



**Family Assistance Legislation  
Amendment (Child Care Management  
System and Other Measures) Act 2007**

**No. 118, 2007**

**An Act to amend the law in relation to family  
assistance, and for related purposes**

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



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
<b>Schedule 1—Amendments relating to Child Care Management System</b>		3
Part 1—Amendments		3
<i>A New Tax System (Family Assistance) Act 1999</i>		3
<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>		5
Part 2—Application and transitional provisions		42
<b>Schedule 2—Civil penalties</b>		49
<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>		49
<b>Schedule 3—Miscellaneous amendments</b>		58
Part 1—Amendments		58
<i>A New Tax System (Family Assistance) Act 1999</i>		58
<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>		58
Part 2—Application provisions		69





# **Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007**

**No. 118, 2007**

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## **An Act to amend the law in relation to family assistance, and for related purposes**

*[Assented to 28 June 2007]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Family Assistance Legislation  
Amendment (Child Care Management System and Other  
Measures) Act 2007*.

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## 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.

<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	Immediately after the commencement of the provision(s) covered by table item 4.	
3. Schedule 2	1 July 2007.	1 July 2007
4. Schedule 3	The day after this Act receives the Royal Assent.	29 June 2007

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 Management System**

### **Part 1—Amendments**

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

##### **1 Subsections 10(2) and (3)**

Repeal the subsections, substitute:

###### *Initial 42 days absence*

- (2) For the purposes of this Act, if:
- (a) a child is absent from all of one or more sessions of care that would otherwise have been provided to the child by an approved child care service (other than an approved occasional care service) on a day (even if the child is not absent from some or all of another session or sessions of care provided by the service or another service on the day); and
  - (b) the day does not fall:
    - (i) before the day the service has started providing care for the child; or
    - (ii) after the day the service has stopped providing care for the child (otherwise than temporarily); and
  - (c) one or more of the hours in the session of care would, if the session were taken to have been provided to the child, count towards the weekly limit of hours for which an individual or an approved child care service is eligible for child care benefit in respect of the care of the child; and
  - (d) before the day, not more than 41 days have elapsed in the same financial year on which a session of care is taken to have been provided under this subsection to the child;  
the service is taken to have provided the session of care to the child.

###### *Additional absence days permitted*

- (3) For the purposes of this Act, if:

**Schedule 1** Amendments relating to Child Care Management System  
**Part 1** Amendments

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- (a) a child is absent from all of a session of care that would otherwise have been provided to the child by an approved child care service (other than an approved occasional care service); and
- (b) more than 42 days have elapsed in the same financial year on which a session of care is taken to have been provided under subsection (2) to the child; and
- (c) one of the following applies:
  - (i) the absence is due to the illness of the child, the individual in whose care the child is, that individual's partner, or another individual with whom the child lives, and a medical certificate covering that illness is obtained from a medical practitioner and given to the service;
  - (ii) the absence is due to the child's attendance at a pre-school;
  - (iii) the absence is due to alternative care arrangements being made for the child because the child does not have to be at school on a pupil-free day;
  - (iv) the absence occurs in circumstances specified in a determination under section 11 as permitted circumstances for the purpose of this subparagraph; and
- (d) one or more of the hours in the session of care would, if the session were taken to have been provided to the child, count towards the weekly limit of hours for which an individual or an approved child care service is eligible for child care benefit in respect of the care of the child;

the service is taken to have provided the session of care to the child.

**2 Section 11**

Omit "subparagraph 10(2)(b)(iv)", substitute "subparagraph 10(3)(c)(iv)".

**3 Subsection 57A(1)**

Omit "(1)".

**4 Subsection 57A(2)**

Repeal the subsection.



**5 Subclause 2(2) of Schedule 2 (subparagraphs (a)(iii), (b)(iii), (c)(iii), (d)(iii) and (e)(iii) of the definition of *part-time %*)**

Omit “one or more approved centre based long day care services”, substitute “the approved centre based long day care service”.

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

**6 Subsection 3(1)**

Insert:

*ceases* to be enrolled, in relation to a child to whom an approved child care service provides care, has the meaning given by section 219AD.

**7 Subsection 3(1)**

Insert:

*enrolled* in relation to a child to whom an approved child care service provides care, has the meaning given by subsections 219A(2) and 219AA(2).

**8 Section 4**

Before “If,”, insert “(1)”.

**9 Section 4**

Omit “or the doing of the other thing, by the use of a telecommunications system or other electronic equipment”, substitute “or the doing of the other thing:

- (c) by the use of a telecommunications system or other electronic equipment; or
- (d) by the use of software registered with the Secretary”.

**10 At the end of section 4**

Add:

- (2) A person may apply to have software registered by the Secretary for the purposes of a particular application, claim or other thing, or a class of applications, claims or other things.

- (3) The Secretary may, at his or her discretion, register the software for the purposes of that application, claim or other thing, or class of applications, claims or other things.

## **11 Section 48**

Repeal the section, substitute:

### **48 Overview of process if individual is conditionally eligible for child care benefit by fee reduction**

- (1) An approved child care service is obliged to notify the Secretary if an individual enrolls a child for care by the service.
- (2) Once that enrolment is confirmed by the Secretary, the service is obliged to give weekly reports to the Secretary about the care provided to the child.
- (3) If a report is given, and a determination of conditional eligibility under section 50F is in force in respect of an individual and a child with the effect that the individual is conditionally eligible for child care benefit by fee reduction for care provided by the approved child care service to the child in a week, the Secretary will calculate the amount by which the fees charged by the service for the care are to be reduced.
- (4) The amount by which the fees are to be reduced is referable to the amount of child care benefit that would be paid in respect of the sessions if entitlement to an amount of child care benefit was determined under section 51B in respect of the income year in which the week falls. The amount of fee reduction is calculated by the Secretary using the provisions of the Family Assistance Act.
- (5) The service must pass on to the individual the amount of the fee reduction calculated by the Secretary. If the service has already reduced the amount of fees charged to the individual for care provided to the child in anticipation of the calculation by the Secretary, the service is taken to have passed on a fee reduction equal to the amount by which the fees have already been reduced.
- (6) When the determination of entitlement is made, if the amount of the entitlement is greater than the amount of the fee reductions already received by the individual in respect of the sessions in the income year, the amount of the entitlement consists of the amount

of the difference together with the amount of fee reductions received by the individual.

- (7) When the determination of entitlement is made, if the amount of the entitlement is less than the amount of the fee reductions already received by the individual in respect of the sessions in the income year, the amount of the entitlement is the amount of the fee reductions less the amount of the difference.
- (8) Payments in respect of fee reduction are made to the service by the Secretary to enable the service to pass on to the individual the amount of fee reductions as calculated (see Division 2 of Part 8A).

## **12 Subsection 50L(8)**

Omit “, and the approved child care service providing care to the child who was the subject of the claim,”.

## **13 At the end of section 50L**

Add:

- (10) The Secretary may make notice of the cessation of the determination under subsection (7) available to the approved child care service providing care to the child who was the subject of the claim, including by making notice available to the service using an electronic interface.

## **14 Subsection 50M(1)**

Omit all the words after “to the claimant”.

## **15 At the end of section 50M**

Add:

- (4) The Secretary may make notice of the determinations made in respect of the claimant under sections 50F, 50H, 50J and 50K available to the approved child care service, or services, that are, or will be, providing care to the child, including by making the notice available to the service using an electronic interface.

## **16 Subsection 50V(1)**

Repeal the subsection, substitute:

- (1) The Secretary must give notice of a determination under subsection 50T(1) that the claimant is eligible for the special grandparent rate for a child to the claimant.

**17 At the end of section 50V**

Add:

- (4) The Secretary may make notice of a determination under subsection 50T(1) available to the approved child care service, or services, that are, or will be, providing care to the child, including by making the notice available to the service using an electronic interface.

**18 After Subdivision CA of Division 4 of Part 3**

Insert:

**Subdivision CB—Calculating the rate and amount of fee reductions**

**50Z Calculating the rate and amount of fee reductions—individual conditionally eligible**

- (1) If:
  - (a) a determination of conditional eligibility for child care benefit by fee reduction under section 50F is in force in respect of an individual (the *claimant*) and a child for a session or sessions of care provided by the service in a week; and
  - (b) the service gives a report under subsection 219N(1) in respect of the individual and the child in respect of the week;the Secretary must calculate the rate at which, and the amount in which, the Secretary considers fee reduction is applicable in respect of the session or sessions of care provided in the week.
- (2) In calculating the rate and amount, the Secretary must take into account all of the following decisions:
  - (a) determinations made under this Act and under the Family Assistance Act by the Secretary in respect of the claimant and the child;
  - (b) certificates given by the service in respect of the claimant and the child that relate to a weekly limit of hours under

subsection 54(10), 55(6) or 56(3) of the Family Assistance Act;

- (c) certificates given by the service setting a rate of fee reductions under subsection 76(1) of the Family Assistance Act in respect of the claimant and the child.
- (3) The Secretary must notify the approved child care service of the rate and amount calculated.
- (4) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (5) Without limiting subsection (4), the Secretary may approve notification of the rate and amount by making the information available to the approved child care service using an electronic interface. In that case, the approved child care service is taken to have been given the notice on the day on which the information is made available.

#### **50ZA Revising the rate and amount calculation**

- (1) The Secretary may recalculate the rate at which, and the amount in which, the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by the service to the child in the week, provided no determination has been made under section 51B of the rate at which and the amount in which the Secretary considers the claimant eligible for the income year in which the week falls.
- (2) Subject to subsection (3), the Secretary must notify the approved child care service of the recalculated rate and amount.
- (3) The Secretary need not notify the approved child care service of the recalculated rate and amount if the rate or amount is reduced, and the recalculation is for a reason other than the substitution or withdrawal by the service of a report given under section 219N.
- (4) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (5) Without limiting subsection (4), the Secretary may approve notification of the recalculated rate and amount by making the information available to the approved child care service using an electronic interface. In that case, the approved child care service is

taken to have been given the notice on the day on which the information is made available.

**50ZB Calculating the amount of child care benefit by fee reduction—service eligible**

- (1) If:
  - (a) an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session or sessions of care provided by the service to a child at risk; and
  - (b) the service gives a report under subsection 219N(2) in respect of the child in respect of a week;the Secretary must calculate the amount in which the Secretary considers child care benefit by fee reduction is applicable in respect of the child in respect of the week.
- (2) In calculating the amount, the Secretary must take into account all of the following decisions:
  - (a) determinations made under this Act and under the Family Assistance Act by the Secretary in respect of the child;
  - (b) certificates given by the service in respect of the child that relate to a weekly limit of hours under subsection 54(10), 55(6) or 56(4) of the Family Assistance Act;
  - (c) certificates given by the service setting a rate of child care benefit by fee reduction under subsection 76(2) of the Family Assistance Act in respect of the child.
- (3) The Secretary must notify the approved child care service of the amount calculated.
- (4) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (5) Without limiting subsection (4), the Secretary may approve notification of the amount by making the information available to the approved child care service using an electronic interface. In that case, the approved child care service is taken to have been given the notice on the day on which the information is made available.

### **50ZC Revising the rate and amount calculation**

- (1) The Secretary may recalculate the amount in which the Secretary considers child care benefit by fee reduction is applicable in respect of a session or sessions of care provided to the child in the week, provided no determination has been made under section 54B of the amount in which the Secretary considers the service eligible in respect of the care provided to the child for the financial year in which the week falls.
- (2) Subject to subsection (3), the Secretary must notify the approved child care service of the recalculated amount.
- (3) The Secretary need not notify the approved child care service of the recalculated amount if the amount is reduced, and the recalculation is for a reason other than the substitution or withdrawal by the service of a report given under section 219N.
- (4) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (5) Without limiting subsection (4), the Secretary may approve notification of the recalculated amount by making the information available to the approved child care service using an electronic interface. In that case, the approved child care service is taken to have been given the notice on the day on which the information is made available.

### **19 Subparagraph 51E(1)(c)(iii)**

Repeal the subparagraph, substitute:

- (iii) the total amount of the fee reductions (if any) that an approved child care service providing care to the child is required, under section 219B, to pass on to the claimant in respect of sessions of care provided to the child during the income year; and

### **20 Paragraph 54D(1)(c)**

Repeal the paragraph, substitute:

- (c) the total amount of the child care benefit by fee reduction (if any) that the claimant is required, under section 219BA, to pass on to itself in respect of sessions of care provided to the child during the financial year; and

**21 Paragraphs 56(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) the service is required, under section 219B, to pass on to the claimant a fee reduction for those sessions of care; and
- (c) the amount of the entitlement is greater than the total amount which the service is obliged to pass on to the claimant under that section for those sessions of care;

**22 Paragraph 56B(1)(b)**

Repeal the paragraph, substitute:

- (b) the service is required, under section 219BA, to pass on to itself child care benefit by fee reduction for those sessions of care; and
- (c) the amount of the entitlement is greater than the total amount which the service is obliged to pass on to itself under that section for those sessions of care;

**23 At the end of Subdivision L of Division 4 of Part 3**

Add:

**57G Secretary's power to require further information about children enrolled in child care**

- (1) The Secretary may, by notice, require an approved child care service to give the Secretary further information in relation to any aspect of the care provided, or expected to be provided in the future, to all children:
  - (a) in relation to whom:
    - (i) the service has given the Secretary notice of enrolment under sections 219A and 219AB, or sections 219AA and 219AB;
    - (ii) the Secretary has confirmed the enrolment in accordance with section 219AE; and
  - (b) who remain enrolled for care by the service.
- (2) The notice must specify either:
  - (a) the period in relation to which the information must be provided; or
  - (b) the intervals in which the information must be provided.



- (3) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (4) Without limiting subsection (3), the Secretary may approve notification of the information by making the notice available to the approved child care service using an electronic interface. In that case, the approved child care service is taken to have been given the notice on the day on which it is made available.
- (5) The information must be given to the Secretary by the service in the form, and in the manner or way, approved by the Secretary.

**24 Subsections 63(2) and (2A)**

Repeal the subsections.

**25 Subsection 63(3)**

Omit “, (2) or (2A)”.

**26 At the end of section 63**

Add:

- (4) The Secretary may make notice of a variation of:
  - (a) a determination of conditional eligibility; or
  - (b) a determination of CCB%; or
  - (c) a determination of a weekly limit of hours; or
  - (d) a determination of schooling %; or
  - (e) a determination under subsection 50T(1);available to the approved child care service providing care to the child, including by making the notice available to the service using an electronic interface.

**27 Paragraph 64E(1)(b)**

Repeal the paragraph.

**28 At the end of section 64E**

Add:

- (3) If the claimant is an individual, the Secretary may make a notice of variation of a determination of weekly limit of hours available to the approved child care service providing care to the child,

including by making the notice available to the service using an electronic interface.

**29 Subsection 65E(1)**

Omit “and to the approved child care service providing care to the child of the claimant”.

**30 At the end of section 65E**

Add:

- (3) The Secretary may make notice of any variation of a determination under this Subdivision available to the approved child care service providing care to the child of the claimant, including by making the notice available to the service using an electronic interface.

**31 Paragraph 66(1)(f)**

Repeal the paragraph, substitute:

- (f) payments under section 219Q or subsection 219QA(2) in respect of fee reduction;  
(fa) payments of enrolment advances under section 219RA;

**32 After paragraph 66(2)(ba)**

Insert:

- (bb) section 87A (setting off debts against the payment of enrolment advances under section 219RA);  
(bc) section 87B (setting off debts against payments under section 219Q or subsection 219QA(2) in respect of fee reduction);

**33 After paragraph 66(2)(ca)**

Insert:

- (cb) section 219QA (setting off a recalculated fee reduction against payments under section 219Q or subsection 219QA(2) in respect of fee reduction or payments of enrolment advances under section 219RA);  
(cc) section 219RC (setting off an enrolment advance against payments under section 219Q or subsection 219QA(2) in respect of fee reduction or payments of enrolment advances under section 219RA);

### **34 Paragraph 68(1A)(a)**

Repeal the paragraph, substitute:

- (a) the amount:
  - (i) in the case of an individual—that the service that provided care in respect of which the determination under section 51B was made is required, under section 219B, to pass on to the individual as a fee reduction for that care; or
  - (ii) in the case of a service that provided care in respect of which a determination under section 54B was made—that the service is required, under section 219BA, to pass on to itself as a fee reduction for that care; and

### **35 Section 71B**

Repeal the section, substitute:

#### **71B Debts where no entitlement or where enrolment advance wrongly paid**

- (1) If:
  - (a) an approved child care service is required under section 219B to pass an amount on to an individual (the *recipient*) in respect of one or more sessions of child care provided by the service to a child, but the recipient was not entitled to child care benefit in respect of the session or sessions of care; or
  - (b) an approved child care service is required under section 219BA to pass an amount on to itself (the *recipient*) in respect of one or more sessions of child care provided by the service to a child at risk, but the recipient was not entitled to child care benefit in respect of the session or sessions of care; or
  - (c) an amount has been paid to a person (the *recipient*) by way of child care benefit in respect of a period, but the recipient was not entitled to child care benefit in respect of that period; the amount so paid is, subject to section 71F, a debt due to the Commonwealth by the recipient.
- (2) If:
  - (a) an enrolment advance was paid to a child care service under section 219RA; and

(b) the service was not entitled to be paid the advance;  
the amount of the advance becomes a debt due to the  
Commonwealth by the service.

(3) If:

(a) a payment under section 219Q or subsection 219QA(2) in  
respect of fee reduction, or a payment under section 219RA  
of an enrolment advance, 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.

### **36 After section 71C**

Insert:

#### **71CA Debts arising in respect of fee reduction payments not remitted—debt owed by service**

If an approved child care service does not remit to the Secretary an  
amount that the service is required to remit under section 219QB  
(fee reductions that it is not reasonably practicable for the service  
to pass on), the amount is a debt due to the Commonwealth by the  
service.

### **37 Section 71G**

Repeal the section, substitute:

#### **71G Debts arising in respect of child care benefit where fee reduction or enrolment advance paid to service—debt owed by service**

(1) If:

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- (a) either:
  - (i) an amount is paid under section 219Q to a person that is an approved child care service (weekly fee reduction payments); or
  - (ii) such an amount would be paid, but for a set off under subsection 82(2) or section 219QA or 219RC; and
- (b) the service's approval is suspended under this Act or cancelled under section 200, or the service ceases to operate, before a session of care in respect of which the payment was made;

so much of the amount of the fee reduction paid as relates to that session of care is a debt due to the Commonwealth by the service immediately before its approval was suspended or cancelled, or it ceased to operate.

- (2) If:
  - (a) an amount is required to be set off under subsection 219QA(3) against the payment of another amount to a person that is an approved child care service (payment where recalculation reduces the amount of a fee reduction); and
  - (b) the service's approval is suspended under this Act or cancelled under section 200, or the service ceases to operate; and
  - (c) the amount has not already been set off against another amount under subsection 219QA(3) by the day the service's approval is suspended or cancelled, or the service ceases to operate;

the amount is a debt due to the Commonwealth by the service immediately before its approval was suspended or cancelled, or it ceased to operate.

- (3) If:
  - (a) either:
    - (i) an amount is paid under section 219RA to an approved child care service (payment of enrolment advances); or
    - (ii) such an amount would be paid, but for a set off under subsection 82(2) or section 219QA or 219RC; and
  - (b) the service's approval is suspended under this Act or cancelled under section 200, or the service ceases to operate; and

- (c) the amount has not already been set off against another amount under section 219RC by the day the service's approval is suspended or cancelled, or the service ceases to operate;

the amount is a debt due to the Commonwealth by the service immediately before its approval was suspended or cancelled, or it ceased to operate.

### **38 After section 71G**

Insert:

#### **71GA Debt arising in respect of remittal of enrolment advances under paragraph 200(1)(g)**

If, under paragraph 200(1)(g), the Secretary requires an approved child care service to remit enrolment advances paid to the service under section 219RA, an amount equal to the advances that the service is required to remit is a debt due to the Commonwealth by the service.

### **39 Subsection 82(2)**

Repeal the subsection, substitute:

- (2) A debt owed by an approved child care service is recoverable by the Commonwealth by one or more of the following means:
  - (a) setting off the amount of the debt against one or more payments under section 219Q or subsection 219QA(2) in respect of fee reduction;
  - (b) setting off the amount of the debt against one or more enrolment advances paid under section 219RA;
  - (c) repayment by instalments under an arrangement entered into under section 91;
  - (d) legal proceedings;
  - (e) garnishee notice.

### **40 Subsection 82(3) (paragraph (a) of the definition of *debt*)**

Omit "71C, 71D, 71E, 71G", substitute "71C, 71CA, 71D, 71E, 71G, 71GA,".

### **41 Section 86**

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Omit “or 87A”(wherever occurring), substitute “, 87A or 87B”.

Note: The heading to section 86 is altered by omitting “**and 87A**”, and substituting “, **87A and 87B**”.

#### **42 Subsection 87A(1)**

Omit “advances to be paid to an approved child care service under section 219R”, substitute “enrolment advances to be paid to an approved child care service under section 219RA”.

Note: The heading to section 87A is altered by inserting “**enrolment**” before “**advances**”.

#### **43 Paragraph 87A(2)(b)**

After “the sum of those amounts”, insert “and any amounts by which the advance is reduced under section 87B”.

#### **44 After section 87A**

Insert:

#### **87B Setting off debts of an approved child care service against amounts to be paid to the service in respect of fee reduction**

- (1) This section applies to a debt owed by an approved child care service if, under section 82, the debt is recoverable by the Commonwealth by means of setting off the debt against amounts to be paid under section 219Q or subsection 219QA(2) in respect of fee reduction.
- (2) The debt is to be set off, against the amount paid to the service in respect of fee reduction, in the following way:
  - (a) the Secretary is to determine the amount by which each amount paid to the service in respect of a fee reduction is to be reduced;
  - (b) each amount paid to the service in respect of a fee reduction is to be reduced by the amount determined by the Secretary until the sum of those amounts and any amounts by which the advance is reduced under section 87A is equal to the debt.

The Secretary may, from time to time, vary the amount by which the amounts paid to the service in respect of fee reduction are to be reduced.

- (3) The amount of the debt and the amounts paid to the service in respect of fee reduction are reduced accordingly.

**45 Subparagraph 88(6)(b)(i)**

Omit “87A or”, substitute “87A, 87B or”.

**46 Subparagraph 90(5)(b)(i)**

Omit “87A or”, substitute “87A, 87B or”.

**47 Subsection 93A(6) (paragraph (b) of the definition of *family assistance payment*)**

Repeal the paragraph, substitute:

- (b) a payment under section 219Q or subsection 219QA(2) (payments in respect of fee reduction); or
- (ba) a payment of an enrolment advance under section 219RA; or

**48 Subparagraph 95(3)(a)(iia)**

Repeal the subparagraph, substitute:

- (iia) setting off under section 87A against enrolment advances; or
- (iib) setting off under section 87B against payments in respect of fee reduction; or

**49 Paragraph 95(4)(d)**

Omit “advances”, substitute “enrolment advances”.

**50 After paragraph 95(4)(d)**

Insert:

- or (e) setting off under section 87B against payments in respect of fee reduction;

**51 Paragraph 99(2)(c)**

Omit “advances”, substitute “enrolment advances”.

**52 At the end of subsection 99(2)**

Add:

- ; or (d) by setting off under section 87B against payments in respect of fee reduction.



**53 Paragraph 104(1)(c)**

Repeal the paragraph, substitute:

- (c) a calculation of an amount of fee reduction under section 50Z or 50ZB, or a recalculation of such an amount under section 50ZA or 50ZC; or
- (d) a decision by the Secretary under section 219Q or subsection 219QA(2) to pay an amount in respect of fee reduction.

**54 Paragraphs 106(1)(d) and (e)**

Repeal the paragraphs, substitute:

- (d) in all cases mentioned in paragraph (c)—the applicant; and
- (e) in the case mentioned in subparagraph (c)(v)—the approved child care service, or services, providing care to the child concerned.

**55 After subsection 106(1)**

Insert:

- (1A) The Secretary may make notice of a review decision mentioned in paragraph (1)(c) (other than subparagraph (1)(c)(v)) available to the approved child care service, or services, providing care to the child concerned, including by making the notice available to the service using an electronic interface.
- (1B) The Secretary may give notice of a review decision mentioned in subparagraph (1)(c)(v) by making the notice available to the service using an electronic interface.

**56 Paragraph 108(2)(d)**

Repeal the paragraph, substitute:

- (d) a calculation of an amount of fee reduction under section 50Z or 50ZB, or a recalculation of such an amount under section 50ZA or 50ZC; or
- (da) a decision by the Secretary under section 219Q or subsection 219QA(2) to pay an amount in respect of fee reduction; or

**57 Paragraphs 109B(2)(d) and (e)**

Repeal the paragraphs, substitute:

- (d) in all cases mentioned in paragraph (c)—the applicant; and

- (e) in the case mentioned in subparagraph (c)(v)—the approved child care service, or services, providing care to the child concerned.

### **58 After subsection 109B(2)**

Insert:

- (2A) The Secretary may make notice of a review decision mentioned in paragraph (2)(c) (other than subparagraph (2)(c)(v)) available to the approved child care service, or services, providing care to the child concerned, including by making the notice available to the service using an electronic interface.
- (2B) The Secretary may give notice of a review decision mentioned in subparagraph (2)(c)(v) by making the notice available to the service using an electronic interface.

### **59 Paragraph 111(2)(a)**

Repeal the paragraph, substitute:

- (a) a decision under one of the following provisions (form and manner of claims, notices etc.):
  - (i) subsection 7(2);
  - (ii) subsection 38(2);
  - (iii) subsection 49C(1);
  - (iv) paragraph 50L(7)(b);
  - (v) subparagraph 50T(2)(a)(ii);
  - (vi) paragraph 50T(3)(b);
  - (vii) subsection 50Z(4), 50ZA(3), 50ZB(4) or 50ZC(3);
  - (viii) subsection 57G(2);
  - (ix) section 64F;
  - (x) paragraph 219AB(1)(a);
  - (xi) subsection 219AE(4);
  - (xii) subsection 219AF(2);
  - (xiii) subsection 219N(3);
  - (xiv) paragraph 219QB(4)(a);
  - (xv) paragraph 219R(2)(a);
  - (xvi) subsection 219RA(4);
  - (xvii) subsection 57(6) or 81(5) of the Family Assistance Act;

**60 At the end of subsection 111(2)**

Add:

- ; (i) a decision under section 57G (Secretary requiring service to provide further information about aspects of care provided to enrolled children).

**61 Section 141A**

Omit “If:”, substitute “(1) This section applies if:”.

**62 Section 141A**

Omit all the words after subparagraph (c)(i), substitute:

- (ii) a determination of conditional eligibility is still in force in respect of the individual with effect that the individual is conditionally eligible.

**63 At the end of section 141A**

Add:

- (2) The Secretary:
  - (a) must give notice of an SSAT decision mentioned in subparagraph (1)(b)(iii) to the service; and
  - (b) must state in the notice the effect of the decision; and
  - (c) may give the notice by making it available to the service using an electronic interface.
- (3) The Secretary may make notice of an SSAT decision mentioned in paragraph (1)(b) (other than subparagraph (1)(b)(iii)) available to the service, including by making the notice available to the service using an electronic interface.

**64 Paragraph 144(1)(c)**

Omit “paragraphs (a) to (e)”, substitute “paragraphs (a) to (h)”.

**65 Subsection 162(1)**

Omit all the words after “obtained”, substitute “for the purposes of:

- (a) the family assistance law; or
- (b) the Family Homelessness Prevention and Early Intervention Pilot; or
- (c) the Child Care Management System Pilot.”

**66 After paragraph 162(2)(da)**

Insert:

- (db) for the purpose of the Child Care Management System Pilot;  
or

**67 Subparagraph 173(1)(d)(iv)**

After “applicable to a person”, insert “, or the rate at which or amount in which fee reduction is applicable”.

**68 Subsection 175A(3)**

Omit all the words after “, in respect of the child,”, substitute “obtain a payment under section 219Q or subsection 219QA(2) in respect of fee reduction”.

**69 Paragraph 175A(3A)(b)**

Repeal the paragraph, substitute:

- (b) the element that a payment in respect of fee reduction is paid to the service under section 219Q or subsection 219QA(2).

**70 Subsection 175A(4)**

Omit all the words after “the service must not”, substitute “obtain an incorrect amount of a payment under section 219Q or section 219QA in respect of fee reduction.”.

**71 Paragraph 175A(4A)(b)**

Repeal the paragraph, substitute:

- (b) the element that an incorrect amount of a payment is an incorrect amount of a payment under section 219Q or subsection 219QA(2).

**72 Subparagraph 176(1)(a)(iii)**

Repeal the subparagraph, substitute:

- (iii) in the case of an approved child care service—an amount is paid either under section 219Q or subsection 219QA(2) in respect of fee reduction or as an enrolment advance under section 219RA; and

**73 Subsection 176(2)**

Repeal the subsection, substitute:

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- (2) For the purposes of an offence against section 177 that relates to a contravention of subsection (1) of this section, strict liability applies to:
- (a) the element of the offence that a payment in respect of fee reduction is paid to the service under section 219Q or subsection 219QA(2); and
  - (b) the element of the offence that an enrolment advance is paid under section 219RA.

#### **74 Subparagraph 176(3)(d)(iii)**

Repeal the subparagraph, substitute:

- (iii) in the case of an approved child care service—an amount is paid either under section 219Q or subsection 219QA(2) in respect of fee reduction or as an enrolment advance under section 219RA.

#### **75 Subsection 176(4)**

Repeal the subsection, substitute:

- (4) For the purposes of an offence against section 177 that relates to a contravention of subsection (3) of this section, strict liability applies to:
- (a) the element of the offence that a payment in respect of fee reduction is paid to the service under section 219Q or subsection 219QA(2); and
  - (b) the element of the offence that an enrolment advance is paid under section 219RA.

#### **76 Paragraph 178(1)(b)**

Omit “or advance”, substitute “, payments in respect of fee reduction or enrolment advances”.

#### **77 Subparagraph 195(2)(b)(i)**

Omit “paragraphs 200(1)(a) to (e)”, substitute “paragraphs 200(1)(a) to (h)”.

#### **78 At the end of subsection 200(1)**

Add:

- ; (f) withhold the payment of enrolment advances to the service under section 219RA;

- (g) require the remittal to the Secretary of enrolment advances paid to the service under section 219RA;
- (h) suspend, for a maximum of 3 weeks, payment under section 219Q or subsection 219QA(2) in respect of fee reduction.

**79 Subsection 200(2)**

Omit “paragraphs (1)(a) to (e)”, substitute “paragraphs (1)(a) to (h)”.

**80 After subsection 200(3)**

Insert:

*Revocation of enrolment advance withholding*

- (3A) If the Secretary withholds the payment of enrolment advances to the service, the Secretary may at any time, by notice to the service, revoke the withholding with effect from the day specified in the notice.

*Revocation of suspension of payment in respect of fee reduction*

- (3B) If the Secretary suspends payment in respect of fee reduction, the Secretary may at any time, by notice to the service revoke the suspension. If the suspension is revoked, all payments under section 219Q or subsection 219QA(2) that would have been paid but for the suspension must be paid.

**81 Subsection 201(1)**

Omit “paragraphs 200(1)(a) to (e)”, substitute “paragraphs 200(1)(a) to (h)”.

**82 Section 219A**

Repeal the section, substitute:

**219A Obligation to notify Secretary of enrolment of a child by an individual**

- (1) An approved child care service must notify the Secretary of the enrolment of a child by an individual for care by the service.

- (2) A child is *enrolled* by an individual for care by an approved child care service if the individual enters into an arrangement with the service for the provision of care to the child by the service.

Note: If 2 individuals each enter into an arrangement for the provision of care to the child by the service, each enrolment will need to be notified to the Secretary.

- (3) If:

- (a) an individual enters into an arrangement for the care of a child by an approved child care service (the *original arrangement*); and
  - (b) the enrolment of the child by the individual for care by the service ceases under section 219AD; and
  - (c) a session of care is, or sessions of care are, later provided to the child by the service under the original arrangement;
- the individual is taken to enter into a new arrangement for the provision of care to the child by the service at the time the session, or the first of the sessions, of care is provided.

Note: As a result, there will be a new enrolment which will need to be notified to the Secretary.

### **219AA Obligation to notify Secretary of enrolment where approved child care service eligible**

- (1) If an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session or sessions of care provided by the service to a child at risk during a period:
- (a) for which the service has given a certificate under subsection 76(2) of that Act; or
  - (b) during which a determination by the Secretary under subsection 81(4) of that Act in circumstances mentioned in subparagraph 81(4)(b)(ii) of that Act is in effect;
- the service must notify the Secretary of the enrolment of the child for care by the service.
- (2) The child is taken to be *enrolled* for care by the service when the session, or the first of the sessions, of care begins.

### **219AB When and how notice to be given**

- (1) A notice under section 219A or 219AA must:
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- (a) be given in the form, and in the manner or way, approved by the Secretary; and
  - (b) contain any information required by the Secretary.
- (2) Subject to subsection (3), the notice must be given no later than:
- (a) if the child is enrolled after the day on which the Secretary approves the service—the last day of the week immediately following the first week in which care is provided as a result of the enrolment; or
  - (b) if the child is enrolled before that day, but after the day from which the approval is expressed to operate—7 days after the day on which the approval is given.
- (3) If:
- (a) a child care service’s approval is suspended at the time a child is enrolled by an individual for care by the service; and
  - (b) that suspension is later revoked;
- the service must give notice of the enrolment under subsection (1) within 7 days after the suspension is revoked.

**219AC Offence for failure to notify**

- (1) An approved child care service commits an offence if:
- (a) the service is required to give notice under section 219A; and
  - (b) the service does not give the notice in accordance with that section and section 219AB.

Penalty: 60 penalty units.

- (2) An approved child care service commits an offence if:
- (a) the service is required to give notice under section 219AA; and
  - (b) the service does not give the notice in accordance with that section and section 219AB.

Penalty: 60 penalty units.

- (3) Subsections (1) and (2) are offences of strict liability.



### **219AD When enrolment ceases**

- (1) An enrolment of a child by an individual for care by an approved child care service *ceases* if:
  - (a) the arrangement under which care is provided ceases; or
  - (b) the service becomes eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session of care provided by the service to the child.
- (2) If a child is taken to be enrolled for care by an approved child care service under subsection 219AA(2), the enrolment is taken to have *ceased*:
  - (a) if a certificate has been given in respect of the child under subsection 76(2) of the Family Assistance Act, either:
    - (i) when the period for which a certificate was given ends; or
    - (ii) if the Secretary makes a determination in circumstances mentioned in subparagraph 81(4)(b)(i) of that Act at the end of the 13 week period mentioned in that subparagraph—when that determination ceases to have effect; or
  - (b) if the Secretary makes a determination in circumstances mentioned in subparagraph 81(4)(b)(ii) of that Act—when that determination ceases to have effect.
- (3) The enrolment of a child for care by an approved child care service (whether by an individual or otherwise) is taken to have *ceased* if no session of care to the child, over a number of weeks specified by the Secretary by legislative instrument, is reported to the Secretary under section 219N.
- (4) Different periods may be specified in relation to different kinds of service or types of care.

### **219AE Secretary to confirm receipt of notice**

- (1) Subject to subsection (2), the Secretary must provide confirmation to the approved child care service of the receipt of a notice given under section 219A or section 219AA.
- (2) The Secretary need not provide that confirmation if:

- (a) the notice is given under section 219A in relation to the enrolment of a child by an individual; and
  - (b) the information contained in the notice is inconsistent with information contained in a claim, or in a document that accompanies a claim, made by an individual in relation to care provided by the service to the child.
- (3) The Secretary must include in the confirmation details of the record maintained by the Secretary in relation to the enrolment.
- (4) The confirmation must be given in the form, and in the manner or way, approved by the Secretary.

### **219AF Obligation to update enrolment information**

- (1) If:
- (a) an approved child care service gives notice of enrolment in accordance with sections 219A and 219AB, or sections 219AA and 219AB; and
  - (b) after the notice is given:
    - (i) information provided in the notice becomes incorrect; or
    - (ii) information becomes available that, had it been available at the time the notice was given, should have been included in the notice; or
    - (iii) information becomes available that, had it been available at the time the notice was given, would have required the notice to have been given in a different form;
- the service must, within 7 days after the information becomes incorrect or becomes available, notify the Secretary of the correction or available information.
- (2) The notice must be given in the form, and in the manner or way, approved by the Secretary.

### **219AG Offence for failure to update enrolment information**

- (1) An approved child care service commits an offence if:
- (a) the service is required to notify the Secretary of a correction or available information under section 219AF; and

- (b) the service does not notify the Secretary in accordance with that section.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

### **83 Section 219B**

Repeal the section, substitute:

#### **219B Obligation to pass on fee reductions where individual conditionally eligible**

- (1) This section applies if:
- (a) a determination of conditional eligibility for child care benefit by fee reduction under section 50F is in force in respect of an individual (the *claimant*) and a child for a session of care provided by an approved child care service to the child in a week; and
  - (b) the Secretary calculates under section 50Z, or recalculates under section 50ZA, the amount of fee reduction applicable in respect of the session of care; and
  - (c) the Secretary has notified the service of the amount in accordance with subsection 50Z(3), or the recalculated amount in accordance with subsection 50ZA(2).
- (2) Subject to subsection (3), the service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to the claimant, except to the extent that the service is required to remit the amount to the Secretary under section 219QB.

Penalty: 60 penalty units.

Note: This amount must be passed on, even if the payment of amounts to the service in respect of fee reduction has been suspended under paragraph 200(1)(h).

- (3) If:
- (a) the Secretary, on recalculating under section 50ZA the amount in which the Secretary considers fee reduction is applicable in respect of the session of care (the *last recalculation*), reduces the amount; and

- (b) the amount is reduced for a reason other than the substitution or withdrawal by the service of a report given under section 219N;

the service must pass on to the claimant the amount as calculated, or recalculated, immediately before the last recalculation, rather than the amount last recalculated.

Note: The fact that the higher rather than the lower amount has been passed on will be taken into account when the determination of entitlement is made under section 51B.

- (4) If:
  - (a) the service reduces the amount by which it charges the claimant in respect of the session of care in anticipation of the Secretary's calculation of the amount applicable in respect of fee reduction for that session (the *anticipated fee reduction*); and
  - (b) the service was an approved child care service at the time the session of care was provided;the service is taken to have passed on to the claimant an amount equal to the anticipated fee reduction.
- (5) The amount is taken to have been passed on to the claimant on the day on which the Secretary notified the service of the amount in accordance with subsection 50Z(3).
- (6) Subsection (2) is an offence of strict liability.

**219BA Obligation to pass on fee reductions where approved child care service eligible**

- (1) This section applies if:
  - (a) an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session of care provided by the service to a child at risk; and
  - (b) the Secretary calculates under section 50ZB, or recalculates under section 50ZC, the amount of child care benefit by fee reduction applicable in respect of the session of care; and
  - (c) the Secretary has notified the service of the amount in accordance with subsection 50ZB(3), or the recalculated amount in accordance with subsection 50ZC(2).

- (2) Subject to subsection (3), the service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to itself, except to the extent that the service is required to remit the amount to the Secretary under section 219QB.
- (3) If:
- (a) the Secretary, on recalculating under section 50ZC the amount in which the Secretary considers child care benefit by fee reduction is applicable in respect of the session of care (the *last recalculation*), reduces the amount; and
  - (b) the amount is reduced for a reason other than the substitution or withdrawal by the service of a report given under section 219N;
- the service must pass on to itself the amount as calculated, or recalculated, immediately before the last recalculation, rather than the amount last recalculated.
- Note: The fact that the higher rather than the lower amount has been passed on will be taken into account when the determination of entitlement is made under section 54B.
- (4) If:
- (a) the service reduces the amount it charges in respect of the session of care in anticipation of the Secretary's calculation of the amount applicable in respect of child care benefit by fee reduction for that session (the *anticipated fee reduction*); and
  - (b) the service was an approved child care service at the time the session of care was provided;
- the service is taken to have passed on to itself an amount equal to the anticipated fee reduction.
- (5) The amount is taken to have been passed on on the day on which the Secretary notified the service of the amount in accordance with subsection 50ZB(3).

**219BB Obligation to charge no more than usual fee—rate determined by child care service or Secretary**

- (1) If:
- (a) an approved child care service certifies under subsection 76(1) or (2) of the Family Assistance Act the hourly rate of

fee reductions or child care benefit applicable for sessions of care provided by the service to a child during a period; or

- (b) the Secretary determines under subsection 81(2), (3) or (4) of the Family Assistance Act the hourly rate of fee reductions or child care benefit for sessions of care an approved child care service provides to a child during a period;

the service must ensure that the fees set for each of those sessions do not exceed the amount of the fees that the service would charge for the same session for the same child if that rate did not apply.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

**219BC Obligation to charge no more than usual fee—special grandparent rate**

- (1) If a determination is in force under subsection 50T(1) with the effect that an individual is eligible for the special grandparent rate for a child in respect of a session of care provided to the child by an approved child care service, the service must ensure that the fees set for the session do not exceed the amount of the fees that the service would charge for the same session for the same child if that rate did not apply.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

**219BD Obligation to charge no more than usual fee—Jobs Education and Training (JET) Child Care fee assistance**

- (1) If:
- (a) a determination of conditional eligibility for child care benefit by fee reduction under section 50F is in force in respect of an individual and a child for a session of care provided by an approved child care service to the child; and
- (b) the service becomes aware that the individual is eligible to receive Jobs Education and Training (JET) Child Care fee assistance in relation to the session of care;

the service must ensure that the fees set for the session do not exceed the amount of the fees that the service would charge an

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individual who was not eligible for that assistance for the same session for the same child.

Penalty: 60 penalty units.

(2) In subsection (1):

*Jobs Education and Training (JET) Child Care fee assistance* means the payment of that name that is paid by the Commonwealth.

(3) Subsection (1) is an offence of strict liability.

#### **84 Section 219C**

Repeal the section.

#### **85 Section 219D**

Repeal the section.

#### **86 Subsection 219E(1)**

Repeal the subsection, substitute:

- (1) If an approved child care service charges an individual a fee in respect of a session of care provided to a child under an enrolment by the individual that has been confirmed under section 219AE, the service must, at the time the fee or a part of the fee is paid, issue a receipt as provided for in the rules (if any) made under subsection (2), stating the following in respect of the session of care:
- (a) the fees paid;
  - (b) if the service is required to pass on an amount under section 219B or 219BA—that amount;
  - (c) any other information the Secretary specifies in the rules (if any) made under subsection (2).

Penalty: 60 penalty units.

#### **87 Section 219N**

Repeal the section, substitute:

**219N Obligation to give reports to Secretary**

- (1) For each week in which a session of care is provided by an approved child care service to a child in relation to whom an enrolment has been:
  - (a) notified to the Secretary in accordance with sections 219A and 219AB; and
  - (b) confirmed by the Secretary in accordance with section 219AE;the service must give the Secretary a report in accordance with this section.
- (2) For each week in which a session of care is provided by an approved child care service to a child in relation to whom an enrolment has been:
  - (a) notified to the Secretary in accordance with sections 219AA and 219AB; and
  - (b) confirmed by the Secretary in accordance with section 219AE;the service must give the Secretary a report in accordance with this section.
- (3) The report must be made in the form, and in the manner or way, approved by the Secretary.
- (4) The report must include:
  - (a) any information required by the Secretary that is relevant to:
    - (i) determining whether a fee reduction is applicable in relation to the care and, if so, the rate and amount of that fee reduction; or
    - (ii) making a determination of entitlement, or no entitlement, in relation to the care under Division 4 of Part 3; and
  - (b) any other information required by the Secretary.
- (5) The report must be given no later than:
  - (a) if the week in which the session of care was provided fell wholly before the day on which the enrolment was confirmed—the period of 7 days after the day on which the enrolment was confirmed; and



- (b) otherwise—the end of the second week immediately following the week.
- (6) An approved child care service commits an offence if:
- (a) the service is required to give a report under subsection (1) or (2); and
  - (b) the service does not give the report in accordance with this section.

Penalty: 60 penalty units.

- (7) An approved child care service may:
- (a) substitute the report with an updated report at any time; or
  - (b) if the report was given in circumstances where it was not required to be given—withdraw the report.

## **88 After section 219NA**

Insert:

### **219NB Obligation to provide further information to Secretary about enrolled children**

If the Secretary, by notice under section 57G, requires an approved child care service to provide further information to the Secretary (further information in relation to aspects of the care provided to children enrolled for care by the service), the service must comply with the notice.

Penalty: 60 penalty units.

## **89 Section 219P**

Repeal the section, substitute:

### **219P Obligations of operators of former approved child care services**

If the approval of a child care service is suspended or cancelled, the person who operated the child care service immediately before the service's approval was suspended or cancelled must fulfil the obligations under the following provisions in respect of sessions of care that occurred before the approval was suspended or cancelled as if it had not been:

- (a) section 219A;
- (b) section 219AA;
- (c) section 219AF;
- (d) section 219B;
- (e) section 219BA;
- (f) section 219BB;
- (g) section 219BC;
- (h) section 219BD;
- (i) section 219E;
- (j) section 219N;
- (k) section 219QB.

Penalty: 60 penalty units.

## **90 Division 2 of Part 8A**

Repeal the Division, substitute:

### **Division 2—Weekly payments in respect of fee reduction to approved child care services**

#### **219Q Weekly payments in respect of fee reduction**

- (1) If the Secretary, under section 50Z or 50ZB, calculates the amount in which the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by an approved child care service to a child in a week, the Secretary must pay the amount calculated to the credit of a bank account nominated and maintained by the service.
- (2) If the Secretary, on recalculating under section 50ZA or 50ZC the amount in which the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by an approved child care service to a child in a week, increases the amount, the Secretary must pay to the credit of a bank account nominated and maintained by the service an amount equal to the increase.
- (3) This section is subject to:
  - (a) Part 4 (overpayments and debt recovery); and
  - (b) section 219QA (set off where amount of applicable fee reduction reduced on recalculation); and

- (c) section 219RC (set off where enrolment ceases); and
- (d) paragraph 200(1)(h) (suspending payment in respect of fee reduction).

### **219QA Payments and set offs where recalculation results in reduced fee reduction**

- (1) This section applies if:
  - (a) the Secretary, on recalculating under section 50ZA or 50ZC the amount in which the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by an approved child care service to a child in a week, reduces the amount; and
  - (b) the amount is reduced because of the substitution or withdrawal by the service of a report given under section 219N.
- (2) The Secretary must pay the amount as last recalculated to the credit of a bank account nominated and maintained by the service.
- (3) The amount as calculated, or recalculated, immediately before the last recalculation must be set off against a later payment to the service of an amount in respect of:
  - (a) one or more payments under section 219Q or subsection 219QA(2) in respect of fee reduction; or
  - (b) one or more enrolment advances under section 219RA.

### **219QB Remitting amounts that cannot be passed on**

- (1) If:
  - (a) either:
    - (i) an amount is paid to an approved child care service under section 219Q in relation to a session of care provided by an approved child care service to a child in a week; or
    - (ii) such an amount would be paid, but for a set off under subsection 82(2) or section 219QA or 219RC or the imposition of a sanction under paragraph 200(1)(h); and
  - (b) it is not reasonably practicable for the service to pass on to the claimant or the service itself within the time required

under subsection 219B(2) or 219BA(2) the fee reduction in respect of which the amount was or would have been paid; the service must immediately remit to the Secretary an amount equal to the amount that could not be passed on.

Penalty: 60 penalty units.

- (2) The amount must be remitted in the manner or way approved by the Secretary.
- (3) The service must notify the Secretary of the remittal of the amount.
- (4) The notice must:
  - (a) be given in the form, and in the manner or way, approved by the Secretary; and
  - (b) include any information required by the Secretary.

### **Division 3—Enrolment advances**

#### **219R Election to receive enrolment advance**

- (1) An approved child care service, other than an approved occasional care service, may, when giving notice in accordance with section 219A, elect to receive the payment of an enrolment advance in relation to the enrolment.
- (2) The election must:
  - (a) be given in the form, and in the manner or way, approved by the Secretary; and
  - (b) include any information required by the Secretary.

#### **219RA Enrolment advance must be paid if service elects to receive it**

- (1) If an approved child care service, other than an approved occasional care service:
  - (a) makes an election in accordance with section 219R in respect of an enrolment; and
  - (b) the Secretary confirms the enrolment under section 219AE; the Secretary must pay the amount of the advance to the credit of a bank account nominated and maintained by the service.
- (2) This section is subject to:

- (a) Part 4 (overpayments and debt recovery); and
  - (b) section 219QA (set off where amount of applicable fee reduction reduced on recalculation); and
  - (c) section 219RC (set off where enrolment ceases); and
  - (d) paragraph 200(1)(f) (withholding enrolment advances).
- (3) The Secretary must give the service notice of the payment.
- (4) Notice of the payment must be given in the form, and in the manner or way, approved by the Secretary.

### **219RB Amount of enrolment advances**

- (1) The Secretary may, by legislative instrument, determine the amount of the enrolment advance that may be paid in respect of enrolments of a specified class.
- (2) Without limiting subsection (1), the Secretary may provide for the indexation of enrolment advances.

### **219RC Setting off enrolment advance when enrolment ceases**

If an enrolment ceases in respect of which:

- (a) an enrolment advance was paid; or
- (b) an enrolment advance would have been paid but for a set off under subsection 82(2) or section 219QA or 219RC or the imposition of a sanction under paragraph 200(1)(f);

the Secretary must set off an amount equal to the amount of the enrolment advance against:

- (c) any other enrolment advance that is to be paid to the service; or
- (d) any fee reduction that is to be paid to the service in relation to that or another enrolment.

## Part 2—Application and transitional provisions

### 91 Application day

- (1) In this Part:  
*application day* means:
- (a) 1 July 2009, unless an earlier or later day is determined by the Secretary under subitem (2) or (3); or
  - (b) if an earlier day is determined by the Secretary under subitem (2) for an approved child care service, then for that service—the earlier day; or
  - (c) if a later day is determined by the Secretary under subitem (3) for an approved child care service, then for that service—the later day.
- (2) The Secretary may determine a day that falls on or after 1 July 2007 but before 1 July 2009 as the *application day* for a specified approved child care service.
- (3) The Secretary may determine a day that falls after 1 July 2009 as the *application day* for a specified approved child care service, if the Secretary is satisfied that the service will be unable to satisfy the requirements imposed under the amendments made by this Schedule on 1 July 2009 because of technical difficulties, that are beyond the control of the service, in accessing the electronic interface by which those requirements are to be met.

### 92 Electronic communications

For the purposes of section 4 of the *A New Tax System (Family Assistance) (Administration) Act 1999*, this Part is taken to form part of the family assistance law.

### 93 Application

The amendments made by this Schedule apply:

- (a) to the extent that the amendments relate to the enrolment of a child for care by an approved child care service, or enrolment advances—to enrolments that occur on or after the application day for the service; or

- (b) otherwise—to a session or sessions of care provided by an approved child care service to a child during a week falling wholly after the application day for the service.

#### **94 Children already enrolled on application day**

If a child is already enrolled for care by an approved child care service on the application day for the service:

- (a) the service must give the Secretary notice of the enrolment in accordance with sections 219A to 219AB, inserted by item 82, within 7 days after the application day; and
- (b) the amendments made by this Schedule otherwise apply in relation to the enrolment in the same way as they would apply if it had taken place after the application day.

#### **95 Notification of email address**

- (1) It is a condition for the continued approval of an approved child care service that the service notify the Secretary of the service's email address within 7 days after the application day for the service.
- (2) The service is taken to have complied with subitem (1) if the service notifies the Secretary of its email address before the application day, and the service's email address does not change between notification and the application day.
- (3) Notice must be given in the form, and in the manner or way, approved by the Secretary.

#### **96 Obligation to give reports to Secretary for sessions of care before application day**

If the application day for an approved child care service falls within a reporting period for the service, the service must comply with section 219N of the Family Assistance Administration Act, as in force immediately before the commencement of this Schedule, in respect of that reporting period as if:

- (a) subsection 219N(1) referred to subsection (3) or (4), and not subsection (3), (4) or (5); and
- (b) the reference in paragraph 219N(2)(a) to subsection 219P(4) of that Act were a reference to that subsection as in force immediately before the commencement of this Schedule; and

- (c) the reference in paragraph 219N(3)(c) to section 219A of that Act were a reference to that section as in force immediately before the commencement of this Schedule; and
- (d) the reference in paragraph 219N(4)(a) to section 219B of that Act were a reference to that section as in force immediately before the commencement of this Schedule; and
- (e) the reference in subsections 219N(3) and (4) to “each week of the reporting period” were a reference to “each session of care in the reporting period that falls before the service’s application day under Part 2 of Schedule 1 of the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*”; and
- (f) subsection 219N(5) were repealed.

**97 Acquittal of advances paid to approved child care service before application day**

- (1) This item applies in relation to:
  - (a) each approved child care service in respect of which there has been no acquittal under section 219S of the Family Assistance Administration Act, as in force immediately before the commencement of this Schedule, of advances paid during a reporting period before the closing day (a *relevant period*); and
  - (b) for the reporting period in which the application day for an approved child care service falls—so much of the reporting period as falls before the application day (a *relevant period*).
- (2) The Secretary must compare the amount of the advance determined by the Secretary under section 219Q of the Family Assistance Administration Act, as in force immediately before the commencement of this Schedule, in respect of the service and each relevant period with the amount passed on by the service in reduced fees during that period, in compliance with sections 219A and 219B of that Act, as in force immediately before commencement of this Schedule.
- (3) In comparing the 2 amounts, the Secretary may assume that an approved child care service that does not comply with:
  - (a) subsection 219N(1), paragraph 219N(2)(b), and subsections 219N(3) and (4), as in force immediately before the commencement of this Schedule, in relation to a relevant period mentioned in paragraph (1)(a) of this item; or



- (b) item 96 in relation to a relevant period mentioned in paragraph (1)(b) of this item;  
has not passed on any amount in reduced fees during the period.
- (4) If the amount of the advance is more than the amount of the reduced fees:
- (a) the difference in the amounts is a debt due to the Commonwealth by the service; and
  - (b) subsection 82(2) of the Family Assistance Administration Act applies in respect of the recovery of that debt.
- (5) If the amount of the advance is less than the amount of the reduced fees, the difference in the amounts is to be paid to the credit of a bank account nominated and maintained by the service.
- (6) The Secretary must give notice of any debt arising under subitem (4), or any payment made under subitem (5), to the service.
- (7) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (8) In this item:  
***closing day***, in relation to an approved child care service, means the last day of the second reporting period immediately following the reporting period in which the service's application day falls.

## **98 Notice where individual not conditionally eligible and approved child care service not eligible**

- (1) This item applies:
- (a) in relation to each of the following periods:
    - (i) for the reporting period in which the application day for an approved child care service falls—so much of the reporting period as falls before the application day (a ***relevant period***);
    - (ii) each earlier reporting period determined by the Secretary for the approved child care service (a ***relevant period***); and
  - (b) if, in respect of a child to whom the service provides care during the relevant period:
    - (i) a determination under section 50F that an individual is conditionally eligible for child care benefit by fee

**Schedule 1** Amendments relating to Child Care Management System  
**Part 2** Application and transitional provisions

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- reduction for care provided to the child is not in force in respect of any individual and that child when the service provides the care; and
- (ii) the service is not eligible under section 47 of the Family Assistance Act for payment of child care benefit by fee reduction for the care.
- (2) The service must give the Secretary a report in the manner provided in subitem (3), stating the following matters in respect of the child and each week, or part of a week, that falls within the relevant period:
- (a) the name of the child;
- (b) the number of hours of care in the sessions of care in respect of which the service would be required, under section 219A of the Family Assistance Administration Act in item 1 of the table, as in force immediately before the commencement of this Schedule, to reduce fees if a determination of conditional eligibility under section 50F was in force in respect of an individual and the child when the care was provided, if the service has charged for those hours of care;
- (c) any other information required by the Secretary in the form.
- (3) The report must be given:
- (a) to the Secretary either:
- (i) by the end of the second financial year immediately following the financial year in which the application day falls; or
- (ii) if the Secretary requests the service to give the report earlier—within 30 days after that request is made; and
- (b) in the form, and in the manner or way, approved by the Secretary under paragraph 219N(2)(b), as in force immediately before the commencement of this Schedule.
- (4) The request must be made in the form, or in the manner or way, approved by the Secretary.
- (5) If an approved child care service is required to give a report under this item for a relevant period, it is not required to give a report under section 219N, as in force immediately before the commencement of this Schedule, containing the information set out in subsection (5) of that section, for that period. However, it is a condition for the continued approval of the service that the service comply with this item.
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## **99 Information other than protected information obtained for the purposes of the Child Care Management System Pilot**

- (1) A person may obtain information other than protected information for the purposes of the Child Care Management System Pilot.
- (2) A person must not:
- (a) make a record of information, other than protected information, obtained for the purposes of the Child Care Management System Pilot; or
  - (b) disclose such information to any person; or
  - (c) otherwise use such information;
- unless that action:
- (d) is done for the purposes of the Child Care Management System Pilot; or
  - (e) is otherwise authorised by law.
- Penalty: 2 years imprisonment.
- (3) Despite any other law, an approved child care service, or a person engaged in the conduct of an approved child care service, may:
- (a) make a record of personal information held in the records of the service or person, in relation to a child to whom the service provides care, or an individual who has enrolled a child for care by the service; or
  - (b) disclose such information to any person; or
  - (c) otherwise use such information;
- for the purposes of the Child Care Management System Pilot.
- (4) In this item:  
*personal information* has the same meaning as in the *Privacy Act 1988*.

## **100 Saving provision in relation to item 2**

A determination in force immediately before the commencement of item 2 specifying circumstances as permitted circumstances for the purposes of subparagraph 10(2)(b)(iv) of the Family Assistance Act continues in force on and after the application day in respect of an approved child care service, as if it were a determination specifying those circumstances as permitted circumstances for the purposes of subparagraph 10(3)(c)(iv) of that Act.

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### **101 Transitional regulations**

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions, and prescribing any modification or adaptation of this Act, the Family Assistance Act or the Family Assistance Administration Act) relating to the amendments made by this Act.

## **Schedule 2—Civil penalties**

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

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

Insert:

*civil penalty provision* means subsection 219EA(2) or 219TSB(1).

#### **2 At the end of subsection 104(1)**

Add:

; or (e) a decision under Division 2 of Part 8C (infringement notices).

#### **3 At the end of subsection 108(2)**

Add:

; or (g) a decision under Division 2 of Part 8C (infringement notices).

#### **4 Subsection 111(1A)**

After “personally”, insert “(except a decision under Division 2 of Part 8C (infringement notices))”.

#### **5 After paragraph 144(1)(o)**

Insert:

- (oa) a decision under subsection 219TSQ(1) to suspend an approved child care service’s approval;
- (ob) a decision under subsection 219TSQ(3) to revoke the suspension of the approval of an approved child care service from a particular day;

#### **6 After section 219E**

Insert:

### **219EA Obligation to provide information relating to child care places**

- (1) This section applies if, under rules determined under subsection 205(1), an approved child care service is required to provide, by a particular time, information as to:
  - (a) the number of child care places provided during a particular period; and
  - (b) the number of child care places likely to be available during a particular period.
- (2) The service must provide the information by that time in the form, manner or way specified in the request that resulted in that requirement.
- (3) Subsection (2) is a *civil penalty provision*.

Note: Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

## **7 After Part 8B**

Insert:

## **Part 8C—Civil penalties**

### **Division 1—Civil penalty orders**

#### **219TSA Definitions**

In this Division:

*civil penalty order* means an order under subsection 219TSC(1).

*penalty unit* has the meaning given by section 4AA of the *Crimes Act 1914*.

#### **219TSB Ancillary contravention of civil penalty provision**

- (1) A person must not:
    - (a) attempt to contravene a civil penalty provision (other than this subsection); or
    - (b) aid, abet, counsel or procure a contravention of a civil penalty provision (other than this subsection); or
-

- (c) induce, whether by threats or promises or otherwise, a contravention of a civil penalty provision (other than this subsection); or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision (other than this subsection); or
  - (e) conspire with others to effect a contravention of a civil penalty provision (other than this subsection).
- (2) Subsection (1) is a *civil penalty provision*.

### **219TSC Civil penalty orders**

- (1) If the Federal Court of Australia or the Federal Magistrates Court is satisfied that a person has contravened a civil penalty provision, the court may, on the application of the Minister, order the person to pay to the Commonwealth such pecuniary penalty, in respect of each contravention, as the court determines to be appropriate.
- (2) An order under subsection (1) is to be known as a *civil penalty order*.

#### *Determining pecuniary penalty*

- (3) In determining the pecuniary penalty, the court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct.

#### *Civil enforcement of penalty*

- (4) The pecuniary penalty is a civil debt payable to the Commonwealth.
- (5) The Commonwealth may enforce the order under subsection (1) as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

Note: If a civil penalty order is made in relation to a person who operates an approved child care service, the Secretary may be able to take further action against the service under section 200.

### **219TSD Maximum penalties for contravention of civil penalty provisions**

The pecuniary penalty payable under subsection 219TSC(1) by a person in respect of a contravention of a civil penalty provision is not to exceed:

- (a) for a contravention by a body corporate—60 penalty units; and
- (b) for a contravention by a person other than a body corporate—30 penalty units.

### **219TSE Proceedings may be heard together**

The Federal Court of Australia or the Federal Magistrates Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

### **219TSF Time limit for application for an order**

Proceedings for a civil penalty order may be started no later than 4 years after the contravention.

### **219TSG Civil evidence and procedure rules for civil penalty orders**

The Federal Court of Australia or the Federal Magistrates Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

## **Division 2—Infringement notices**

### **219TSH Definitions**

In this Division:

*authorised person* means:

- (a) the Secretary; or
- (b) an officer appointed under section 219TSO.



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***civil contravention*** means a contravention of a civil penalty provision.

***infringement notice*** means an infringement notice under section 219TSI.

***penalty unit*** has the meaning given by section 4AA of the *Crimes Act 1914*.

### **219TSI When an infringement notice can be given**

- (1) If an authorised person has reasonable grounds to believe that a person has, on a particular day, committed one or more contraventions of a particular civil penalty provision, the authorised person may give to the person an infringement notice relating to those contraventions.
- (2) An infringement notice must be given within 12 months after the day on which the civil contraventions are alleged to have taken place.

### **219TSJ Matters to be included in an infringement notice**

- (1) An infringement notice must:
  - (a) set out the name of the person to whom the notice is given; and
  - (b) set out the name of the approved child care service concerned; and
  - (c) set out the name of the authorised person who gave the notice; and
  - (d) set out brief details of each of the alleged civil contraventions; and
  - (e) contain a statement to the effect that the matter or matters will not be dealt with by the Federal Court of Australia or the Federal Magistrates Court if the penalty specified in the notice is paid to the Commonwealth, within:
    - (i) 28 days after the notice is given; or
    - (ii) if the Secretary allows a longer period—that longer period; and
  - (f) give an explanation of how payment of the penalty is to be made; and

- 
- (g) set out such other matters (if any) as are specified by the regulations.
- (2) For the purposes of paragraph (1)(d), the brief details must include the following information in relation to each alleged civil contravention:
- (a) the date of the alleged contravention;
  - (b) the civil penalty provision that was allegedly contravened.

### 219TSK Amount of penalty

#### *Infringement notice given to a body corporate*

- (1) The penalty to be specified in an infringement notice given to a body corporate must be a pecuniary penalty equal to the number of penalty units worked out using the table:

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<b>Number of penalty units</b>		
<b>Item</b>	<b>In this case ...</b>	<b>the number of penalty units is ...</b>
1	The notice relates to a single alleged contravention of a civil penalty provision	4.
2	The notice relates to more than 1 alleged contravention of a civil penalty provision	the number obtained by multiplying 4 by the number of alleged contraventions.

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#### *Infringement notice given to a person other than a body corporate*

- (2) The penalty to be specified in an infringement notice given to a person other than a body corporate must be a pecuniary penalty equal to the number of penalty units worked out using the table:

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<b>Number of penalty units</b>		
<b>Item</b>	<b>In this case ...</b>	<b>the number of penalty units is ...</b>
1	The notice relates to a single alleged contravention of a civil penalty provision	2.
2	The notice relates to more than 1 alleged contravention of a civil penalty provision	the number obtained by multiplying 2 by the number of alleged contraventions.

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### **219TSL Withdrawal of an infringement notice**

- (1) This section applies if an infringement notice is given to a person.
- (2) An authorised person may, by written notice (the *withdrawal notice*) given to the person, withdraw the infringement notice.
- (3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

#### *Refund of penalty if infringement notice withdrawn*

- (4) If:
  - (a) the penalty specified in the infringement notice is paid; and
  - (b) the infringement notice is withdrawn after the penalty is paid;the Commonwealth is liable to refund the penalty.

### **219TSM What happens if the penalty is paid**

- (1) This section applies if:
  - (a) an infringement notice relating to one or more alleged civil contraventions is given to a person; and
  - (b) the penalty is paid in accordance with the infringement notice; and
  - (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the alleged civil contraventions is discharged.
- (3) Proceedings under Division 1 must not be brought against the person for the alleged civil contraventions.

### **219TSN Effect of this Division on civil proceedings**

This Division does not:

- (a) require an infringement notice to be given in relation to an alleged civil contravention; or
- (b) affect the liability of a person to have proceedings under Division 1 brought against the person for an alleged civil contravention if:
  - (i) the person does not comply with an infringement notice relating to the contravention; or

- (ii) an infringement notice relating to the contravention is not given to the person; or
- (iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
- (c) limit the discretion of the Federal Court of Australia or the Federal Magistrates Court to determine the amount of a penalty to be imposed on a person who is found in proceedings under Division 1 to have contravened a civil penalty provision.

### **219TSO Appointment of authorised person**

The Secretary may, by writing, appoint an officer of the Department as an authorised person for the purposes of this Division.

### **219TSP Regulations**

The regulations may make further provision in relation to infringement notices.

## **Division 3—Suspension of approved child care service’s approval**

### **219TSQ Suspension of approved child care service’s approval**

- (1) The Secretary must, by notice given to a person who operates an approved child care service, suspend the service’s approval if:
  - (a) 10 infringement notices under section 219TSI are given to the person in relation to the service within a period (the *infringement period*) of 12 months; and
  - (b) in relation to each notice, the time for paying the penalty specified in the notice has ended before the end of the infringement period.
- (2) The notice must:
  - (a) specify a day, not earlier than the day on which the notice is given, on which the suspension takes effect; and
  - (b) specify the grounds upon which the Secretary has suspended the service’s approval.

- (3) The Secretary may, by notice given to a person who operates the service, revoke the suspension with effect from the day specified in the notice.

## **8 At the end of section 221**

Add:

- (4) The Secretary must not delegate to an officer the Secretary's powers under Division 2 of Part 8C (infringement notices).

## **9 Application**

The amendment made by item 6 applies in relation to obligations to provide information that arise after the commencement of that item (regardless of whether the information relates to a period starting before or after that commencement).

## Schedule 3—Miscellaneous amendments

### Part 1—Amendments

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

##### **1 After subsection 18(1)**

Insert:

- (1A) A child is taken to be a *school child* for the purposes of the Act if the child has reached 6 years of age, unless an individual who is:
- (a) conditionally eligible under section 42 for child care benefit by fee reduction for a session of care provided to the child; or
  - (b) eligible for child care benefit (by fee reduction or otherwise) for a session of care provided to the child;
- notifies the Secretary in the manner required by the Secretary that the child does not satisfy the criterion in subsection (1).

##### **2 Paragraph 50(1)(b)**

Omit “section 200 of”.

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

##### **3 Paragraph 62(1)(b)**

Repeal the paragraph, substitute:

- (b) the Secretary:
- (i) in order to make a decision about the conditional eligibility at any time; or
  - (ii) in order to make a decision about the claimant’s eligibility for child care benefit by fee reduction under section 43 of the Family Assistance Act at any time; or
  - (iii) in relation to a matter referred to in subsection 154(5) of this Act;
- requires the claimant, or the claimant’s partner, under Division 1 of Part 6 of this Act, to give information or produce documents; and

Note: The heading to section 62 is altered by adding at the end “etc.”.

**4 After paragraph 104(1)(b)**

Insert:

(ba) a decision to give a person a notice under section 204A; or

**5 After paragraph 108(2)(c)**

Insert:

(ca) a decision to give a person a notice under section 204A; or

**6 Subsection 109D(6) (definition of *excepted decision*)**

Add at the end:

; or (c) a decision of a kind mentioned in subsection 144(1)  
(decisions in relation to child care services and registered  
carers).

**7 After section 109D**

Insert:

**109DA Review applications—time limits applicable to decisions in  
relation to child care services and registered carers**

An application for review under subsection 109A(1) of a decision  
of a kind mentioned in subsection 144(1) (decisions in relation to  
child care services and registered carers) must be made no later  
than 28 days after the applicant is notified of the decision.

**8 Subsection 111(2)**

After “apply for review under subsection (1)”, insert “or (1A)”.

**9 At the end of subsection 111(2)**

Add:

; (h) a decision to make a determination under subsection 57(1) of  
the Family Assistance Act (determination that an approved  
child care service is a sole provider).

**10 Before subsection 144(1)**

Insert:

(1A) If:

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- (a) a decision of a kind mentioned in subsection (1) (decisions in relation to child care services and registered carers) has been reviewed under section 109A; and
- (b) the decision has been affirmed, varied or set aside and substituted by the Secretary or an authorised review officer under subsection 109A(2);

application may also be made to the AAT for the review of the decision.

(1B) For the purposes of subsection (1A), the decision made by the Secretary or authorised review officer is taken to be:

- (a) where the Secretary or authorised review officer affirms a decision—that decision as affirmed; and
- (b) where the Secretary or authorised review officer varies a decision—that decision as varied; and
- (c) where the Secretary or authorised review officer sets a decision aside and substitutes a new decision—the new decision.

(1C) If a decision of a kind mentioned in subsection (1) (decisions in relation to child care services and registered carers) has been made by the Secretary personally, or by another agency head himself or herself in the exercise of a delegated power, application may also be made to the AAT for the review of the decision.

### **11 Subsection 144(1)**

Omit “Application may also be made to the AAT for review of the following decisions”, substitute “Each of the following is a decision in relation to which an application may be made under subsection (1A) or (1C)”.

### **12 After paragraph 144(1)(d)**

Insert:

- (da) a decision under subsection 201A(1) to suspend the approval of an approved child care service from a particular day;
- (db) a decision under subsection 201A(3) to revoke the suspension of the approval of an approved child care service from a particular day;

### **13 Subsection 153(2)**

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After “document”, insert “or records”.

**14 At the end of subsection 154(5)**

Add:

; or (e) the records that a person is required to keep under section 219G.

**15 After subsection 154(5)**

Insert:

(5A) The Secretary may require a person who is required to keep records under section 219G to produce to a specified agency such of those records as are specified in the notice given to the person under section 158.

**16 Subparagraphs 158(2)(b)(i) and (ii)**

After “document”, insert “or records”.

**17 Subparagraph 158(2)(b)(iii)**

Omit “or the document is to be produced”, substitute “, the document is to be produced or the records are to be produced”.

**18 Subsection 159(1)**

After “document”, insert “or records”.

**19 Paragraph 160(b)**

After “document”, insert “or records”.

**20 Paragraph 195(2)(b)**

Omit “either”, substitute “any”.

**21 After subparagraph 195(2)(b)(i)**

Insert:

- (ia) the Secretary suspended the approval of the service under section 201A;
- (ib) the Secretary suspended the approval of the service under section 219TSQ;

**22 Subsection 195(4)**

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Repeal the subsection, substitute:

- (4) For the purposes of paragraph (3)(b), the day from which the approval is expressed to operate:
  - (a) may be a day before the day the Secretary approves the service; but
  - (b) must not be a day that is earlier than 6 months before the day on which the application for the approval was made.

**23 Subsection 200(2)**

Add at the end “The notice must specify the day, no earlier than the day on which the notice is given, on which the sanction takes effect.”.

**24 After section 201**

Insert:

**201A Immediate suspension for certain breaches**

- (1) The Secretary may, by notice given to an approved child care service, suspend the approval of the service if the Secretary reasonably believes that:
  - (a) the service is not complying with all applicable requirements imposed by a law of the Commonwealth, or of the State or Territory in which the service is situated, relating to child care; or
  - (b) there is an imminent threat to the health or safety of a child, or children, because of the care provided by the service to the child or children; or
  - (c) due to urgent circumstances, it is no longer appropriate for the service to provide child care.
- (2) The Secretary must, in the notice:
  - (a) specify a day, not earlier than the day on which the notice is given, on which the suspension is to take effect; and
  - (b) specify the grounds upon which the Secretary has suspended the service’s approval; and
  - (c) inform the service of its rights under this Act to seek a review of the decision to suspend the service’s approval.
- (3) If the Secretary suspends the approval of an approved child care service, the Secretary may at any time, by notice to the service,

revoke the suspension with effect from the day specified in the notice.

## **25 After section 204**

Insert:

### **204A Notifying individuals about effect on entitlement to child care benefit of actions by approved child care services**

#### *Breach of conditions by approved child care service*

- (1) If the Secretary is satisfied that an approved child care service:
  - (a) has not complied with a condition for the continued approval of the service; or
  - (b) is not complying with a condition for the continued approval of the service;

the Secretary may give a notice to an individual whose entitlement to be paid child care benefit may be affected if the Secretary were to suspend or cancel the service's approval because of the Secretary being so satisfied.

- (2) A notice under subsection (1) must:
  - (a) state that the Secretary is satisfied that the service has not complied, or is not complying, with a condition for the continued approval of the service; and
  - (b) set out the effect on that entitlement if the Secretary were to suspend or cancel the service's approval because of the Secretary being so satisfied.

A notice under subsection (1) may set out any other information that the Secretary thinks relevant.

#### *Suspension or cancellation of approved child care service's approval*

- (3) If the Secretary suspends or cancels an approved child care service's approval, the Secretary may give a notice to an individual whose entitlement to be paid child care benefit may be affected because of the suspension or cancellation.
- (4) A notice under subsection (3) must:

**Schedule 3** Miscellaneous amendments

**Part 1** Amendments

---

- (a) state that the Secretary has suspended or cancelled the service's approval; and
- (b) set out the effect on that entitlement because of the suspension or cancellation.

A notice under subsection (3) may set out any other information that the Secretary thinks relevant.

*Form and manner or way of notice*

- (5) A notice under this section must be in the form, and in the manner or way, approved by the Secretary.

**26 After subsection 219A(1)**

Insert:

- (1A) If the service becomes aware that the individual is eligible to receive Jobs Education and Training (JET) Child Care fee assistance in relation to a session of care provided by the service to the child, the service must ensure that the fees set for the session do not exceed the amount of the fees that the service would charge an individual who was not eligible for that assistance for the same session for the same child.

Penalty: 60 penalty units.

- (1B) In subsection (1A):

*Jobs Education and Training (JET) Child Care fee assistance* means the payment of that name that is paid by the Commonwealth.

Note: The heading to section 219A is altered by adding at the end "etc."

**27 Paragraphs 219A(2)(a) and (b)**

Omit "6", substitute "7".

**28 Subsection 219A(2) (table items 2 and 3, at the end of column 2)**

Add "The service must also ensure that the fees set for a session for which the service reduces fees under this item do not exceed the amount of the fees that the service would charge an individual who was not eligible for the fee reductions for the same session for the same child."

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**29 Subsection 219A(3)**

Omit “Subsection (2) is an offence”, substitute “Subsections (1A) and (2) are offences”.

**30 After paragraph 219B(1)(c)**

Insert:

; and (d) ensure that the fees set for a session for which the service is required to reduce fees under this subsection do not exceed the amount of the fees that the service would charge an individual for the same session for the same child if the service was not so eligible.

**31 Subsection 219D(1)**

Repeal the subsection, substitute:

- (1) If an approved child care service:
- (a) receives notice under this Act that the service’s approval has been suspended; or
  - (b) receives notice under subsection 200(2) that the service’s approval has been cancelled;
- the service must cease to reduce fees as provided for in sections 219A and 219B for sessions of care the service provides on or after the day on which the sanction takes effect.

**32 Subsection 219D(2)**

Omit “under subsection 200(3)”.

**33 At the end of section 219G**

Add:

*Notification of premises at which records are kept*

- (3) The person must notify the Secretary in writing, within the period of 14 days beginning on the day after the cessation day, of the premises at which the records are kept on the day after the cessation day.

Penalty: 60 penalty units.

- (4) If the premises at which the records are kept changes during the period:

- (a) beginning on the day after the cessation day; and
- (b) ending on the last day the person is required to keep the records under subsection (1);

the person must notify the Secretary in writing of the new premises within the period of 14 days beginning on the day the records begin to be kept at the new premises.

Penalty: 60 penalty units.

- (5) In subsections (3) and (4):

*cessation day* means the day the service ceased to be an approved child care service.

- (6) Subsections (3) and (4) are offences of strict liability.

### 34 Paragraph 219K(1)(b)

Repeal the paragraph, substitute:

- (b) in the case of records referred to in subsection 219G(2)—the premises last notified under section 219G in respect of the records at any reasonable time of a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

### 35 After section 221

Insert:

#### 221A Committees

- (1) The Minister may in writing establish committees for the purposes of the family assistance law.

##### *Functions*

- (2) A committee has the functions determined in writing by the Minister.
- (3) A committee must, in performing its functions, comply with any directions given to the committee by the Minister.

##### *Appointments*

- (4) A committee consists of the members appointed in writing by the Minister.
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- (5) A member of a committee holds office on a part-time basis.

*Chair*

- (6) The Minister may designate a member of a committee as the Chair of the committee.

*Remuneration and allowances*

- (7) A member of a committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (8) A member of a committee is to be paid the allowances that are prescribed by the regulations.
- (9) Subsections (7) and (8) have effect subject to the *Remuneration Tribunal Act 1973*.

*Disclosure of interests*

- (10) A member of a committee must give written notice to the Minister of any direct or indirect pecuniary interest that the member has or acquires and that conflicts or could conflict with the proper performance of the member's functions.

*Resignation*

- (11) A member of a committee may resign his or her appointment by giving the Minister a written resignation.

*Termination*

- (12) The Minister may at any time terminate the appointment of a member of a committee.

**36 After section 224**

Insert:

**224A Notice of decisions under Part 8**

- (1) If a notice of a decision of an officer under Part 8 is:

**Schedule 3** Miscellaneous amendments

**Part 1** Amendments

---

- (a) left at the address of the place of business of a child care service last known to the Secretary; or
  - (b) sent by prepaid post to the address of a child care service last known to the Secretary; or
  - (c) sent by email to the last known email address of the child care service;
- notice of the decision is taken, for the purposes of the family assistance law, to have been given to the service.
- (2) Notice of a decision of an officer under Part 8 may be given to a service by properly addressing, prepaying and posting the document as a letter.
  - (3) If notice of a decision is given in accordance with subsection (2), notice of the decision is taken to have been given to the service at the time at which the notice would be delivered in the ordinary course of the post, unless the contrary is proved.

**37 Subsection 231(2)**

Omit “The”, substitute “Subject to subsection (2A), the”.

**38 After subsection 231(2)**

Insert:

(2A) If:

- (a) an unincorporated body or association is operating an approved child care service; and
- (b) a debt becomes due to the Commonwealth by the service under Part 4;

then subsection (2) does not apply in relation to the debt and the debt is taken to be a debt owed by the service.

Note: One of the effects of this subsection is that subsection 82(2) rather than subsection 82(1) will apply to the debt. Subsection 82(2) provides more ways of recovering debts than subsection 82(1) (for example, setting off debts against advances is permissible).



## **Part 2—Application provisions**

### **39 Application of items 6 to 11**

The amendments made by items 6 to 11 of this Schedule apply in relation to decisions made after the commencement of those items.

### **40 Application of items 14 and 15**

The amendments made by items 14 and 15 apply in relation to a requirement to keep records that arose before or after the commencement of those items.

### **41 Application of item 22**

The amendment made by item 22 applies in relation to applications for approvals that are made after the commencement of that item.

### **42 Application of items 23 and 31**

The amendments made by items 23 and 31 of this Schedule apply in relation to notices given on or after the commencement of those items.

### **43 Application of item 25**

- (1) Subsection 204A(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as inserted by item 25, applies in relation to non-compliance with conditions that occurs before or after the commencement of that item.
- (2) Subsection 204A(3) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as inserted by item 25, applies in relation to suspensions or cancellations that occur before or after the commencement of that item.

### **44 Application of items 26, 28 and 30**

The amendments made by items 26, 28 and 30 apply in relation to sessions of care provided after the commencement of those items.

### **45 Application of items 33 and 34**

The amendments made by items 33 and 34 apply in relation to services that cease to be approved child care services after the commencement of those items.

**Schedule 3** Miscellaneous amendments

**Part 2** Application provisions

---

**46 Application of item 36**

The amendment made by item 36 applies to an attempt to give notice of a decision that takes place on or after the commencement of that item.

**47 Application of items 37 and 38**

The amendments made by items 37 and 38 apply in relation to debts that become due to the Commonwealth after the commencement of those items.

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*[Minister's second reading speech made in—  
House of Representatives on 24 May 2007  
Senate on 13 June 2007]*

(96/07)

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