THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY ASSISTANCE LEGISLATION AMENDMENT
(CHILD CARE MEASURES) BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by authority of the Assistant Minister for Education,
the Honourable Sussan Ley MP)
This Bill amends the A New Tax System (Family Assistance) Act 1999 to continue to maintain the Child Care Rebate (CCR) limit at $7,500 for three income years, starting from 1 July 2014, and maintain the Child Care Benefit (CCB) income thresholds at the amounts applicable as at 30 June 2014 for three income years, starting from 1 July 2014, with the first indexation of these amounts recommencing on 1 July 2017.

As a result of these amendments:

- families will continue to be able to receive up to the maximum CCR amount of $7,500 per child, per financial year for out-of-pocket child care costs for the three income years starting from 1 July 2014 and ending on 30 June 2017; and
- families’ CCB income thresholds will remain at the amounts applicable on 30 June 2014 for the three income years starting from 1 July 2014 and ending on 30 June 2017.

The CCB standard hourly rate, the minimum hourly amount and the multiple child loadings related to the CCB will continue to be indexed by the Consumer Price Index (CPI) on 1 July each year. These amounts are not affected by either of these measures.

Maintaining the CCR limit at $7,500 per child, per financial year for a further three years was a 2013-14 Budget savings measure. The savings were included in the Budget, but the required legislative amendments were not introduced to the 43rd Parliament.

The CCR measure was put forward in the Social Services and Other Legislation Amendment Bill 2013 (at Schedule 9) which was passed by Parliament on 25 March 2014. The Senate passed an amendment that removed the CCR measure prior to the passage of the Bill.

Maintaining the CCB income thresholds for three years from 1 July 2014 is a 2014-15 Budget savings measure.
FINANCIAL IMPACT STATEMENT

The CCR measure is expected to deliver net savings of $105.8 million over three years (2014–15, 2015–16 and 2016–17).

Family Assistance Legislation Amendment (Child Care Measures) Bill 2014

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Background

The Child Care Rebate (CCR) is a payment that provides assistance for families who use approved child care by covering half of all their out-of-pocket fees (after Child Care Benefit (CCB), a means tested payment), up to a maximum limit per child per income year. The CCR limit is currently capped at $7,500 until 30 June 2014. To be eligible for the CCR, families must be eligible for CCB, have used approved child care and met the CCR work, training, study test. CCR is not income tested and eligibility for CCR includes families who are entitled to CCB at the ‘zero rate’ due to their income.

In 2011 legislative amendments were made to paragraph 84F of the A New Tax System (Family Assistance) Act 1999 (the FA Act) by the Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011 (the Budget Measures Act) to set a cap and to pause the indexation of the CCR limit. These amendments took effect on 15 September 2011.

The CCB is a means-tested payment that provides financial assistance to help families with child care costs. The CCB upper and lower income thresholds are used as part of calculating the rate of an individual’s CCB. The lower and upper CCB income thresholds are currently $41,902 and $97,632 respectively and are indexed each year on 1 July in line with CPI increases.

The Child Care Rebate (CCR) measure in this Bill was first put forward in the Social Services and Other Legislation Amendment Bill 2013 (at Schedule 9) by the Honourable Kevin Andrews MP and was examined by the Parliamentary Joint Committee on Human Rights. In the Committee’s first report of the 44th Parliament, dated 10 December 2013, the Committee considered that the amendments proposed in Schedule 9 of that Bill, which included the CCR measure, did not give rise to human rights compatibility issues.

Overview of the Bill

The Bill will maintain the current CCR limit at $7,500 per financial year per child, by continuing to pause the indexation of the CCR limit for a further three income years to 30 June 2017. The Bill amends paragraph 84F(ea) of, and
clause 3 of Schedule 4 to, the FA Act to preserve the current CCR limit and pause the indexation of the CCR limit that was originally introduced through the Budget Measures Act in 2011.

The Bill will also maintain the CCB income thresholds at the amount applicable as at 30 June 2014, for the three income years to 30 June 2017. The Bill amends Schedule 4 to the FA Act to maintain the CCB income thresholds at the amounts in place as at 30 June 2014.

**Human Rights Implications**

The Bill engages the following human rights:

**Rights of the child**

The rights of the child are contained in the *Convention of the Rights of the Child* (CRC).

Article 3 of the CRC requires that in all actions concerning children, the best interests of the child shall be a primary consideration.

To the extent that the Bill engages the rights of the child, it does not limit those rights as it maintains the provision of payments to assist the affordability of child care for families.

**Right to social security**

In the context of providing additional payments to families for child care the Bill also engages the right to social security contained in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as article 26 of the CRC, which specifically recognises the right of a child to benefit from social security.

Article 9 of the ICESCR requires amongst other things that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families. Article 26 of the CRC requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child.

The right to social security is not absolute and may be subject to permissible limitations. The UN Committee on Economic, Social and Cultural Rights has said that the right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage.[1]

Any removal in entitlements must be justified in line with Article 4 of the ICESCR (limitations are to be determined by law, be compatible with the nature of these rights and be solely for the purpose of promoting the general

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welfare in a democratic society) in the context of the full use of the maximum available resources of the State party.[2]

The Government considers that maintaining the current CCR limit until 1 July 2017 is a reasonable, necessary and proportionate measure that is in the interest of Australia’s current fiscal and economic position, given savings from the measure have already been taken by the previous government.

The current limit of $7,500 per child per financial year is currently set out in the legislation and will be retained in this measure. This maximum amount of CCR is not being reduced through this Bill.

The Government also considers that the overall effect of maintaining the CCB income thresholds until 1 July 2017 will, in relation to the families whose children attend approved child care, be limited by continued indexation of the CCB standard hourly rate, the minimum hourly amount and the multiple child loadings, which are not affected by this measure. For many of the families impacted by maintaining the CCB income thresholds, half of their additional out-of-pocket child care costs will be met by CCR.

To the extent the Bill limits the right to social security, this limitation is reasonable and proportionate to achieving a legitimate aim.

**Conclusion**

To the extent that the Bill engages the rights of the child and to the extent it engages and places any limitation on the right to social security, such limitation is reasonable, necessary and proportionate to achieving a legitimate aim.

The Bill is compatible with human rights.

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NOTES ON CLAUSES

Clause 1 - Short title

This clause provides that the name of the Bill, when enacted, is the Family Assistance Legislation Amendment (Child Care Measures) Act 2014 (the Act).

Clause 2 - Commencement

This clause provides that the Act will commence on 1 July 2014.

Clause 3 - Schedule(s)

This clause provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned and that any other item in a Schedule to the Bill has effect according to its terms.

For ease of description, this explanatory memorandum uses the following abbreviations:

‘CCB’ means Child Care Benefit.

‘CCR’ means Child Care Rebate.


‘JETCCFA’ means Jobs Education and Training Child Care Fee Assistance.
Schedule 1  Amendments

Summary

This Schedule makes amendments to the Family Assistance Act to maintain the Child Care Rebate (CCR) limit at $7,500 per child, per financial year for three income years starting from 1 July 2014, with the indexation of this amount recommencing in line with CPI on 1 July 2017.

This Schedule also makes amendments to the Family Assistance Act to maintain the Child Care Benefit (CCB) income thresholds at the rate applicable as at 30 June 2014, starting from 1 July 2014 for three income years, with the indexation of this amount recommencing in line with CPI on 1 July 2017.

Background

CCR is a payment assisting eligible individuals with the cost of child care fees for sessions of care provided by an approved child care service. The amount of CCR an individual may receive for a child for an income year is 50 per cent of the difference between the amount that the individual is liable to pay for care provided to the child and the sum of the individual’s CCB entitlement (if any) and JETCCFA (if any) relating to that child, up to the maximum limit legislatively set at $7,500 for 2013-14 (CCR limit). The legislation currently provides for the CCR limit amount to be indexed by CPI on 1 July 2014.

CCB is a means tested payment that provides financial assistance to help families with child care costs. To qualify for CCB, recipients need to meet an income test, with the maximum rate currently payable for adjusted taxable income under $41,902. The legislation currently provides for the CCB income thresholds to be indexed by the Consumer Price Index on 1 July each year.

Explanation of the changes

A New Tax System (Family Assistance) Act 1999

Item 1 – Paragraph 84F(ea)

Section 84F specifies the amounts of the CCR limit applicable in respect of a child and an income year. These amounts are relevant to the calculation of the amount of CCR for a quarter (under section 84AA) and for an income year (under section 84A) and the amount of CCR relating to CCB in substitution (under section 84DA) and the amount of CCR for a week (under section 84AAA).
Paragraph 84F(ea) currently specifies the limit of $7,500 for the income years ending on 30 June 2012, 30 June 2013 and 30 June 2014.

Item 1 amends paragraph 84F(ea) to specify a CCR limit of $7,500 for three additional income years, being the income years ending on 30 June 2015, 30 June 2016 and 30 June 2017.

**Item 2 – New subclause 3(5B) of Schedule 4**

This item inserts a new heading and a new subclause 3(5B) of Schedule 4, to provide that the CCB lower income threshold and the CCB upper income threshold are not to be indexed on 1 July 2014, 1 July 2015 and 1 July 2016. A note to subclause 3(5B) states that indexation of the income thresholds resumes on 1 July 2017.

**Item 3 – Heading to subclause 3(6A) of Schedule 4**

This item substitutes the heading to subclause 3(6A) of Schedule 4 to remove the previous reference to specific income years.

**Item 4 – Subclause 3(6B) of Schedule 4**

This item extends the non-indexation of the CCR limit in subclause 3(6B) of Schedule 4 to include the income years starting on 1 July 2014, 1 July 2015 and 1 July 2016.

**Item 5 – Note to subclause 3(6B) of Schedule 4**

This item amends the note to subclause 3(6B) of Schedule 4 to state that indexation of the CCR limit resumes on 1 July 2017.

**Item 6 – New subclause 3(6C) of Schedule 4**

This item inserts a new subclause 3(6C) of Schedule 4 which provides that when indexation of the CCR limit resumes on 1 July 2017, the amount of CCR limit which is to be indexed is $7,500.

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

**Item 7 – Repeal item 5 of Schedule 1**

This item repeals item 5 of Schedule 1 of the *Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011*. This item implemented a provision with the same effect as new subclause 3(6C) of Schedule 4 to the *A New Tax System (Family Assistance) Act 1999* (see item 6, above), applying to the indexation of the CCR limit that would have resumed on 1 July 2014 but for the changes introduced by this Bill. Accordingly, item 5 of Schedule 1 of the *Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011* is no longer required.