



Child Care Legislation Amendment Act 1998

No. 13, 1998



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**An Act to amend legislation relating to child care,
and for related purposes**

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An Act to amend legislation relating to child care, and for related purposes

[Assented to 16 April 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Child Care Legislation Amendment Act 1998*.

2 Commencement

- (1) Sections 1, 2, 3 and 4 and items 16 and 17 of Schedule 1 commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day to be fixed by Proclamation.

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- (3) If a provision referred to in subsection (2) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Transitional matters

- (1) The regulations may deal with transitional matters relating to the amendments made by Schedule 1 to this Act.
- (2) The Governor-General may make regulations for the purposes of this section.

Schedule 1—Amendment of Acts

Child Care Act 1972

1 Section 4

Insert:

Agency means the Commonwealth Services Delivery Agency established by the Agency Act.

Agency Act means the *Commonwealth Services Delivery Agency Act 1997*.

Australian Immunisation Handbook means the latest edition of the Australian Immunisation Handbook published by the Australian Government Publishing Service.

CEO, in relation to the Agency, means the Chief Executive Officer of the Agency.

conscientious objection, in relation to the immunisation of a child, has the same meaning as in the *Child Care Payments Act 1997*.

eligibility requirements means the requirements referred to in paragraph 4C(1A)(a).

immunised has the same meaning as in the *Child Care Payments Act 1997*.

information includes estimates.

officer means a person performing duties, or exercising powers or functions, under or in relation to this Act and, in relation to a provision of Part IIIA, includes:

- (a) a person who has been such a person; and
- (b) a person who is or has been appointed or employed by the Commonwealth and who, as a result of that appointment or employment, may acquire or has acquired information about a person under this Act; and

- (c) a person who, although not appointed or employed by the Commonwealth, performs or performed services for the Commonwealth and who, as a result of performing those services, may acquire or has acquired information about a person under this Act.

protected information means:

- (a) information about a person or a child care service that is or was held in the records of the Department, the Health Insurance Commission or the Agency; or
- (b) information that there is no information about a person or a child care service held in such records.

recognised immunisation provider has the same meaning as in section 46A of the *Health Insurance Act 1973*.

service arrangements has the same meaning as in the Agency Act.

2 At the end of section 4

Add:

- (2) For the purposes of this Act, a thing is taken to be done or required for a permitted purpose if it is done or required:
 - (a) for the purposes of this Act; or
 - (b) for the purposes of the *Social Security Act 1991*; or
 - (c) for the purposes of making a payment to the operator of an approved child care service by way of a grant of a similar kind to grants made under section 12A.

3 At the end of subsection 4B(2)

Add “, and the determination is not suspended or has not been cancelled”.

4 At the end of section 4B

Add:

- (3) A determination in relation to a child care centre made under subsection (2), whether before or after the commencement of this subsection, is subject to the following conditions:

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- (a) the child care centre must continue to satisfy the eligibility requirements;
 - (b) the child care centre must hold an allocation of child care places;
 - (c) the child care centre must not exceed its child care place limit;
 - (d) the provision of child care by the child care centre must comply with all applicable requirements imposed by a law of the Commonwealth, or of the State or Territory where the centre is situated, relating to child care;
 - (e) such other conditions as the Secretary may impose by written notice to the operator of the child care centre;
 - (f) such other conditions as the Minister may impose by determination published in the *Gazette* on a class of child care centres that includes the child care centre.
- (4) For the purposes of paragraph (3)(c), a child care centre is taken to exceed its child care place limit if, at any particular time, the number of children receiving child care at the centre is greater than the number of places in the centre's allocation of child care places.

5 Subsection 4C(1)

Repeal the subsection, substitute:

- (1) The Minister may, by determination in writing, make guidelines:
 - (a) with respect to the exercise of the Minister's powers under section 4B; or
 - (b) with respect to the exercise of the Secretary's powers under section 12F.
- (1A) The guidelines may specify:
 - (a) the requirements that a child care centre or its operator, or both, must satisfy before the child care centre can be determined to be an eligible child care centre, for the purposes of section 12A; and
 - (b) procedures relating to the allocation (including re-allocation) of child care places; and

- (c) matters to be taken into account in working out the number of child care places to be allocated to eligible child care centres; and
- (d) the maximum number of places that can be allocated to eligible child care centres in a specified class; and
- (e) any other matters to be taken into account in making such an allocation.

6 After section 4C

Insert:

4D Allocation conditions stop applying after 31 December 1999

After 31 December 1999, paragraphs 4B(3)(b) and (c) and 4E(1)(c) do not apply.

4E Consequences of breach of conditions

- (1) The Secretary may impose one or more of the following sanctions on an eligible child care centre if satisfied that it has breached a condition mentioned in subsection 4B(3):
 - (a) vary the conditions imposed under paragraph 4B(3)(e);
 - (b) impose additional conditions under that paragraph;
 - (c) reduce the number of places in the centre's allocation of child care places;
 - (d) suspend the determination made under subsection 4B(2) in relation to the child care centre;
 - (e) cancel that determination.
- (2) The Minister may determine, in writing, matters to be taken into account in imposing a sanction under this section.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

4F Procedure for imposing a sanction

- (1) Before imposing a sanction on an eligible child care centre under section 4E, the Secretary must give the operator of the centre a written notice:
 - (a) stating that the Secretary is considering imposing the sanction; and
 - (b) setting out the grounds on which the Secretary is considering imposing the sanction; and
 - (c) summarising the evidence and other material on which those grounds are based; and
 - (d) summarising the effect of the notice (including the review provided for by section 4G) and of the sanction that the Secretary is considering imposing; and
 - (e) inviting the operator to make written submissions to the Secretary within 28 days, stating why the sanction should not be imposed.
- (2) In deciding whether to impose the sanction, the Secretary must have regard to any submissions made by the operator as mentioned in paragraph (1)(e).

4G Review by the Administrative Appeals Tribunal

An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a decision to impose a condition under paragraph 4B(3)(e); and
- (b) a decision to impose a sanction under section 4E.

7 After the heading to Part III

Insert:

Division 1—Grants for new eligible child care centres and grants for fee relief

8 After subparagraph 12A(1)(a)(i)

Insert:

- (ia) in verifying, for the purpose of assessing the amount of fee relief payable to the operator of an eligible child care centre, the work related circumstances of the families of children in economic need; and
- (ib) in identifying, for the purposes of assessing the amount of fee relief payable to the operator of an eligible child care centre, children receiving child care at an eligible child care centre as children to whom special circumstances apply; and
- (ic) in identifying, for the purposes of assessing the amount of fee relief payable to the operator of an eligible child care centre, whether or not special circumstances apply to the child care centre; and

9 After subsection 12A(1)

Insert:

- (1A) The reference in subparagraph (1)(a)(ia) to verifying the work related circumstances of a family is a reference to deciding whether each parental member of the family is a person to whom any of the following applies:
 - (a) the person has recognised work or work related commitments within the meaning of section 29 of the *Childcare Rebate Act 1993*;
 - (b) the person has recognised training commitments within the meaning of section 30 of that Act;
 - (c) the person has recognised study circumstances within the meaning of section 31 of that Act;
 - (d) the person is covered by a determination under subsection 28(2) of that Act.

10 At the end of section 12A

Add:

- (4) In this section:

family, in relation to verification of a kind referred to in subparagraph (1)(a)(ia), has the same meaning as it would have in section 5 of the *Childcare Rebate Act 1993* if the references in that

section to the Managing Director of the Health Insurance Commission were references to the person responsible for the verification.

parental member, in relation to a family, has the same meaning as in section 4 of the *Childcare Rebate Act 1993*.

11 After section 12A

Insert:

Division 2—Provision of tax file numbers

12 After section 12E

Insert:

Division 3—Allocation of child care places

12F Secretary to allocate child care places

- (1) The Secretary is to allocate child care places to child care centres determined, whether before or after the commencement of this Division, to be eligible child care centres under subsection 4B(2).
- (2) An allocation must be made in accordance with the guidelines made under section 4C.
- (3) After 31 December 1999, this section does not apply.

Division 4—The immunisation requirement

12G The immunisation requirement

- (1) An amount is not payable to the operator of an eligible child care centre by way of a grant approved under section 12A in respect of a child under 7, from a date determined by the Secretary under subsection (2) in relation to the child, unless the Secretary is satisfied that:
 - (a) the child is immunised; or
 - (b) both of the following have occurred:

- (i) a recognised immunisation provider has certified in writing that he or she has discussed with a person who is a fee relief beneficiary in relation to the child the benefits and risks of immunising the child;
 - (ii) the person has declared in writing that he or she has a conscientious objection to the child being immunised; or
 - (c) if the child is a dependent child of another person, both of the following have occurred:
 - (i) a recognised immunisation provider has certified in writing that he or she has discussed with the other person the benefits and risks of immunising the child; and
 - (ii) the other person has declared in writing that he or she has a conscientious objection to the child being immunised; or
 - (d) a recognised immunisation provider has certified in writing that the immunisation of the child would be medically contraindicated under the specifications set out in the Australian Immunisation Handbook; or
 - (e) a recognised immunisation provider has verified in writing that the vaccine for immunising the child is not, or will not be, available immediately before or during the period in respect of which the amount of grant would otherwise be payable to the operator; or
 - (f) a registered medical practitioner has certified in writing that the child has recovered from the relevant disease, has developed a natural immunity and does not require immunisation; or
 - (g) the child is in a class of children exempted from the requirement to be immunised by a direction under subsection 12H(1).
- (2) If the Secretary is not satisfied as mentioned in a paragraph of subsection (1), the Secretary must:
- (a) determine, in accordance with the Minister's directions, the date from which amounts of grant approved under section 12A cease to be payable for fee relief in respect of the child; and

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- (b) give notice, in accordance with the directions, that an amount of grant approved under section 12A is not payable for fee relief in respect of the child on or after that date.

12H Minister's directions

- (1) The Minister may, in writing, direct that children included in a class of children specified in the direction are exempted from the requirement to be immunised.
- (2) The Minister may, in writing, give directions about:
 - (a) the persons to whom notice under subsection 12G(2) is to be given, the matters to be included in such a notice and the procedure for giving such a notice; and
 - (b) the way in which the date referred to in paragraph 12G(2)(a) is to be determined.
- (3) A direction under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

13 After Part III

Insert:

Part IIIA—Confidentiality

12J Authorised access to and use of protected information

- (1) A person may obtain protected information if the information is obtained for a permitted purpose.

Note: In certain circumstances it is an offence for a person to obtain protected information without authority (see section 12K).

- (2) A person may:
 - (a) make a record of protected information; or
 - (b) disclose protected information to any person; or
 - (c) otherwise use protected information;if the record, disclosure or use made of the information by the person is made:

- (d) for a permitted purpose; or
- (e) for the purpose for which the information was disclosed to the person under section 12M or 12N.

Note: In certain circumstances it is an offence for a person to use protected information without authority (see section 12L).

12K Offence—unauthorised access to protected information

A person is guilty of an offence if:

- (a) the person obtains information; and
- (b) the information is protected information; and
- (c) the person:
 - (i) is not authorised or required by or under this Act or the *Social Security Act 1991*; and
 - (ii) has no other lawful authority; to obtain the information; and
- (d) the person knows, or is reckless as to whether, the information is protected information.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

12L Offence—unauthorised use of protected information

A person is guilty of an offence if:

- (a) the person:
 - (i) makes a record of; or
 - (ii) discloses to any other person; or
 - (iii) otherwise makes use of; information; and
- (b) the information is protected information; and
- (c) the person:
 - (i) is not authorised or required by or under this Act or the *Social Security Act 1991*; and
 - (ii) has no other lawful authority;

to make the record, disclosure or use of the information that is made by the person; and

- (d) the person knows, or is reckless as to whether, the information is protected information.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

12M Protection extends to court, tribunal etc. proceedings

An officer must not, except for a permitted purpose, be required:

- (a) to produce any document in his or her possession; or
- (b) to disclose any matter or thing of which he or she had notice;

by reason of the performance or exercise of his or her duties, functions or powers under this Act or the *Social Security Act 1991* to:

- (c) a court; or
- (d) a tribunal; or
- (e) an authority; or
- (f) a person;

having power to require the production of documents or the answering of questions.

12N Secretary's certificate

- (1) Despite sections 12L and 12M, the Secretary may:

- (a) if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases—disclose information acquired by an officer in the performance of his or her functions or duties or in the exercise of his or her powers under this Act or the *Social Security Act 1991* to such persons and for such purposes as the Secretary determines; or
- (b) disclose any such information to the Secretary of a Department of State of the Commonwealth or to the head of an authority of the Commonwealth for the purposes of that Department or authority; or

- (c) disclose any such information to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it.

Note: A person to whom information is disclosed may commit an offence if the person uses the information without authority (see section 12L).

- (2) In giving certificates for the purposes of paragraph (1)(a), the Secretary must act in accordance with guidelines in force under subsection 12P(1).
- (3) In disclosing information under paragraph (1)(b), the Secretary must act in accordance with guidelines in force under subsection 12P(1).

12P Guidelines for exercise of Secretary's disclosure power

- (1) The Minister, by determination in writing:
 - (a) may make guidelines for the exercise of the Secretary's power to give certificates for the purposes of paragraph 12N(1)(a); and
 - (b) may make guidelines for the exercise of the Secretary's power under paragraph 12N(1)(b).
- (2) The guidelines must not be inconsistent with the provisions of the *Privacy Act 1988*.
- (3) Before making a determination under subsection (1), the Minister must consult the Privacy Commissioner.
- (4) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

12Q Offence—soliciting disclosure of protected information

A person is guilty of an offence if:

- (a) the person solicits the disclosure of information from an officer or another person; and
 - (b) the disclosure would be in contravention of this Part; and
 - (c) the first-mentioned person knows, or is reckless as to whether, the information is protected information.
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The offence is committed whether or not any protected information is actually disclosed.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

12R Offence—untrue representations

A person commits an offence if:

- (a) the person solicits the disclosure of protected information from an officer; and
- (b) for that purpose makes representations which the person knows are untrue.

The offence is committed whether or not any protected information is actually disclosed.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

12S Offences—offering to supply protected information

- (1) A person is guilty of an offence if the person:

- (a) offers to supply (whether to a particular person or otherwise) information about another person; and
- (b) knows that the information is protected information.

The offence is committed whether or not any protected information is actually supplied.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) A person is guilty of an offence if the person:

- (a) holds himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person; and
- (b) knows that the information is protected information.

The offence is committed whether or not any protected information is actually supplied.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3) Nothing in subsection (1) or (2) renders an officer acting in the exercise or performance of his or her duties, functions or powers under this Act or the *Social Security Act 1991* guilty of an offence.

12T Freedom of Information Act not affected

The provisions of this Part that relate to the disclosure of information do not affect the operation of the *Freedom of Information Act 1982*.

12U Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Part.

12V Crown not liable to be prosecuted for offences

The Crown is not liable to be prosecuted for an offence against, or arising out of, this Part.

14 After subsection 21(1)

Insert:

- (2) The Minister may, in accordance with service arrangements, by signed instrument, delegate to the CEO or an employee of the Agency the Minister's powers under subsection 12A(2) and sections 20B and 23.

Note: The heading to section 21 is replaced by the heading "**Delegations by the Minister**".

15 After section 21

Insert:

21A Delegations by the Secretary

- (1) The Secretary may, by signed instrument, delegate all or any of the Secretary's powers and functions under this Act to an officer.
- (2) The Secretary may, in accordance with service arrangements, by signed instrument, delegate to the CEO or an employee of the Agency all or any of the Secretary's powers and functions under this Act.
- (3) The Secretary may, by signed instrument, delegate to the operator of an eligible child care centre all or any of the Secretary's powers and functions under Division 4 of Part III of this Act.
- (4) If the Secretary delegates to the CEO or an employee of the Agency a power under this Act to invite a person to make submissions to the Secretary, the delegate may, in exercising the power, invite the person to make the submissions to the CEO instead of the Secretary.
- (5) A person who makes a submission to the CEO instead of the Secretary in response to an invitation given by a delegate referred to in subsection (4) is to be treated for all purposes as if the person had made the submission to the Secretary in response to an invitation by the Secretary.

Child Care Payments Act 1997

16 Paragraph 12(2)(a)

Omit "6", substitute "30".

17 Subsection 12(3)

Omit "6", substitute "30".

Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997

18 Sections 8 and 9

Repeal the sections.

19 Item 1 of Schedule 1

Repeal the item, substitute:

1 Subsection 4(1) (definition of *Agency*)

Repeal the definition.

1A Subsection 4(1) (definition of *Agency Act*)

Repeal the definition.

1B Subsection 4(1) (definition of *approved child care service*)

Repeal the definition.

1C Subsection 4(1) (definition of *Australian Immunisation Handbook*)

Repeal the definition.

1D Subsection 4(1) (definition of *CEO*)

Repeal the definition.

1E Subsection 4(1) (definition of *conscientious objection*)

Repeal the definition.

1F Subsection 4(1) (definition of *eligibility requirements*)

Repeal the definition.

20 After item 2 of Schedule 1

Insert:

2A Subsection 4(1) (definition of *immunised*)

Repeal the definition.

2B Subsection 4(1) (definition of *information*)

Repeal the definition.

2C Subsection 4(1) (definition of *officer*)

Repeal the definition.

21 After item 3 of Schedule 1

Insert:

3A Subsection 4(1) (definition of *protected information*)

Repeal the definition.

3B Subsection 4(1) (definition of *recognised immunisation provider*)

Repeal the definition.

3C Subsection 4(1) (definition of *service arrangements*)

Repeal the definition.

22 After item 4 of Schedule 1

Insert:

4A Subsection 4(2)

Repeal the subsection.

23 Item 6 of Schedule 1

Repeal the item, substitute:

6 Subsections 4B(2) to (4)

Repeal the subsections.

6A Paragraph 4C(1)(b)

Repeal the paragraph.

6B Subsection 4C(1A)

Repeal the subsection.

6C Sections 4D to 4G

Repeal the sections.

6D Division 1 of Part III (heading)

Repeal the heading, substitute:

Division 1—Grants for new eligible child care centres

24 Item 7 of Schedule 1

Repeal the item, substitute:

7 Section 12A

Repeal the section.

7A Divisions 2, 3 and 4 of Part III

Repeal the Divisions.

7B Part IIIA

Repeal the Part.

7C Subsection 21(2)

Repeal the subsection.

7D Section 21A

Repeal the section.

Childcare Rebate Act 1993

25 Section 4

Insert:

Australian Immunisation Handbook means the latest edition of the Australian Immunisation Handbook published by the Australian Government Publishing Service.

conscientious objection, in relation to the immunisation of a child, has the same meaning as in the *Child Care Payments Act 1997*.

immunised has the same meaning as in the *Child Care Payments Act 1997*.

recognised immunisation provider has the same meaning as in section 46A of the *Health Insurance Act 1973*.

26 After Division 1 of Part 4

Insert:

Division 1A—The immunisation requirement

39A The immunisation requirement

(1) If:

- (a) a claim for childcare rebate is made on or after the commencement of this Division in respect of a child under 7; and
- (b) the claim is the first one made in respect of the child after:
 - (i) the commencement of this Division; or
 - (ii) the last one made in respect of the same child in relation to which the Commission was satisfied as mentioned in a paragraph of subsection (3); and
- (c) the Commission is not satisfied as mentioned in a paragraph of subsection (3) in relation to the claim;

childcare rebate is payable in respect of the claim, and any subsequent claim for childcare rebate made in respect of the child within 28 days after the first-mentioned claim was made, despite the fact that the Commission is not so satisfied in relation to any of the claims.

(2) If:

- (a) subsection (1) applies in respect of a child; and
 - (b) a claim for childcare rebate is made in respect of the child after the end of the 28 day period mentioned in that subsection; and
 - (c) the child was still under 7 when the claim was made;
- childcare rebate is not payable in respect of the claim unless the Commission is satisfied as mentioned in a paragraph of subsection (3).

(3) The Commission is to be satisfied in relation to a claim that:

- (a) the child was immunised when the claim was made; or
- (b) before the claim was made:
 - (i) a recognised immunisation provider certified in writing that he or she had discussed with the person who made

- the claim the benefits and risks of immunising the child;
and
 - (ii) the person declared in writing that he or she had a conscientious objection to the child being immunised;
or
 - (c) if the child is a dependent child of another person, the claim was made after:
 - (i) a recognised immunisation provider certified in writing that he or she had discussed with the other person the benefits and risks of immunising the child; and
 - (ii) the other person declared in writing that he or she had a conscientious objection to the child being immunised;
or
 - (d) both of the following conditions are satisfied:
 - (i) when the claim was made the immunisation of the child was contraindicated under the specifications set out in the Australian Immunisation Handbook;
 - (ii) a recognised immunisation provider has certified in writing that the immunisation is medically contraindicated under those specifications; or
 - (e) a recognised immunisation provider has certified in writing that the vaccine for immunising the child was not available immediately before the claim was made; or
 - (f) a registered medical practitioner has certified in writing that the child has recovered from the relevant disease, has developed a natural immunity and does not require immunisation; or
 - (g) the child is in a class of children exempted from the requirement to be immunised by a direction under subsection 39B(1).
- (4) If:
- (a) the Commission is satisfied as mentioned in a paragraph of subsection (3) in relation to the child; and
 - (b) a person later makes another claim for child care rebate in relation to the child;
- the Commission has to regard that paragraph as also being satisfied in relation to the child and the later claim, unless the Commission
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considers that there is reason to require the matter in the paragraph to be re-established.

39B Minister's directions

- (1) The Minister may, in writing, direct that children included in a class of children specified in the direction are exempted from the requirement to be immunised.
- (2) The Minister may, in writing, give directions about the way in which the Commission is to satisfy itself about a matter mentioned in subsection 39A(3), including the matters to be taken into account by the Commission for that purpose.
- (3) A direction under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*[Minister's second reading speech made in—
House of Representatives on 4 March 1998
Senate on 23 March 1998]*

(5/98)

