Family Assistance Legislation Amendment (Child Care Measures) Bill 2014

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Date introduced: 5 June 2014
House: House of Representatives
Portfolio: Education
Commencement: 1 July 2014

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
Purpose of the Bill

The purpose of the Family Assistance Legislation Amendment (Child Care Measures) Bill 2014 (the Bill) is to amend the A New Tax System (Family Assistance) Act 1999 (the FA Act) and the Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011 to maintain the current Child Care Rebate (CCR) annual limit of $7,500 for three years from 1 July 2014 and to maintain the current Child Care Benefit (CCB) income test thresholds at their current level for three years from 1 July 2014. Under normal circumstances, the CCR limit and CCB income test thresholds are indexed on an annual basis in line with movements in the Consumer Price Index (CPI). The measures constitute a freeze on the annual indexation of these amounts.

Background

An identical proposal to freeze the indexation of the CCR limit was contained in Schedule 9 of the Social Services and Other Legislation Amendment Bill 2013. An amendment was moved by the Opposition to remove the provisions relevant to CCR indexation from the Bill, and was passed by the Senate on 5 March 2014. An amended version of the Social Services and Other Legislation Amendment Bill 2013, not containing the relevant provisions, was passed by the Parliament on 25 March 2014. The three-year freeze on the indexation of the CCR limit was originally proposed by the Labor Government in the 2013–14 Budget.

The freeze on the indexation of the CCB income test threshold was announced in the 2014–15 Budget as part of a broader measure affecting the indexation of income test thresholds for major welfare payments.

Child care fee assistance

The Commonwealth Government’s main funding of the Early Childhood Education and Care sector comes in the form of fee assistance for families, primarily through CCB and CCR. The Commonwealth provides some limited funding for capital and running costs but this is primarily for services that would otherwise be unable to operate, such as services in remote areas or services for children with special needs.

Child Care Benefit

CCB is paid to those using ‘approved’ or ‘registered’ childcare services. Most long day care, family day care, outside school-hours school care, vacation care and some in-home or occasional care services offer approved care. Approved care services must meet requirements set out in family assistance law, particularly in the A New Tax System (Family Assistance) (Administration) Act 1999 and relevant instruments. Registered care is provided by grandparents or other relatives, friends or nannies that are registered with the Department of Human Services as carers.

Parents/carers using approved care services can currently claim CCB for between 24–50 hours care per child per week (either as a fee reduction paid directly to the child care provider or as a lump sum at the end of the financial year). Both parents/carers, or a single parent, must meet the work, training, study test for at least 15 hours (or have an exemption) to be eligible for more than 24 hours of CCB per child per week, up to 50 hours per child per week. The work, training, study test looks at whether the parents/carers used child care for a work-related commitment: paid work, looking for work, studying, training or volunteering.

CCB for registered care is paid when a claim is made to the Department of Human Services and can be for up to 50 hours of child care per week for a non-school aged child. For registered care, both parents or a single parent must meet the work, training, study test at some time during the week child care is used to receive up to the 50 hour limit (no minimum requirement and exemptions from the test can be granted).

Eligibility for CCB requires parents/carers to have their child, if under the age of seven, immunised (or be considered exempt from immunisation requirements) and meet residency requirements, and those using approved care must meet an income test. There is no income test for parents/carers using registered care.

**Income test**

For those using approved care, the maximum CCB rate is payable for families with an annual adjusted taxable income under $41,902 per annum or families on income support. Family income over this threshold amount reduces the maximum CCB rate (though the rate payable depends on the number of children in care, type of care and hours used). A separate upper threshold applies to families with more than one child in approved care that modifies the way CCB entitlements are calculated for families with income over this amount. Families with income above the income limit will not receive any CCB. The income limit for one child in care is $145,642. For two children in care it is $150,914. For three children in care it is $170,904 (plus $32,219 for each child after the third).

The current maximum CCB rates are:

- for approved care—up to $3.99 per hour for a non-school aged child ($199.50 for a 50 hour week) and
- for registered care—$0.666 per hour up to $33.30 per week.

Different rates apply for non-school age children, and children attending care part-time or outside standard hours.

**Child Care Rebate**

CCR assists families further with out-of-pocket expenses for approved child care (not registered care). Out-of-pocket expenses are total child care fees less CCB. CCR covers 50 per cent of out-of-pocket expenses up to a maximum of $7,500 per child per year (this amount is usually indexed to CPI but indexation has been paused since 2011–12). To be eligible for CCR, an individual must meet all the eligibility conditions for CCB with the exception of the means test. This means that parents/carers can still be eligible for CCR even if receiving no CCB because of a high income. CCR does have a participation test (that is, both parents/carers or a single parent must work, study or train at some time during the week in which child care is used), however, there is no minimum number of hours for such activities.

CCR is paid fortnightly to families or child care service providers, or quarterly or as an annual lump sum to the family.

**Indexation**

In social security and family assistance legislation, indexation refers to the adjustment of payment rates or means test thresholds in line with movements in an economic index, usually the Consumer Price Index (CPI). The CPI measures changes in prices paid by households for a fixed basket of goods over time. Indexing rates or thresholds to CPI maintains their real value over time.

**Child Care Benefit**

CCB payment rates and the income test thresholds are normally indexed at the beginning of each financial year, adjusting the relevant amounts by the movement in the CPI over the year to the preceding December quarter. So, the indexation for the amounts to apply in 2013–14 was based on the CPI increase between the December quarter in 2011 and the December quarter in 2012. The indexation of CCB rates and income thresholds has

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8. Ibid. Adjusted taxable income for the purposes of the FA Act is the sum of taxable income, adjusted fringe benefits, target foreign income, net investment loss, tax free pension or benefits and reportable superannuation contributions less any child maintenance expenditure (child support). See Department of Social Services (DSS), ‘1.1.A.20 Adjusted taxable income (ATI)’, Guide to Family Assistance, DSS website, accessed 13 June 2014.

9. Ibid.

10. Ibid.

11. Ibid.

12. Ibid.

never been frozen since the payment commenced in July 2000.\textsuperscript{14} Table 1 sets out the historical income thresholds for CCB.

**Table 1: Child Care Benefit—historical income test thresholds**

<table>
<thead>
<tr>
<th>Year</th>
<th>One child - income threshold</th>
<th>More than one child - lower income threshold</th>
<th>More than one child - upper income threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000–01</td>
<td>$28,200</td>
<td>$28,200</td>
<td>$66,000</td>
</tr>
<tr>
<td>2001–02</td>
<td>$29,857</td>
<td>$29,857</td>
<td>$69,828</td>
</tr>
<tr>
<td>2002–03</td>
<td>$30,806</td>
<td>$30,806</td>
<td>$71,993</td>
</tr>
<tr>
<td>2003–04</td>
<td>$31,755</td>
<td>$31,755</td>
<td>$74,153</td>
</tr>
<tr>
<td>2004–05</td>
<td>$32,485</td>
<td>$32,485</td>
<td>$75,933</td>
</tr>
<tr>
<td>2005–06</td>
<td>$33,361</td>
<td>$33,361</td>
<td>$77,907</td>
</tr>
<tr>
<td>2006–07</td>
<td>$34,310</td>
<td>$34,310</td>
<td>$80,088</td>
</tr>
<tr>
<td>2007–08</td>
<td>$35,478</td>
<td>$35,478</td>
<td>$82,731</td>
</tr>
<tr>
<td>2008–09</td>
<td>$36,573</td>
<td>$36,573</td>
<td>$85,213</td>
</tr>
<tr>
<td>2009–10</td>
<td>$37,960</td>
<td>$37,960</td>
<td>$88,366</td>
</tr>
<tr>
<td>2010–11</td>
<td>$38,763</td>
<td>$38,763</td>
<td>$90,222</td>
</tr>
<tr>
<td>2011–12</td>
<td>$39,785</td>
<td>$39,785</td>
<td>$92,658</td>
</tr>
<tr>
<td>2012–13</td>
<td>$41,026</td>
<td>$41,026</td>
<td>$95,530</td>
</tr>
<tr>
<td>2013–14</td>
<td>$41,902</td>
<td>$41,902</td>
<td>$97,632</td>
</tr>
</tbody>
</table>

Source: Department of Social Services (DSS), ‘3.6.5.20 CCB—historical income thresholds’, Guide to Family Assistance, DSS website.

**Child Care Rebate**

The CCR limit is normally indexed at the beginning of the financial year, in the same way as the CCB rates and income test thresholds. However, the CCR limit was reduced from $7,941 to $7,500 for the 2011–12 income year and indexation frozen until 1 July 2014.\textsuperscript{15} Table 2 sets out the historical CCR limits.

**Table 2: Maximum annual Child Care Rebate limit**

<table>
<thead>
<tr>
<th>Year</th>
<th>Maximum limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004–05</td>
<td>$4,000</td>
</tr>
<tr>
<td>2005–06</td>
<td>$4,096</td>
</tr>
<tr>
<td>2006–07</td>
<td>$4,211</td>
</tr>
<tr>
<td>2007–08</td>
<td>$4,354</td>
</tr>
<tr>
<td>2008–09</td>
<td>$7,500</td>
</tr>
<tr>
<td>2009–10*</td>
<td>$7,778</td>
</tr>
<tr>
<td>2010–11</td>
<td>$7,941</td>
</tr>
<tr>
<td>2011–12</td>
<td>$7,500</td>
</tr>
</tbody>
</table>

\textsuperscript{14} For historical income threshold levels, see DSS, ‘3.6.5.20 CCB—historical income thresholds’, Guide to Family Assistance, DSS website, accessed 10 June 2014.

\textsuperscript{15} Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011 (Cth), accessed 10 June 2014.
Year | Maximum limit
--- | ---
2012–13 | $7,500
2013–14 | $7,500

* Prior to 2009–10, Child Care Rebate was known as Child Care Tax Rebate.


The limit reduction and indexation freeze which occurred in 2011–12 has had a significant impact on the level of support currently provided through CCR. Table 3 models what the maximum limits for CCR would be had the rate not been reduced and indexation frozen and, separately, what it would be if it was reduced but indexation continued (based on the indexation provisions in the FA Act). If the indexation freeze had not applied, families in 2013–14 would be able to access $400–$1,100 more than they are currently able to claim.

<table>
<thead>
<tr>
<th>Year</th>
<th>Maximum limit if not reduced and indexation applied</th>
<th>Maximum limit if reduced and indexation applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011–12</td>
<td>$8,163</td>
<td>$7,500</td>
</tr>
<tr>
<td>2012–13</td>
<td>$8,408</td>
<td>$7,725</td>
</tr>
<tr>
<td>2013–14</td>
<td>$8,593</td>
<td>$7,895</td>
</tr>
<tr>
<td>2014–15</td>
<td>$8,825</td>
<td>$8,108</td>
</tr>
</tbody>
</table>

Source: Parliamentary Library estimates.

If indexation were to apply in July 2014 to the current limit, then for 2014–15 the maximum limit would be $7,703.

**Bill proposal**

The Bill proposes to pause indexation of the CCB income test thresholds for three years and to continue the freeze on the indexation of the CCR annual limit. This means that the current CCB income test thresholds and the CCR annual limit will remain the same over the next three years. CCB payment rates are unaffected by the measures proposed in the Bill and will continue to be indexed once a year in line with CPI movements.

**Policy position of non-government parties/independents**

The Opposition has criticised the measures proposed in the Bill stating that the freeze on the indexation of the CCB income thresholds is ‘cutting access to child care for those who can least afford it’. The Shadow Minister for Education and Early Childhood, Kate Ellis, stated that the measures are ‘an aggressive attack on family budgets, and on women trying to return to work’. The Labor Government’s 2013–14 Budget proposed the same freeze on the indexation of the CCR limit as is proposed in the Bill. However, in Opposition, Labor has stated that the freeze was intended to support the establishment of the Early Years Quality Fund which has been abolished by the Coalition Government. Labor Senators Sue Lines and Mehmet Tillem have argued: ‘with that fund now scrapped, a further pause on indexation unnecessarily impacts the sector and families who utilise childcare without redirecting the budget savings back into the sector’. The Coalition Government has since announced that it will direct the remaining funding for the Early Years Quality Fund into a new Long Day Care Professional Development Programme.

17. Ibid.
The Australian Greens are opposed to the proposed measures and stated that ‘the Greens will do everything we can to stop these cuts in the Parliament’. Senator Sarah Hanson-Young stated:

Ripping more than $200 million dollars out of the pockets of Australian mums and dads is not the way to fix our nation’s broken childcare system.

The Abbott Government should be investing money into childcare, not making savage cuts.

The only way to ensure that all Australian families have access to high quality, affordable childcare is to support the sector.

Many who work in childcare are worried that these cuts are just the beginning and that future Coalition Budgets will come with more pain for families.

Position of major interest groups

Early Childhood Australia (ECA), the peak early childhood advocacy organisation, has stated that a complete rethink of government subsidies for child care is required and that the proposed indexation freezes ‘will have a dramatic effect on the cost of care over the next few years’. ECA modelled the impact of the changes and estimated the measures in the Bill ‘will leave a family with a household income of $135,000 per annum up to $6,000 worse off, per child, by 2017’. ECA Chief Executive Officer, Samantha Page, stated that ‘without significant reform of the child care system, government subsidies would continue to lose real value and families could withdraw children from care’.

One of the largest childcare providers in Australia, Goodstart Early Learning, stated that they were concerned at the impact the CCB income threshold freeze would have on affordability, particularly for low-income families:

We are certainly concerned about it over the longer term, because it is a slow burn impact. Low-income families, as I said, are struggling the most with childcare costs. We should be looking to increase assistance for that group rather than reduce it. We are worried that reducing the amount of CCB for working families will have an impact on whether parents can afford to go back to work. People do make very conscious decisions based on their tax after childcare benefit and whether they can return to work.

... 

For the childcare benefit, both the rates and the income thresholds are indexed to CPI, but the cost of child care has been going up by more than CPI—roughly twice CPI over the last decade—and wages have been going up by more than CPI: roughly 1½ per cent more than CPI over the last decade. When CCB was introduced by John Howard, back in 2000 during the GST negotiations, the maximum CCB came in at 74 per cent of full-time average earnings. It is currently sitting at about 50 per cent, and with this pause the maximum rate will cut out at 40 per cent of average full-time earnings by 2017. So, if you look at it in a historical sense, inadequate indexation ultimately results in fewer and fewer people being eligible for these things. The actual maximum rate of CCB—at $40 a day, or $4 an hour—similarly has been indexed to CPI over a period. But the gap between it and what people are paying each year widens; although, I should note that if they are workers, half of that gap is picked up by the childcare rebate up to the cap.

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20. S Hanson-Young, Families will suffer as $230 million cut from childcare support, media release, 16 May 2014, accessed 12 June 2014.
21. Ibid.
23. Ibid.
24. Ibid.
Committee consideration

The Senate referred the provisions of the Bill to the Education and Employment Legislation Committee on 5 June 2014.\(^{26}\) The Committee’s report was tabled on 16 June 2014 and recommended that the Bill be passed.\(^{27}\) In their Additional Comments, Labor senators expressed concerns that the Bill would exacerbate child care cost pressures on families and negatively impact on women’s workforce participation.\(^{28}\) The Labor senators recommended that the Senate consider these issues when deliberating the Bill.\(^{29}\) The Greens issued a Dissenting Report and recommended the Senate reject the Bill.\(^{30}\)

Financial implications

The Explanatory Memorandum states that the measure relating to CCB income thresholds is expected to provide net savings of $230.4 million over four years (2014–15 to 2017–18) and the measure relating to the CCR limit is expected to provide net savings of $105.8 million over three years.\(^{31}\) The net saving for the CCB measure is made up of two components: reduced expenditure on CCB of $394.7 million over four years accompanied by an increase in CCR expenditure of $164.3 million (as CCR covers 50 per cent of the gap between CCB and fee costs to families).\(^{32}\)

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.\(^{33}\)

Key issues and provisions

Impact on costs of child care and work incentives

The measures proposed by the Bill will increase out-of-pocket costs for many families making use of child care. This will occur partly as a result of family incomes gradually increasing over time (due to wage rises or parents working more hours), while the income test thresholds remain the same. As family income rises above the relevant thresholds, their entitlement for CCB will decrease and, for those whose income rises over the income limits, they will stop receiving any CCB.

While CCR will make up for some of the lost CCB entitlements, rising fees and the annual CCR cap will limit this offsetting effect. The number of families hitting this CCR cap will increase as a result of two key factors:

- increasing fees (average annual growth in fees during the period 2005–2013 was around seven per cent) and
- growth in family incomes and the freeze on the CCB income thresholds, reducing CCB entitlements for some families while increasing the CCR amounts they receive.

As families hit the $7,500 annual limit, they are required to meet all their remaining out-of-pocket child care expenses without any government fee assistance.

The Department of Education expects that the freeze on the indexation of the CCB income thresholds will affect 500,000 families in 2014–15 (around half of those expected to use approved child care).\(^{34}\) The department also estimates that, if the indexation freeze is implemented, 74,000 families will reach the CCR limit in 2014–15;

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27. Ibid., p. 5.
29. Ibid., p. 9.
33. The Statement of Compatibility with Human Rights can be found at page 4 of the Explanatory Memorandum to the Bill.
93,000 in 2015–16 and 114,000 in 2016–17. In 2010–11, the year before the cap was reduced and indexation first frozen, only 9,179 families reached the CCR annual limit.

Increasing costs of child care create work disincentives, particularly for second earners in couple families. The costs of placing children in care in order for parents/carers to undertake paid work, combined with the effect of the withdrawal of benefits such as Family Tax Benefit and taxation, can significantly reduce if not remove the monetary benefits of work.

The proposed measures in the Bill form part of suite of indexation freezes and benefit cuts in the 2014–15 Budget aimed at reducing the rate of growth in social security and family assistance payment expenditure. Many families will be impacted by a combination of these measures resulting in significantly reduced rates of government assistance than they might have been expecting in the coming years.

Reducing growth in expenditure on child care fee assistance

The measures proposed by the Bill are aimed at reducing the growth in expenditure on child care fee assistance. The Assistant Minister for Education, Sussan Ley, stated in her second reading speech: ‘the Government is making decisions that repair the Budget, strengthen the economy and prepare Australia for the long term challenges and opportunities that confront us’.

Expenditure on CCB and CCR has been growing rapidly, in line with growth in the number of children in approved care, as well as fee rises averaging around seven per cent per year over the last eight years. In 2014–15, an estimated $6.3 billion will be spent on CCB and CCR and expenditure is expected to grow to $8.0 billion in 2017–18. The estimated net savings arising from the proposed measures of $336.2 million over the forward estimates seems minor in comparison to the total expenditure on these payments. However, the measures will have a large, long-term effect on expenditure having briefly paused the indexation of these amounts.

Provisions

A New Tax System (Family Assistance) Act 1999

Item 1 amends paragraph 84F(ea) of the FA Act which sets out the maximum CCR limit for the formula used to work out a person’s CCR entitlement. The item adds the income years 2014–15, 2015–16 and 2016–17 to the list of income years for which the $7,500 maximum annual CCR limit applies.

Items 2–6 amend various provisions in Schedule 4 of the FA Act (the Schedule which sets out how indexation and adjustments of amounts in the FA Act are to occur) so that:

- the CCB lower and upper income thresholds are not indexed on 1 July 2014, 1 July 2015 and 1 July 2016 and
- the CCR limit will not be indexed on 1 July 2014, 1 July 2015 and 1 July 2016.

Indexation of the relevant amounts is to resume on 1 July 2017.

Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011

Item 7 repeals item 5 of Schedule 1 of the Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011. The existing item provides for indexation of the CCR limit to occur on 1 July 2014 using the $7,500 limit, but will be superseded by the amendments to the FA Act in items 1–6 of the Bill.

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35. Ibid.