





**Families, Community Services and  
Indigenous Affairs Legislation  
Amendment (Child Care and Other 2007  
Budget Measures) Act 2007**

**No. 113, 2007**

**An Act to amend the law relating to family  
assistance and social security, and for related  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to amend the law relating to family  
assistance and social security, and for related  
purposes**

*[Assented to 28 June 2007]*

The Parliament of Australia enacts:

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## 1 Short title

This Act may be cited as the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Care and Other 2007 Budget Measures) Act 2007*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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| <b>Commencement information</b>   |  |                     |
|---|--|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>                                      | <b>Column 3</b>     |
| <b>Provision(s)</b>   | <b>Commencement</b>                                  | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 28 June 2007        |
| 2. Schedule 1   | 1 July 2007.   | 1 July 2007         |
| 3. Schedule 2   | 1 October 2007.                                      | 1 October 2007      |

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments relating to child care benefit rate and child care tax rebate**

### **Part 1—Amendments**

#### ***A New Tax System (Family Assistance) Act 1999***

##### **1 Subsection 3(1)**

Insert:

*child care tax rebate* means the rebate for which a person is eligible under Division 5 of Part 3.

##### **2 Subsection 3(1) (after paragraph (d) of the definition of *family assistance*)**

Insert:

(da) child care tax rebate; or

##### **3 Subsection 3(1) (definition of *week*)**

After “child care benefit”, insert “and child care tax rebate”.

##### **4 Subsection 3(6)**

After “child care benefit”, insert “and child care tax rebate”.

##### **5 At the end of Part 3**

Add:

### **Division 5—Eligibility for child care tax rebate**

#### **57F Eligibility for child care tax rebate**

(1) An individual is eligible for child care tax rebate for an income year in respect of a child if:

(a) care is provided by one or more approved child care services to the child during at least one week in the year (whether or not the week finished in that year); and

(b) either:

- (i) a determination is made under section 51B of the Family Assistance Administration Act that the individual is entitled to be paid child care benefit by fee reduction for the care; or
- (ii) a determination is made under section 52E of the Family Assistance Administration Act that the individual is entitled to be paid child care benefit for the care; and

(c) under Subdivision G of Division 4, one or more of the following is the weekly limit of hours applicable to the individual in the week:

- (i) the 50 hour limit (see section 54);
- (ii) the more than 50 hour limit (see section 55);
- (iii) the 24 hour care limit under section 56.

Note: If one of the paragraph (c) limits applies, the individual satisfies the paragraph (c) condition, even if the individual has not used child care for the child during the week up to the full extent of the limit.

- (2) If a limit of only 24 hours is applicable to the individual for the week under subsection 53(3), the condition mentioned in paragraph (1)(c) is not satisfied for the week.
- (3) The 50 hour limit is taken, for the purposes of paragraph (1)(c), to be applicable to the individual in the week if it would have been applicable to the individual in the week but for the fact that the individual failed to meet the requirements of paragraph 17A(1)(b) in relation to the week.

## **6 After Division 4 of Part 4**

Insert:

### **Division 4A—Child care tax rebate**

#### **84A Amount of the child care tax rebate**

If a determination of entitlement for child care tax rebate under section 65EA or 65EB of the Family Assistance Administration Act is in force in respect of an income year (the *rebate year*) in respect of an individual for child care provided by one or more approved child care services to a child during the year, the amount

of the rebate which the individual is entitled to be paid in respect of the child for the year is worked out as follows:

*Method statement*

- Step 1.* Work out the total amount of the individual's approved child care fees for the child in each base week for the individual and the child in the rebate year.
- Step 2.* Work out the total amount of the individual's entitlement to child care benefit for the care for the child in each base week for the individual and the child in the rebate year.
- Step 3.* Work out the total amount of Jobs Education and Training (JET) Child Care fee assistance (if any) that the individual is eligible to receive for the child in each base week for the individual and the child in the rebate year.
- Step 4.* Work out the lesser of the following amounts (the **child rebate**) for the child:
- (a) the amount worked out using the formula:
- $$30\% \times \left( \text{Step 1 amount} - \text{Step 2 amount} - \text{Step 3 amount} \right)$$
- (b) the child care tax rebate limit for the rebate year.
- Step 5.* The result is the amount of the individual's child care tax rebate for the child for the rebate year.

**84B Component of formula—*approved child care fees***

*General rule—approved child care fees for a base week for an individual and a child*

- (1) The amount of an individual's **approved child care fees** for a child in a base week for the individual and the child is the amount of fees for which:
- (a) the individual; or

(b) the individual's partner during the week;  
is liable for care provided by an approved child care service or services for the child during the week. Subject to subsection (2), it does not matter whether the individual is entitled to child care benefit for all of that care.

*Special rule if the week is also a base week for the individual's partner for the child*

- (2) If the base week is also a base week for the individual's partner and the child, the individual's approved child care fees for the week do not include any fees that the individual's partner was liable to pay for care by an approved child care service or services for the child in the week for which the individual is not entitled to child care benefit.

*If fee reduction applies, count unreduced amount of fees*

- (3) If fees for child care by an approved child care service have been reduced under Division 1 of Part 8A of the Family Assistance Administration Act, then for the purposes of this section, a reference to the fees for which the individual, or the individual's partner, is liable is taken to be a reference to the fees for which the individual, or the individual's partner, would have been liable for the care if they had not been so reduced.

#### **84C Component of formula—*base week***

A week is a *base week* for an individual for a child in a rebate year if:

- (a) all or part of the week falls within the rebate year; and
- (b) care is provided by one or more approved child care services to the child during the week; and
- (c) either:
  - (i) a determination is made under section 51B of the Family Assistance Administration Act that the individual is entitled to be paid child care benefit by fee reduction for the care; or
  - (ii) a determination is made under section 52E of the Family Assistance Administration Act that the individual is entitled to be paid child care benefit for the care; and

- (d) paragraph 57F(1)(c) (as affected by subsections 57F(2) and (3)) is satisfied for the week.

**84D Component of formula—*amount of the individual’s entitlement to child care benefit***

The *amount* of an individual’s entitlement to child care benefit for the care of a child by one or more approved child care services in a base week for the individual and the child in a rebate year is:

- (a) for an individual in respect of whom a determination of entitlement is made under section 51B of the Family Assistance Administration Act in respect of one or more sessions of care provided during that week—so much of the amount in which the individual is determined to be entitled to be paid child care benefit by fee reduction for the rebate year as is attributable to that week; and
- (b) for an individual in respect of whom a determination is made under section 52E of the Family Assistance Administration Act for a past period—so much of the amount in which the individual is determined to be entitled to be paid child care benefit for the rebate year as is attributable to that week.

**84E Component of formula—*Jobs Education and Training (JET) Child Care fee assistance***

*Jobs Education and Training (JET) Child Care fee assistance* means the payment of that name that is paid by the Commonwealth to the individual in respect of child care provided by one or more approved child care services to the child in the base week.

**84F Component of formula—*child care tax rebate limit***

- (1) The *child care tax rebate limit* is:
- (a) for the income year ending on 30 June 2007—\$4,211; and
- (b) for the income year ending on 30 June 2008—\$4,354.
- (2) The limit is indexed annually under Schedule 4 from 1 July 2008 onwards.

**7 Subclause 4(1) of Schedule 2 (cell at table item 1, column headed “Standard hourly rate”)**

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**Schedule 1** Amendments relating to child care benefit rate and child care tax rebate  
**Part 1** Amendments

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Repeal the cell, substitute:  
\$3.37

**8 Clause 12 of Schedule 2 (formula)**

Repeal the formula, substitute:

$$\frac{\$0.564}{\text{Standard hourly rate} \times \text{Multiple child \%}}$$

**9 Clause 2 of Schedule 4 (at the end of the table)**

Add:

22 Child care tax rebate limit CCTR limit [section 84F]

**10 Subclause 3(1) of Schedule 4 (at the end of the table)**

Add:

22 CCTR limit 1 July March highest March \$1.00  
quarter before  
reference  
quarter (but  
not earlier  
than March  
quarter 2008)

**11 At the end of clause 3 of Schedule 4**

Add:

*No indexation of CCB standard hourly rate and CCB minimum hourly rate on 1 July 2007*

- (5) The CCB standard hourly rate and the CCB minimum hourly rate are not to be indexed on 1 July 2007.

*First indexation of CCTR limit*

- (6) The first indexation of the CCTR limit is to take place on 1 July 2008.

***A New Tax System (Family Assistance) (Administration) Act 1999***

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## **12 After Division 4 of Part 3**

Insert:

### **Division 4AA—Child care tax rebate**

#### **Subdivision A—Determination of entitlement to child care tax rebate**

##### **65EA Determination of entitlement to child care tax rebate— individual eligible for child care benefit by fee reduction**

- (1) The Secretary must make a determination under this section in respect of an individual and a child for an income year if:
  - (a) the Secretary has determined under section 51B that the individual is entitled to be paid child care benefit by fee reduction for one or more sessions of care provided by an approved child care service to the child during the year; and
  - (b) no determination under this section, or section 65EB, has already been made in respect of the individual and the child for the income year.
- (2) If the Secretary is satisfied that the individual is eligible under section 57F of the Family Assistance Act for child care tax rebate in respect of the child for the income year, the Secretary must determine the amount of the rebate which the Secretary considers the individual is entitled to be paid in respect of the child for the year.
- (3) If the Secretary is not satisfied that the individual is eligible under section 57F of the Family Assistance Act for child care tax rebate in respect of the child for the income year, the Secretary must determine that the individual is not entitled to be paid child care tax rebate in respect of the child for the year.

##### **65EB Determination of entitlement to child care tax rebate— individual eligible for child care benefit for a past period**

- (1) The Secretary must make a determination under this section in respect of an individual and a child for a past period if:

- (a) the Secretary has determined under section 52E that the individual is entitled to be paid child care benefit for the period for care provided to the child; and
  - (b) no determination under this section, or section 65EA, has already been made in respect of the individual and the child for the income year in which the period falls.
- (2) If the Secretary is satisfied that the individual is eligible under section 57F of the Family Assistance Act for child care tax rebate in respect of the child for the income year in which the period falls, the Secretary must determine the amount of the rebate which the Secretary considers the individual is entitled to be paid in respect of the child for the year.
- (3) If the Secretary is not satisfied that the individual is eligible under section 57F of the Family Assistance Act for child care tax rebate in respect of the child for the income year in which the period falls, the Secretary must determine that the individual is not entitled to be paid child care tax rebate in respect of the child for the year.

#### **65EC Determination of entitlement to child care tax rebate**

- (1) If:
- (a) a determination is made in respect of an individual and a child for an income year:
    - (i) under section 65EA as a result of a determination under section 51B (the *earlier rebate determination*); or
    - (ii) under section 65EB as a result of a determination under section 52E (the *earlier rebate determination*); or
    - (iii) under this section as a result of a determination under section 51B or 52E (the *earlier rebate determination*); and
  - (b) another determination is made under either or both of sections 51B and 52E in respect of the individual and the child for the income year (the *later CCB determination*); and
  - (c) the other determination is not the result of a review of an earlier determination under the relevant section; and
  - (d) the amount of the rebate which the Secretary considers the individual is entitled to be paid in respect of the child for the year is increased as a result of the later CCB determination;

the Secretary must determine under this section the amount of the rebate which the Secretary considers the individual is entitled to be paid in respect of the child for the year (the *later rebate determination*).

- (2) The earlier rebate determination ceases to be in force when the later rebate determination is made.

#### **65ED When determination is in force**

Subject to subsection 65EC(2), a determination under this Subdivision comes into force when it is made and remains in force at all times afterwards.

#### **65EE Notice of determination**

- (1) The Secretary must give notice of a determination under this Subdivision to the individual, stating:
  - (a) the income year in respect of which the determination is made; and
  - (b) whether, under the determination, the individual is entitled to be paid child care tax rebate in respect of the income year; and
  - (c) if the individual is so entitled, the amount of the entitlement; and
  - (d) that the individual may apply for review of the determination in the manner set out in Part 5.
- (2) The determination is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.

#### **Subdivision B—Payment**

##### **65EF Payment of child care tax rebate**

- (1) If a determination is made under section 65EA or 65EB that an individual is entitled to be paid child care tax rebate in respect of a child for an income year, the Secretary must pay the amount to which the individual is determined to be entitled, at such time as the Secretary considers appropriate, to the credit of a bank account nominated and maintained by the individual.

- (2) If a determination is made under section 65EC that an individual is entitled to be paid an increased amount of child care tax rebate in respect of a child for an income year, the Secretary must pay the amount of the increase, at such time as the Secretary considers appropriate, to the credit of a bank account nominated and maintained by the individual.
- (3) The Secretary may direct that the whole or a part of an amount which is to be paid under this section is to be paid in a different way from that provided for by subsection (1) or (2). If the Secretary gives the direction, the amount is to be paid in accordance with the direction.
- (4) This section is subject to Part 4 and to Division 3 of Part 8B.

### **13 After section 71C**

Insert:

#### **71CAA Debts arising in respect of child care tax rebate where no entitlement or rebate paid to wrong account**

- (1) If:
  - (a) an amount has been paid to a person by way of child care tax rebate for an income year; and
  - (b) the person was not entitled to the rebate for that year;the amount so paid is a debt due to the Commonwealth by the person.
- (2) If:
  - (a) a payment representing child care tax rebate for an income year is made to a financial institution for the credit of an account kept with the institution (the *incorrect account*); and
  - (b) the Secretary is satisfied that the amount paid to the institution was intended to be paid for the credit of an account kept in the name of someone who was not the person or one of the persons in whose name the incorrect account was kept;an amount equal to the amount of the payment made to the institution is, subject to subsection 93A(5), a debt due to the Commonwealth by the person, or jointly and severally by the

persons, as the case requires, in whose name the incorrect account was kept.

**71CAB Debts arising in respect of child care tax rebate where overpayment**

If:

- (a) an amount (the *received amount*) has been paid to a person by way of child care tax rebate for an income year; and
- (b) the received amount is greater than the amount (the *correct amount*) of rebate that should have been paid to the person under the family assistance law for the year;

the difference between the received amount and the correct amount is a debt due to the Commonwealth by the person.

**14 Subsection 82(3) (definition of debt)**

After “71CA,”, insert “71CAA, 71CAB,”.

**15 At the end of subsection 92A(2)**

Add “or child care tax rebate”.

**16 Subsection 93A(6) (before paragraph (c) of the definition of family assistance payment)**

Insert:

- (bb) a payment of child care tax rebate under section 65EF; or

**17 After subsection 154(4)**

Insert:

(4A) The Secretary may require a person to:

- (a) give information; or
- (b) produce a document that is in the person’s custody or under the person’s control;

to a specified agency if the Secretary considers that the information or document may be relevant to either or both of the following matters:

- (c) whether an individual is eligible for child care tax rebate;
- (d) the amount of child care tax rebate to which an individual is entitled.

**18 Section 219TA (after paragraph (h) of the definition of *relevant benefit*)**

Insert:

(ha) child care tax rebate; or

***Income Tax Assessment Act 1936***

**19 Subsection 159J(6) (paragraph (ac) of the definition of *separate net income*)**

After “child care benefit,” insert “child care tax rebate.”

***Income Tax Assessment Act 1997***

**20 Section 11-15 (table item headed “family assistance”)**

After:

child care benefit. .... 52-150

insert:

child care tax rebate..... 52-150

**21 Subsection 52-150(1)**

After “child care benefit,” insert “child care tax rebate.”

**22 Subsection 61-470(1)**

After “for an income year”, insert “ending before 1 July 2007”.

## **Part 2—Application**

### **23 Items 5, 6 and 12**

The amendments made by items 5, 6 and 12 of this Schedule apply in relation to income years ending after 30 June 2006.

### **24 Items 7 and 8**

The amendments made by items 7 and 8 of this Schedule apply in relation to sessions of care provided on or after 1 July 2007.

## Schedule 2—Amendments relating to health care cards

### *Social Security Act 1991*

#### **1 At the end of section 1061ZO**

Add:

- (9) This section applies to a person on a day if:
- (a) on that day, the person:
    - (i) is aged at least 16 and has not turned 26; and
    - (ii) is a full-time student; and
    - (iii) is an Australian resident; and
    - (iv) is living in Australia; and
  - (b) on the day before the person turned 16:
    - (i) another person was qualified under Part 2.19 for carer allowance for the person; or
    - (ii) subsection 1061ZK(3) applied to the person; and
  - (c) on the day before the person turned 16, the person was qualified for, and held, a health care card.

Note: For *Australian resident* see subsection 7(2).

#### **2 Transitional provision**

Despite paragraph (c) of subsection 1061ZO(9) of the *Social Security Act 1991*, that subsection is also taken to apply to a person on a day if:

- (a) the person satisfies paragraphs 1061ZO(9)(a) and (b) but not paragraph 1061ZO(9)(c); and
- (b) before 1 October 2007, another person had made a claim for carer allowance for the person; and
- (c) that claim was not determined before the day on which the person turned 16; and
- (d) if the claim had been determined before that day, the person would have been granted a health care card before the day on which the person turned 16.

#### **3 Paragraph 1061ZT(2)(b)**

Omit “or (5)”, substitute “, (5) or (9)”.

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***Social Security (Administration) Act 1999***

**4 Subsection 240B(2)**

After “1061ZK(7)”, insert “or 1061ZO(9)”.

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*[Minister’s second reading speech made in—  
House of Representatives on 31 May 2007  
Senate on 14 June 2007]*

(104/07)

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