two care situations are the same and the same medical condition or disability affects individuals differently. The capacity of a person to cope with a medical condition or disability does vary between individuals and therefore their care needs vary.

Basis of policy commitment

The measures in this Bill were announced in the 2008 Budget as part of a broader package of carer assistance measures.⁷

Committee consideration

The Bill has been referred to the Senate Community Affairs Committee for inquiry and report by 7 May 2009. Details of the inquiry are at:

http://www.aph.gov.au/senate/committee/clac_ctte/soc_sec_improved_support_for_carers_09/index.htm

Financial implications

The measures in this Bill will cost an estimated \$271.5 million over the four years 2008-09 to 2011-12.

7 J. Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs), \$822 Million to Support and Recognise Carers, media release, 13 May 2008, viewed 8 April 2009.
http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/budget08_carers_13may08.htm

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Main provisions

Qualification for Carer Payment when caring for a child

Schedule 1 contains amendments that delete the existing method of determining eligibility for CP when caring for a child and replace it with a new method. The existing method is based on medical criteria relating to the child's disability or medical condition. The new method bases eligibility on the level of care required.

Item 3 adds **new section 38E** which provides for a legislative instrument called the Disability Care Load Assessment (Child) Determination. This will include:

- a test for assessing the functional ability, behaviour and special care needs of a child that includes a section to be completed by a treating health professional,
- a method of rating the child's care needs, and
- a method of providing a qualifying rating for the carer that takes account of the care provided by the carer and the assessment of the health professional.

This item also adds **new section 38F** which provides for a legislative instrument that determines which people or classes of people are treating health professionals.

Items 7 and 9 repeal the definition of profoundly disabled child in existing subsections 197(1), (2), (2AA) and (2A) that form the basis of the existing eligibility criteria for CP when caring for a child.⁸

Item 10 inserts **new sections 197A to 197H, 197J and 197K**. They, along with existing sections 198, 198AA, 198AB and 198AC, set out the range of circumstances where a person may qualify for CP. **New section 197A** lists all these circumstances, most but not all of which relate only to care of children. The section reads as follows:

(1) The following sections set out the circumstances in which a person is qualified for a carer payment:

- (a) section 197B (child with a severe disability or severe medical condition);
- (b) section 197C (2 or more children each with a disability or medical condition);
- (c) section 197D (disabled adult and one or more children each with a disability or medical condition);
- (d) section 197E (child who has a terminal condition);
- (e) section 197F (exchanged care of children);

8 These sections can be seen in the Guide to the Social Security Law at: [http://www.facs.gov.au/guides_acts/sslaw/ssa/b819822a/ea6ca6be/3bf11758/6a4ddfc2.html#SSA-section_197_\(2\)](http://www.facs.gov.au/guides_acts/sslaw/ssa/b819822a/ea6ca6be/3bf11758/6a4ddfc2.html#SSA-section_197_(2)) viewed 16 April 2009.

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- (f) section 197G (short term or episodic care of children);
- (g) section 197H (extension of short term or episodic care of children);
- (h) section 198 (disabled adult, or disabled adult and dependent child);
- (i) section 198AA (hospitalisation).

(2) In addition, sections 198AB and 198AC allow a person to continue to qualify for a carer payment in certain short-term circumstances.

Basic requirements

The basic qualification conditions for CP in these new sections remain much the same as in the existing legislation. Basically the carer must:

- provide constant care to a care receiver who has high care needs,
- provide that care in the home of the care receiver, and
- be an Australian resident.

However there is a new feature included in these new sections. The constant care provided by the carer must severely restrict the carer's capacity to undertake paid employment. This is set out in paragraph (1)(d) of **new sections 197B, 197C and 197D** and paragraph (1)(c) of **new section 197E**. This explicit provision is new but there is already a current limit on the number of hours per week that a carer can cease to provide constant care under section 198AC(4):

198AC.(4) If:

- (a) a person is qualified for carer payment because the person is personally providing constant care for a care receiver or care receivers; and
- (b) the person temporarily ceases to provide that care in order to undertake training, education, unpaid voluntary work or paid employment; and
- (c) the cessation does not exceed 25 hours per week;

the person does not cease to be qualified for the carer payment merely because of the cessation.

So in effect opportunities for employment have always been limited by the requirement to provide constant care. Ceasing care for no longer than 25 hours in a week would limit time for employment and travel time quite severely. The practical impact of this new provision is not explicitly discussed in the Explanatory Memorandum, but several examples are provided on pages 7 to 20 that help in this regard.

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Requirements in more complex situations

New sections 197C to 197H set out variations on the basic qualification provisions in **new section 197B** to cater for more complex situations where there are multiple care providers or receivers or short term or episodic care requirements. The underlying principles that flow through these provisions require that:

- the care level provided be rated as “intense” under the Disability Care Load Assessment (Child) Determination whether there is one care receiver or multiple care receivers (including combinations of children and adults),
- the care must be constant but may involve caring for different care receivers at different times (for example exchanged care of children), and
- the care must severely restrict the carers capacity to engage in paid employment.

Items 11 to 15 amend the parts of **section 198** that presently set out the qualification conditions for CP when caring for a child. These parts are superseded by the qualification conditions set out in **new sections 197A to 197H**.

Item 16 replaces existing section 198AA which concerns qualification for CP while a care receiver is in hospital with **new section 198AA**. The new section includes the new qualification categories provided for in **new sections 197A to 197H** and removes the 63 day time limit on qualification for CP while the care receiver is in hospital where the care receiver is a child.

Qualification for Carer Allowance if receiving Carer Payment when caring for a child

Item 18 inserts **new section 954B**. This section provides for automatic eligibility for Carer Allowance (CA) where a person qualifies for CP when caring for a child. In some situations the CP recipient may not otherwise meet the eligibility requirement for CA.

Item 29 inserts **new clauses 137 to 141** into **Schedule 1A** of the *Social Security Act 1991*. These clauses are savings provisions that ensure that no carers are disadvantaged by the changes to CP qualification provisions. They also ensure that beneficial changes in this bill flow through to existing recipients of CP.

Savings provisions

Schedule 2 makes amendments to the *Social Security (Administration) Act 1999* that are necessary because of the changes to CA eligibility provided for in **new section 954B** (see above) of the *Social Security Act 1991*.

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