





# **Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Act 2008**

**No. 53, 2008**

**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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# **Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Act 2008**

**No. 53, 2008**

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

*[Assented to 25 June 2008]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Family Assistance Legislation  
Amendment (Child Care Budget and Other Measures) Act 2008*.

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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.	25 June 2008
2. Schedule 1, items 1 to 63	7 July 2008.	7 July 2008
3. Schedule 1, item 64	The day on which this Act receives the Royal Assent.	25 June 2008
4. Schedule 2	1 July 2008.	1 July 2008
5. Schedule 3	The day on which this Act receives the Royal Assent.	25 June 2008
6. Schedule 4	The day after this Act receives the Royal Assent.	26 June 2008
7. Schedule 5, items 1 to 4	The day on which this Act receives the Royal Assent.	25 June 2008
8. Schedule 5, item 5	At the same time as the provision(s) covered by table item 4.	1 July 2008
9. Schedule 5, items 6 to 22	The day on which this Act receives the Royal Assent.	25 June 2008
10. Schedule 5, item 23	1 January 2009.	1 January 2009
11. Schedule 5, items 24 to 31	The day on which this Act receives the Royal Assent.	25 June 2008

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.

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- (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—Removing minimum rate of CCB

### Part 1—Amendments

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

##### **1 Paragraph 57F(1)(b)**

Repeal the paragraph, substitute:

- (b) one of the following determinations is made:
  - (i) a determination under section 51B of the Family Assistance Administration Act that the individual is entitled to be paid child care benefit by fee reduction for the care;
  - (ii) a determination under subsection 51C(1) of the Family Assistance Administration Act in relation to the individual and the care;
  - (iii) a determination under section 52E of the Family Assistance Administration Act that the individual is entitled to be paid child care benefit for the care;
  - (iv) a determination under subsection 52G(1) of the Family Assistance Administration Act in relation to the individual and the care; and

##### **2 Subsection 83(1) (definition of *minimum hourly amount*)**

Repeal the definition, substitute:

*minimum hourly amount* is \$0.581.

##### **3 Section 84A (method statement, step 2)**

After “total amount”, insert “(if any)”.

##### **4 Subsection 84B(1)**

Omit “all of”.

##### **5 Paragraph 84C(c)**

Repeal the paragraph, substitute:

- (c) one of the following determinations is made:

- (i) a determination under section 51B of the Family Assistance Administration Act that the individual is entitled to be paid child care benefit by fee reduction for the care;
- (ii) a determination under subsection 51C(1) of the Family Assistance Administration Act in relation to the individual and the care;
- (iii) a determination under section 52E of the Family Assistance Administration Act that the individual is entitled to be paid child care benefit for the care;
- (iv) a determination under subsection 52G(1) of the Family Assistance Administration Act in relation to the individual and the care; and

**6 At the end of section 84D**

Add:

- ; and (c) for an individual in respect of whom a determination is made under subsection 51C(1) or 52G(1) of the Family Assistance Administration Act—a nil amount, to the extent that the determination relates to the session or sessions of care provided during that week.

**7 Subclause 2(3) of Schedule 2 (definition of *taxable income* %)**

Omit “12”, substitute “11”.

**8 Clause 8 of Schedule 2 (method statement, step 6)**

Omit “*provisional taxable income* %.”, substitute “individual’s *taxable income* %”. However, if the result is less than zero, the individual’s *taxable income* % is zero.”.

**9 Clause 8 of Schedule 2 (method statement, steps 7 and 8)**

Repeal the steps.

**10 Clause 12 of Schedule 2**

Repeal the clause.

**11 Clause 2 of Schedule 4 (table item 21)**

Repeal the item, substitute:

**Schedule 1** Removing minimum rate of CCB  
**Part 1** Amendments

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21 Minimum hourly amount for child care benefit CCB minimum hourly amount [subsection 83(1)]

**12 Subclause 3(1) of Schedule 4 (table item 21)**

Repeal the item, substitute:

21 CCB minimum hourly amount 1 July December highest December quarter before reference quarter (but not earlier than December quarter 2007) \$0.001

**13 After subclause 3(5) of Schedule 4**

Insert:

*First indexation of CCB minimum hourly amount*

(5A) The first indexation of the CCB minimum hourly amount is to take place on 1 July 2009.

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

**14 Subsection 3(1) (definition of CCB %)**

Repeal the definition, substitute:

**CCB %**, in respect of an individual, means:

- (a) the CCB % determined (including as a result of a variation) in respect of the individual under Division 4 of Part 3; or
- (b) the CCB % otherwise applicable to the individual under Division 4 of Part 3; or
- (c) if neither paragraph (a) nor (b) applies to the individual—the CCB % calculated in respect of the individual under subclause 2(2) of Schedule 2 to the Family Assistance Act.

**15 Subsection 3(1) (definition of *minimum taxable income* %)**

Repeal the definition.

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**16 After section 4**

Insert:

**4A Rate and amount of CCB by fee reduction may be zero**

For the purposes of this Act and the Family Assistance Act:

- (a) a rate calculated under subsection 50Z(1), or recalculated under subsection 50ZA(1), may be a zero rate; and
- (b) an amount calculated under subsection 50Z(1), or recalculated under subsection 50ZA(1), may be a nil amount.

**17 Subparagraph 49C(2)(e)(ii)**

Omit “the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %”, substitute “a CCB % of zero % applicable to him or her”.

**18 Subsection 49E(8)**

Omit “the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %”, substitute “a CCB % of zero % applicable to him or her”.

**19 Subsection 49F(9)**

Omit “the CCB % applicable to the person calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %”, substitute “a CCB % of zero % applicable to the person”.

**20 Paragraph 50B(1)(c)**

Omit “the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %”, substitute “a CCB % of zero % applicable to him or her”.

**21 Subsection 50J(2)**

Repeal the subsection, substitute:

- (2) In making a determination of CCB %, the Secretary must:

- (a) determine a percentage of zero % if subsection 55(2) or 55B(1), or section 55C, applies; or
- (b) otherwise—use the provisions in Schedule 2 to the Family Assistance Act as if references in those provisions to a person being eligible were references to a person being conditionally eligible under section 42 of that Act.

**22 At the end of subsection 50Z(1)**

Add:

Note: The rate may be a zero rate and the amount a nil amount (see section 4A).

**23 At the end of subsection 50ZA(1)**

Add:

Note: The recalculated rate may be a zero rate and the recalculated amount a nil amount (see section 4A).

**24 Subsection 51B(1)**

Repeal the subsection, substitute:

- (1) If the Secretary is satisfied:
  - (a) that the claimant is eligible under section 43 of the Family Assistance Act for child care benefit by fee reduction in respect of one or more sessions of care provided by an approved child care service to the child during the income year; and
  - (b) that, if the claimant were to be entitled to child care benefit by fee reduction in respect of the sessions, the rate of benefit would be more than a zero rate;

the Secretary must determine that the claimant is entitled to be paid child care benefit by fee reduction for the sessions. The determination must include the rate at which, and the amount in which, the Secretary considers the claimant eligible for the year.

**25 Section 51C**

Repeal the section, substitute:

**51C Determination that no entitlement**

- (1) If the Secretary:
-

- (a) is satisfied that the claimant is eligible as mentioned in paragraph 51B(1)(a) in respect of care provided to a child by an approved child care service during an income year; but
  - (b) is not satisfied as mentioned in paragraph 51B(1)(b) that, if the claimant were to be entitled to child care benefit, the rate of benefit would be more than a zero rate;
- the Secretary must determine that the claimant is not entitled to be paid child care benefit by fee reduction in respect of that care.

- (2) If the Secretary is not satisfied that the claimant is eligible as mentioned in paragraph 51B(1)(a) in respect of care provided to a child by an approved child care service during an income year, the Secretary must determine that the claimant is not entitled to be paid child care benefit by fee reduction in respect of that care.

## **26 Paragraph 52D(b)**

Omit “the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %”, substitute “a CCB % of zero % applicable to him or her”.

## **27 At the end of paragraph 52E(b)**

Add “and”.

## **28 After paragraph 52E(b)**

Insert:

- (c) the Secretary is satisfied that, if the claimant were to be entitled to be paid child care benefit in respect of the period, the amount of the entitlement would be more than a nil amount;

## **29 Section 52G**

Repeal the section, substitute:

### **52G Determination that no entitlement**

- (1) If the Secretary:
  - (a) is satisfied that the claimant is eligible as mentioned in paragraph 52E(b) in respect of care provided to a child by an approved child care service during a past period; but

- (b) is not satisfied as mentioned in paragraph 52E(c) that, if the claimant were to be entitled to be paid child care benefit, the entitlement would be more than a nil amount;  
the Secretary must determine that the claimant is not entitled to be paid child care benefit for the past period in respect of that care.
- (2) If the Secretary is not satisfied that the claimant is eligible as mentioned in paragraph 52E(b) in respect of care provided to a child by an approved child care service during a past period, the Secretary must determine that the claimant is not entitled to be paid child care benefit for the past period in respect of that care.
- (3) If the Secretary is not satisfied as mentioned in section 52F, the Secretary must determine that the claimant is not entitled to be paid child care benefit for the past period in respect of the child.

**30 Paragraph 52H(2)(b)**

Omit “section 52G”, substitute “subsection 52G(2)”.

**31 Paragraph 52H(3)(b)**

Omit “section 52G”, substitute “subsection 52G(3)”.

**32 Section 53D**

Repeal the section, substitute:

**53D Determination of entitlement**

If the Secretary is satisfied that:

- (a) the claimant is eligible for child care benefit under section 46 of the Family Assistance Act in respect of the child; and
- (b) if the claimant were to be entitled to be paid child care benefit by single payment/in substitution because of the death of another individual in respect of the child, the amount of the entitlement would be more than a nil amount;

the Secretary must determine that the claimant is entitled to be paid child care benefit by single payment/in substitution because of the death of another individual in respect of the child for the amount the Secretary considers the claimant eligible.

**33 Section 53E**

Repeal the section, substitute:

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### **53E Determination that no entitlement**

- (1) If the Secretary:
  - (a) is satisfied that the claimant is eligible as mentioned in paragraph 53D(a); but
  - (b) is not satisfied as mentioned in paragraph 53D(b) that, if the claimant were to be entitled to be paid child care benefit, the amount of the entitlement would be more than a nil amount; the Secretary must determine that the claimant is not entitled, in respect of the child, to be paid child care benefit by single payment/in substitution because of the death of another individual.
- (2) If the Secretary is not satisfied that the claimant is eligible as mentioned in paragraph 53D(a), the Secretary must determine that the claimant is not entitled, in respect of the child, to be paid child care benefit by single payment/in substitution because of the death of another individual.

### **34 Paragraph 53F(2)(b)**

Omit “section 53E”, substitute “subsection 53E(2)”.

### **35 Paragraph 53F(3)(b)**

Omit “section 53E”, substitute “subsection 53E(2)”.

### **36 Subsection 55(2)**

Repeal the subsection, substitute:

- (2) This subsection applies if the claimant does not give the Secretary an estimate of the amount needed that the Secretary considers reasonable.

Note: This means the Secretary must determine the CCB % of the claimant to be zero % (see subsection 50J(2)).

### **37 Subsection 55A(2)**

Omit “to be calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %”, substitute “zero %”.

### **38 Sections 55B and 55C**

Repeal the sections, substitute:

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**55B CCB % applicable to individual is zero % when certain other information not provided**

- (1) This subsection applies if:
- (a) an individual's CCB % is required to be determined under section 50J; and
  - (b) the care in the claim concerned is care provided by an approved child care service; and
  - (c) either of the following situations arises:
    - (i) the individual does not give the Secretary information needed to work out the number of children the individual has in care of a particular kind;
    - (ii) the claimant opted to have a CCB % of zero % applicable to him or her.

Note: This means the Secretary must determine the CCB % of the claimant to be zero % (see subsection 50J(2)).

- (2) If:
- (a) the rate of child care benefit is required to be calculated for the purpose of making a determination of entitlement under Subdivision E or F; and
  - (b) the care in the claim concerned is care provided by an approved child care service; and
  - (c) either of the following situations arises:
    - (i) the individual, or if the individual has died, another individual making a claim for child care benefit by single payment/in substitution because of the death of that individual, does not give the Secretary information needed to work out the number of children the individual has, or had, in care of a particular kind;
    - (ii) the claimant opted to have a CCB % of zero % applicable to him or her;
- the CCB % applicable to the claimant is zero %.

**55C CCB % applicable to individual when tax file number information not given**

This section applies if:

- (a) either:

- (i) the Secretary makes a determination of conditional eligibility in respect of a claimant under section 50F in the situation referred to in subparagraph 50D(1)(d)(ii), (iii), (iv) or (v); or
  - (ii) the Secretary makes a determination of conditional eligibility in respect of a claimant under section 50F in the situation referred to in subsection 50D(4); and
- (b) the claimant's CCB % is required to be determined under section 50J.

Note: This means the Secretary must determine the CCB % of the claimant to be zero % (see subsection 50J(2)).

### **39 Subsection 57B(7)**

Omit "the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %", substitute "a CCB % of zero % applicable to him or her".

### **40 Paragraph 57C(b)**

Omit "the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %", substitute "a CCB % of zero % applicable to him or her".

### **41 Subsection 58(5)**

Omit "to be recalculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %", substitute "zero %".

### **42 Subsection 58(7)**

Repeal the subsection, substitute:

- (7) For the purposes of this Act and the Family Assistance Act, the variation referred to in subsection (6) has the effect:
  - (a) that the claimant continues to be entitled under section 52E to be paid an amount of child care benefit in respect of the past period to which the claim relates; but
  - (b) that the amount of the entitlement is a nil amount.

This subsection has effect despite section 52E.

**43 Subsection 59D(1)**

Omit “recalculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %”, substitute “zero %”.

**44 Paragraph 60(1)(b)**

Omit “the minimum taxable income % as the taxable income % as provided for in section 55B”, substitute “a CCB % of zero % as provided for in subsection 55B(2)”.

Note: The heading to section 60 is altered by omitting “**minimum taxable income %**” and substituting “**CCB % of zero %**”.

**45 Subparagraph 60(1)(c)(i)**

Omit “55B (c)(i)”, substitute “55B(2)(c)(i)”.

**46 Subparagraph 60(1)(c)(ii)**

Omit “55B (c)(ii)”, substitute “55B(2)(c)(ii)”.

**47 Paragraph 60A(1)(b)**

Omit “the minimum taxable income % as the taxable income % as provided for in subsection 55A(2) or section 55B”, substitute “a CCB % of zero % as provided for in subsection 55A(2) or 55B(2)”.

Note: The heading to section 60A is altered by omitting “**minimum taxable income %**” and substituting “**CCB % of zero %**”.

**48 Subparagraph 60A(1)(c)(ii)**

Omit “55B(c)(i)”, substitute “55B(2)(c)(i)”.

**49 Subparagraph 60A(1)(c)(iii)**

Omit “55B(c)(ii)”, substitute “55B(2)(c)(ii)”.

**50 Paragraph 60B(1)(b)**

Repeal the paragraph, substitute:

(b) the CCB % is zero % because subsection 55(2) or 55B(1), or section 55C, applies; and

Note: The heading to section 60B is altered by omitting “**minimum taxable income % used under section 55, 55B or 55C as the taxable income %**” and substituting “**CCB % is zero % because of subsection 55(2) or 55B(1), or section 55C,**”.

**51 Subparagraph 60B(1)(c)(i)**

Omit “if the situation in subsection 55(2) arose”, substitute “if subsection 55(2) applies”.

**52 Subparagraph 60B(1)(c)(ii)**

Omit “if the situation in subparagraph 55B(c)(i) arose”, substitute “if subparagraph 55B(1)(c)(i) applies”.

**53 Subparagraph 60B(1)(c)(iii)**

Omit “if the situation in subparagraph 55B(c)(ii) arose”, substitute “if subparagraph 55B(1)(c)(ii) applies”.

**54 Subparagraph 60B(1)(c)(iv)**

Omit “if the situations in section 55C arose”, substitute “if section 55C applies”.

**55 Subsection 60C(1)**

Omit “calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %”, substitute “zero %”.

**56 Subsection 60D(2)**

Repeal the subsection, substitute:

- (2) For the purposes of this Act and the Family Assistance Act, the variation has the effect:
- (a) that the claimant continues to be entitled under section 51B to be paid an amount of child care benefit for the particular income year; but
  - (b) that the amount of the entitlement is a nil amount.

This subsection has effect despite subsection 51B(1).

**57 Subsection 60E(1)**

Omit “calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %”, substitute “zero %”.

**58 Subsection 62A(1)**

Omit “recalculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %”, substitute “zero %”.

### **59 Subsection 65EA(1)**

Repeal the subsection, substitute:

- (1) The Secretary must make a determination under this section in respect of an individual and a child for an income year if:
  - (a) the Secretary has determined under section 51B that the individual is entitled to be paid child care benefit by fee reduction for one or more sessions of care provided by an approved child care service to the child during the income year; or
  - (b) the Secretary has determined under subsection 51C(1) or (2) that the individual is not entitled to be paid child care benefit by fee reduction for one or more sessions of care provided by an approved child care service to the child during the income year;so long as a determination under this section, or section 65EB, has not already been made in respect of the individual and the child for the care.

Note 1: The heading to section 65EA is replaced by the heading “**Determining entitlement, or no entitlement, to child care tax rebate—eligibility for child care benefit by fee reduction**”.

Note 2: The following heading to subsection 65EA(2) is inserted “*Determining entitlement to child care tax rebate*”.

Note 3: The following heading to subsection 65EA(3) is inserted “*Determining no entitlement to child care tax rebate*”.

### **60 Subsection 65EB(1)**

Repeal the subsection, substitute:

- (1) The Secretary must make a determination under this section in respect of an individual and care provided to a child by an approved child care service during a past period if:
  - (a) the Secretary has determined under section 52E that the individual is entitled to be paid child care benefit for the period for care in respect of the child; or

- (b) the Secretary has determined under subsection 52G(1) or (2) that the individual is not entitled to be paid child care benefit for the past period in respect of the child;

so long as a determination under this section, or section 65EA, has not already been made in respect of the individual and the child for care provided by the service during the period.

Note 1: The heading to section 65EB is replaced by the heading “**Determining entitlement, or no entitlement, to child care tax rebate—eligibility for child care benefit for past period**”.

Note 2: The following heading to subsection 65EB(2) is inserted “*Determining entitlement to child care tax rebate*”.

Note 3: The following heading to subsection 65EB(3) is inserted “*Determining no entitlement to child care tax rebate*”.

## **61 Subsection 65EC(1)**

Repeal the subsection, substitute:

(1) If:

- (a) a determination (the *earlier rebate determination*) is made in respect of an individual and a child for an income year:
- (i) under subsection 65EA(2) as a result of a determination under section 51B or subsection 51C(1); or
  - (ii) under subsection 65EA(3) in relation to a determination under section 51B or subsection 51C(1) or (2); or
  - (iii) under subsection 65EB(2) as a result of a determination under section 52E or subsection 52G(1); or
  - (iv) under subsection 65EB(3) in relation to a determination under section 52E or subsection 52G(1) or (2); or
  - (v) under this section as a result of a determination under section 51B or 52E or subsection 51C(1) or 52G(1); and
- (b) a later determination is made under section 51B or 52E or subsection 51C(1) or 52G(1) in respect of the individual and the child for the income year (the *later CCB determination*); and
- (c) the later CCB determination is not the result of a review of an earlier determination under the relevant section; and
- (d) as a result of the later CCB determination, the Secretary considers:
- (i) if there has only been one earlier rebate determination and that was made under subsection 65EA(3) or

**Schedule 1** Removing minimum rate of CCB  
**Part 1** Amendments

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65EB(3)—the individual is entitled to be paid an amount (the *new amount*) of child care tax rebate in respect of the child for the year; or

- (ii) otherwise—the individual is entitled to be paid an increased amount (the *new amount*) of child care tax rebate;

the Secretary must determine that the individual is entitled to be paid the new amount of child care tax rebate in respect of the child for the year (the *later rebate determination*).

Note: The heading to section 65EC is replaced by the heading “**Later determinations of entitlement to child care tax rebate**”.

**62 Subparagraph 108(2)(f)(i)**

Omit “operation of subsection 55(2)”, substitute “application of subsection 55(2)”.

## **Part 2—Application and transitional provisions**

### **63 Application**

The amendments made by this Schedule apply in relation to care provided by an approved child care service to a child on or after 7 July 2008.

### **64 Transitional—varying CCB % determinations**

*Secretary may vary CCB % determinations between commencement and 6 July 2008*

- (1) If:
  - (a) at the commencement of this item, a determination of CCB % under section 50J of the Family Assistance Administration Act is in force in respect of a claimant who is an individual; and
  - (b) the Secretary considers that, if the Secretary were making the determination of CCB % on 7 July 2008, the CCB % determined on 7 July (the *new CCB %*) would be different from the CCB % at commencement (the *current CCB %*);the Secretary may, in writing, vary the determination of CCB % so that the claimant's CCB % is the new CCB %.
- (2) A variation under subitem (1) has effect for the purposes of the Family Assistance Administration Act from 7 July 2008.
- (3) A variation under subitem (1) cannot be made after 6 July 2008.

*Decisions to vary are reviewable*

- (4) For the purposes of Part 5 of the Family Assistance Administration Act, a decision of the Secretary to vary a determination under subitem (1) is taken to be a decision of an officer under the family assistance law.

## **Schedule 2—Election commitments**

### **Part 1—Increasing allowable percentage and annual limit**

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

##### **1 Section 84A (method statement, step 4, formula)**

Omit “30%”, substitute “50%”.

##### **2 At the end of subsection 84F(1)**

Add:

; and (c) for the income year ending on 30 June 2009—\$7,500.

##### **3 Subsection 84F(2)**

Omit “1 July 2008”, substitute “1 July 2009”.

##### **4 Subclause 3(6) of Schedule 4**

Omit “1 July 2008”, substitute “1 July 2009”.

##### **5 Application of item 1**

The amendment made by item 1 applies in relation to care provided by an approved child care service to a child on or after 1 July 2008.

## **Part 2—Paying child care tax rebate quarterly**

### **Division 1—Amendments**

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

##### **6 Before section 57F**

Insert:

##### **57EA Eligibility for child care tax rebate—for a quarter**

- (1) An individual is eligible for child care tax rebate for a quarter in respect of a child if:
  - (a) a determination is in force:
    - (i) under section 50F of the Family Assistance Administration Act; and
    - (ii) during at least one week that falls wholly or partly in the quarter;  
to the effect that the individual is conditionally eligible for child care benefit by fee reduction in respect of the child; and
  - (b) one or more sessions of care are provided by one or more approved child care services to the child during the week; and
  - (c) under Subdivision G of Division 4, one or more of the following is the weekly limit of hours applicable to the individual in the week:
    - (i) the 50 hour limit (see section 54);
    - (ii) the more than 50 hour limit (see section 55);
    - (iii) the 24 hour care limit under section 56; and
  - (d) the Secretary has calculated an amount of fee reduction under subsection 50Z(1) of the Family Assistance Administration Act in respect of the individual and the child for at least one of those sessions of care provided in the week; and
  - (e) the amount referred to in paragraph (d) is:
    - (i) an amount greater than a nil amount; or
    - (ii) a nil amount because the CCB % applicable to the individual is zero %.

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Note 1: If one of the paragraph (c) limits applies, the individual satisfies the paragraph (c) condition, even if the individual has not used child care for the child during the week up to the full extent of the limit.

Note 2: For the purposes of paragraph (d), it does not matter if the amount is later recalculated under subsection 50ZA(1) of the Family Assistance Administration Act.

(2) If:

(a) a limit mentioned in paragraph (1)(c) does not apply under a determination in force under section 50H of the Family Assistance Administration Act for the individual and the child in the week; but

(b) the circumstances in which such a limit applies were applicable to the individual in that week;

then that limit is taken, for the purposes of that paragraph, to be the weekly limit of hours applicable to the individual in the week.

Note: If the only limit applicable to the individual in the week was the limit of 24 hours under subsection 53(3), then the condition in paragraph (1)(c) will not be satisfied.

(3) The 50 hour limit is taken, for the purposes of paragraph (1)(c), to be applicable to the individual in the week if it would have been applicable to the individual in the week but for the fact that the individual failed to meet the requirements of paragraph 17A(1)(b) in relation to the week.

Note: The heading to section 57F is altered by adding at the end “—for an income year”.

**7 Before section 84A**

Insert:

**Subdivision A—Child care tax rebate for a quarter**

**84AA Amount of the child care tax rebate—for a quarter**

If the Secretary must, under subsection 65EAA(1) of the Family Assistance Administration Act, calculate the amount of child care tax rebate applicable in respect of an individual and a child for a quarter in an income year, the amount is worked out as follows:

<i>Method statement</i>
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- Step 1. Work out the total amount of the individual's approved child care fees for the child in each base week for the individual and the child in the quarter.
- Step 2. Work out the total amount (if any) of so much of the fee reductions:
- (a) calculated under subsection 50Z(1) of the Family Assistance Administration Act; or
  - (b) recalculated under subsection 50ZA(1) of that Act;
- in respect of the individual and the child as are attributable to each base week in the quarter.
- Step 3. Work out the total amount of Jobs Education and Training (JET) Child Care fee assistance (if any) that the individual is eligible to receive for the child in each base week for the individual and the child in the quarter.
- Step 4. Work out the lesser of the following amounts for the child:
- (a) the amount worked out using the formula:  
$$50\% \times \left( \text{Step 1 amount} - \text{Step 2 amount} - \text{Step 3 amount} \right)$$
  - (b) the amount worked out by subtracting the total of the child care tax rebate (if any) applicable in respect of the individual and the child for each earlier quarter in the income year from the child care tax rebate limit for the income year.
- Step 5. The result is the amount of the individual's child care tax rebate for the child for the quarter.

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

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

- (1) For the purposes of section 84AA, the amount of an individual's ***approved child care fees*** for a child in a base week for the individual and the child is the amount of fees for which:
  - (a) the individual; or
  - (b) the individual's partner during the week;is liable for care provided by an approved child care service or services for the child during the week. For this purpose, disregard the weekly limit of hours applicable to the individual in the week.

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

- (2) However, the individual's approved child care fees for the week do not include fees that the individual's partner is liable to pay if the base week is also a base week for the individual's partner and the child.

*Disregard amounts passed on to reduce fees*

- (3) For the purposes of this section, disregard any amount passed on to the individual under section 219B of the Family Assistance Administration Act.

**84AC Component of formula—*base week***

For the purposes of section 84AA, a week is a ***base week*** for an individual for a child in a quarter if:

- (a) all or part of the week falls within the quarter; and
- (b) paragraphs 57EA(1)(b) to (e) (as affected by subsections 57EA(2) and (3)) are satisfied for the individual, the child and the week.

**Subdivision B—Child care tax rebate for an income year**

Note: The heading to section 84A is altered by adding at the end “—for an income year”.

**8 Subsection 84B(1)**

---

Omit “The”, substitute “For the purposes of section 84A, the”.

## **9 Section 84C**

Omit “A week”, substitute “For the purposes of section 84A, a week”.

## **10 After section 84D**

Insert:

### **Subdivision C—Common components of each formula**

## **11 Section 84E**

Before “*Jobs*”, insert “For the purposes of sections 84AA and 84A,”.

Note: The heading to section 84E is altered by inserting “**each**” before “**formula**”.

## **12 Subsection 84F(1)**

Omit “The”, substitute “For the purposes of sections 84AA and 84A, the”.

Note: The heading to section 84F is altered by inserting “**each**” before “**formula**”.

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

## **13 Before Subdivision A of Division 4AA of Part 3**

Insert:

### **Subdivision AA—Quarterly payments of child care tax rebate**

#### **65EAA Quarterly payments of child care tax rebate**

*When Secretary must calculate and pay quarterly payments*

(1) If:

- (a) the Secretary is satisfied that an individual is eligible under subsection 57EA(1) of the Family Assistance Act for child care tax rebate for a quarter in respect of a child; and
- (b) the quarter has passed;

the Secretary must calculate the amount of the rebate which the Secretary considers is applicable in respect of the individual and the child for the quarter.

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Note: The calculation is made in accordance with section 84AA of the Family Assistance Act.

- (2) The Secretary must pay the amount of child care tax rebate calculated under subsection (1) to the individual at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the individual.

*Secretary may make direction as to the manner of making payments*

- (3) The Secretary may direct that the whole or a part of an amount that is to be paid under this section is to be paid in a different way from that provided for by subsection (2). If the Secretary gives the direction, the amount is to be paid in accordance with the direction.
- (4) This section is subject to Part 4 and to Division 3 of Part 8B.

**65EAB Revising a calculation of quarterly child care tax rebate**

- (1) The Secretary may recalculate an amount of child care tax rebate which the Secretary considers applicable:
- (a) under subsection 65EAA(1); or
  - (b) under a previous application of this subsection;
- in respect of an individual and a child for a quarter, so long as a determination of entitlement has not been made under Subdivision A in respect of the individual and child for the income year that includes the quarter.
- (2) If:
- (a) an amount of child care tax rebate applicable under this Subdivision in respect of an individual and a child for a quarter has been paid to the individual; and
  - (b) a recalculation under subsection (1) increases the amount of child care tax rebate applicable in respect of the individual and the child for the quarter;
- then subsections 65EAA(2) to (4) apply to the increase as if the increase were the amount applicable under subsection 65EAA(1).
- (3) If:
- (a) an amount of child care tax rebate applicable under this Subdivision in respect of an individual and a child for a quarter has been paid to the individual; and
-

- (b) a recalculation under subsection (1) decreases the amount of child care tax rebate applicable in respect of the individual and the child for the quarter;

the Secretary may set off all or a part of the decrease against an amount of child care tax rebate applicable under this Subdivision in respect of the individual and the child for a later quarter in the same income year.

### **65EAC Notices relating to quarterly payments of child care tax rebate**

- (1) The Secretary must give notice of an amount of child care tax rebate (the *rebate amount*) applicable under this Subdivision to the individual, stating:
  - (a) the child's name and the quarter in respect of which the rebate amount is applicable; and
  - (b) the rebate amount; and
  - (c) the total amount of the individual's approved child care fees for the child worked out under step 1 of the method statement in section 84AA of the Family Assistance Act when calculating the rebate amount; and
  - (d) the total amount (if any) of fee reductions worked out under step 2 of the method statement in section 84AA of the Family Assistance Act when calculating the rebate amount; and
  - (e) if the rebate amount is the result of a recalculation covered by subsection 65EAB(2)—the amount of the increase in rebate as a result of the recalculation; and
  - (f) if the rebate amount is the result of a recalculation covered by subsection 65EAB(3)—the amount of the decrease in rebate as a result of the recalculation, and whether an amount will be set off as described in that subsection.
- (2) The calculation and payment of an amount of child care tax rebate applicable under this Subdivision is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.

### **14 Subsection 65EF(1)**

Omit "or 65EB", substitute ", 65EB or 65EC".

### **15 Subsection 65EF(2)**

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Repeal the subsection, substitute:

- (2) Subsection (1) has effect subject to subsections (2A), (2B) and (2C).
- (2A) If the determination of entitlement is made under section 65EA, the Secretary must reduce the amount to be paid under subsection (1) by the amount of any child care tax rebate already paid under Subdivision AA in respect of the individual and the child for a quarter included in the income year.
- (2B) If:
  - (a) the determination of entitlement is made under section 65EC; and
  - (b) when working out the amount of the entitlement under section 84A of the Family Assistance Act, the base weeks included one or more base weeks for which a determination under section 51B, or subsection 51C(1), was applicable; the Secretary must reduce the amount to be paid under subsection (1) by the amount of any child care tax rebate already paid:
    - (c) under Subdivision AA in respect of the individual and the child for a quarter included in the income year; and
    - (d) under subsection (1) in respect of the individual and the child for the income year.
- (2C) If the determination of entitlement is made under section 65EC in a case not covered by subsection (2B), the Secretary must reduce the amount to be paid under subsection (1) by the amount of any child care tax rebate already paid under subsection (1) in respect of the individual and the child for the income year.

**16 Subsection 65EF(3)**

Omit “or (2)”.

**17 After paragraph 66(2)(a)**

Insert:

- (aa) subsections 65EAA(3) and 65EF(3) (about payment of child care tax rebate in a different way); and

- (ab) subsection 65EAB(3) (about setting off a decrease in a quarterly amount of child care tax rebate against rebate for a later quarter); and

**18 Subsection 93A(6) (paragraph (bb) of the definition of family assistance payment)**

After “section”, insert “65EAA (including as that section applies because of subsection 65EAB(2)) or”.

**19 After paragraph 104(1)(d)**

Insert:

- (da) a calculation of an amount of child care tax rebate for a quarter under section 65EAA, or a recalculation of such an amount under section 65EAB; or

**20 After paragraph 108(2)(da)**

Insert:

- (db) a calculation of an amount of child care tax rebate for a quarter under section 65EAA, or a recalculation of such an amount under section 65EAB; or

**21 Paragraph 154(4A)(c)**

After “eligible”, insert “under subsection 57EA(1) or 57F(1) of the Family Assistance Act”.

**22 Paragraph 154(4A)(d)**

Omit all the words after “amount of”, substitute:

child care tax rebate:

- (i) applicable to an individual under Subdivision AA of Division 4AA of Part 3; or  
(ii) to which an individual is entitled.

**23 At the end of paragraph 173(1)(d)**

Add:

- ; or (vi) affects, or might affect, eligibility for child care tax rebate under subsection 57EA(1) of the Family Assistance Act, or the amount of child care tax rebate applicable under Subdivision AA of Division 4AA of Part 3.

**24 Paragraph 175(a)**

After “family assistance”, insert “(other than child care tax rebate for a quarter under Subdivision AA of Division 4AA of Part 3)”.

**25 After section 175**

Insert:

**175AA Obtaining child care tax rebate for a quarter if ineligible**

A person contravenes this section if:

- (a) the person obtains a payment of child care tax rebate for a quarter under Subdivision AA of Division 4AA of Part 3; and
- (b) the person does so knowing that he or she is:
  - (i) ineligible for the payment; or
  - (ii) only eligible for part of the payment.

**26 Subsection 224(1)**

Omit “affecting”.

**27 Paragraphs 224(1)(a) and (b)**

Before “a person’s”, insert “affecting”.

**28 Paragraph 224(1)(c)**

Before “a weekly”, insert “affecting”.

**29 At the end of paragraph 224(1)(c)**

Add “or”.

**30 After paragraph 224(1)(c)**

Insert:

- (ca) about the amount of child care tax rebate applicable in respect of a person and a child for a quarter under Subdivision AA of Division 4AA of Part 3;

**31 Subsection 224(2)**

Omit “affecting a matter referred to in paragraph (1) (a), (b) or (c)”, substitute “affecting or about a matter referred to in paragraph (1)(a), (b), (c) or (ca)”.

---

## **Division 2—Application**

### **32 Application**

The amendments made by this Part apply in relation to care provided by an approved child care service to a child on or after 1 July 2008.

## **Division 3—Transitional: Service’s application day happens after the quarter for which child care tax rebate is applicable**

### **33 Definitions**

In this Division:

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

*Assistance Act* means the *A New Tax System (Family Assistance) Act 1999*.

### **34 When this Division applies**

This Division applies if:

- (a) one or more sessions of care are provided by an approved child care service to a child during a week that falls wholly or partly in a quarter; and
- (b) the service’s application day (within the meaning of item 91 of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*) has not happened before the last week that falls wholly or partly in the quarter.

### **35 Changed effect of the Assistance Act**

- (1) The Assistance Act has effect in relation to that care as if paragraph 57EA(1)(d) of that Act were as follows:
  - (d) the service has calculated an amount of fee reductions under section 219A of the Family Assistance Administration Act applicable to the individual and the child for at least one of those sessions of care provided in the week; and
- (2) The Assistance Act has effect in relation to that care as if note 3 at the end of subsection 57EA(1) of that Act were omitted.

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- (3) The Assistance Act has effect in relation to that care as if the total amount to be worked out under step 2 of the method statement in section 84AA of that Act also included so much of the fee reductions:
- (a) reported under subsection 219N(1) or 219P(1) of the Family Assistance Administration Act; and
  - (b) made in respect of the individual and the child;
- as are attributable to each base week in the quarter.

Note: Those fee reductions may be nil (see section 4A of the Administration Act (as replaced by subitem 36(1))).

- (4) The Assistance Act has effect in relation to that care as if subsection 84AB(3) of that Act were as follows:

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

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

**36 Changed effect of the Administration Act**

- (1) The Administration Act has effect in relation to that care as if section 4A of that Act were as follows:

**4A Rate and amount of CCB by fee reduction may be zero**

For the purposes of this Act and the Family Assistance Act:

- (a) a rate calculated under column 2 of the table in section 219A may be a zero rate; and
  - (b) an amount calculated under column 2 of the table in section 219A may be a nil amount.
- (2) The Administration Act has effect in relation to that care as if the following paragraph were inserted after paragraph 65EAA(1)(b) of that Act:
- ; and (c) the Secretary is given a report under subsection 219N(1) or 219P(1) in respect of the individual and the child for at least one session of care provided to the child during a week for
-

which the individual is so eligible for child care tax rebate in respect of the child;

**Division 4—Transitional: Service’s application day happens during the quarter for which child care tax rebate is applicable**

**37 Interpretation**

- (1) In this Division:  
*Administration Act* means the *A New Tax System (Family Assistance) (Administration) Act 1999*.  
*Assistance Act* means the *A New Tax System (Family Assistance) Act 1999*.
- (2) For the purposes of this Division, section 219N of the Administration Act applies with the effect it has under item 96 of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.

**38 When this Division applies**

This Division applies if:

- (a) one or more sessions of care are provided by an approved child care service to a child during a week that falls wholly or partly in a quarter; and
- (b) the service’s application day (within the meaning of item 91 of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*) happens during the quarter (other than during the last week that falls wholly or partly in the quarter).

**39 Changed effect of the Assistance Act**

- (1) The Assistance Act has effect in relation to that care as if subsection 3(1) of that Act included the following definition:  
*application day*, for an approved child care service, has the meaning given by item 91 of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.

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- (2) The Assistance Act has effect in relation to that care as if paragraph 57EA(1)(d) of that Act were as follows:
- (d) either:
- (i) if the week falls before or includes the service's application day—the service has calculated an amount of fee reductions under section 219A of the Family Assistance Administration Act applicable to the individual and the child for at least one of those sessions of care provided in the week; or
  - (ii) if the week falls wholly after the service's application day—the Secretary has calculated an amount of fee reduction under subsection 50Z(1) of the Family Assistance Administration Act in respect of the individual and the child for at least one of those sessions of care provided in the week; and

- (3) The Assistance Act has effect in relation to that care as if note 3 at the end of subsection 57EA(1) of that Act were as follows:

Note 3: For the purposes of subparagraph (d)(ii), it does not matter if the amount is later recalculated under subsection 50ZA(1) of the Family Assistance Administration Act.

- (4) The Assistance Act has effect in relation to any sessions of that care that were provided in a base week in the quarter, where the week falls before or includes the service's application day, as if the total amount to be worked out under step 2 of the method statement in section 84AA of that Act for the quarter also included so much of the fee reductions:

- (a) reported under subsection 219N(1) or 219P(1) of the Family Assistance Administration Act; and
- (b) made in respect of the individual and the child;

as are attributable to that base week.

Note 1: Those fee reductions may be nil (see section 4A of the Administration Act (as replaced by subitem 40(1))).

Note 2: The normal application of step 2 of that method statement will include in the total amount the fee reductions calculated in respect of care provided in base weeks falling wholly after the service's application day. Those fee reductions may also be nil (see section 4A of the Administration Act as it applies to the service in the weeks after its application day).

- (5) The Assistance Act has effect in relation to any sessions of that care that were provided in a week falling before, or including, the service's application day as if subsection 84AB(3) of that Act were as follows:
-

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

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

#### **40 Changed effect of the Administration Act**

- (1) The Administration Act has effect in relation to any sessions of that care that were provided in a week falling before, or including, the service's application day as if section 4A of that Act were as follows:

##### **4A Rate and amount of CCB by fee reduction may be zero**

For the purposes of this Act and the Family Assistance Act:

- (a) a rate calculated under column 2 of the table in section 219A may be a zero rate; and
  - (b) an amount calculated under column 2 of the table in section 219A may be a nil amount.
- (2) The Administration Act has effect in relation to that care as if the following paragraph were inserted after paragraph 65EAA(1)(b) of that Act:
- ; and (c) if the individual is so eligible in relation to at least one session of care provided by an approved child care service in a week falling before, or including, the service's application day—the Secretary is given a report under subsection 219N(1) or 219P(1) in respect of the individual and the child for the care;

## Schedule 3—Recovery of debts

### Part 1—Setting off of entitlements

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

**1 Paragraph 66(2)(ba)**

Omit “arrears of”.

**2 Paragraph 66(2)(ca)**

Omit “arrears of”.

**3 Paragraph 82(1)(b)**

Omit “setting off arrears of”, substitute “setting off (otherwise than as mentioned in paragraph (a))”.

**4 Paragraph 82(1)(e)**

Omit “arrears of family assistance—setting off the arrears”, substitute “family assistance—setting off (otherwise than as mentioned in paragraph (d)) the family assistance”.

**5 Paragraph 84A(1)(a)**

Omit “by way of arrears”.

Note: The heading to section 84A is altered by omitting “arrears of”.

**6 Subparagraph 84A(1)(b)(i)**

Omit “arrears of”.

**7 Subsection 84A(2)**

Omit “to arrears”.

**8 Subsection 84A(3)**

Repeal the subsection, substitute:

- (3) Under subsection (2), the Secretary may set off a person’s child care benefit only against a debt the person incurs in relation to child care benefit or child care tax rebate.

**9 Subsection 84A(4)**

Omit “to arrears”.

**10 Paragraph 92A(1)(b)**

Omit “by way of arrears of family assistance”, substitute “of family assistance (except family tax benefit to which section 92 applies)”.

Note: The heading to section 92A is altered by omitting “**arrears of**”.

**11 Paragraph 92A(1)(c)**

Omit “arrears”, substitute “entitlement”.

**12 Subsection 92A(1)**

Omit “to arrears”.

**13 Subsection 92A(2)**

Omit “arrears of”.

**14 Subsection 92A(3)**

Omit “to arrears”.

**15 Subparagraph 95(3)(a)(ia)**

Omit “arrears of”.

**16 Paragraph 95(4)(b)**

Omit “arrears of”.

**17 Paragraph 99(2)(b)**

Omit “arrears of”.

**Part 2—Debts of approved child care service where  
fee reduction or enrolment advance paid**

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

**18 Paragraph 71G(1)(b)**

Repeal the paragraph, substitute:

- (b) the service's approval is suspended or cancelled under this Act before a session of care in respect of which the payment was made;

**19 Subsection 71G(1)**

Omit “, or it ceased to operate”.

**20 Paragraph 71G(2)(b)**

Repeal the paragraph, substitute:

- (b) the service's approval is suspended or cancelled under this Act; and

**21 Paragraph 71G(2)(c)**

Omit “, or the service ceases to operate”.

**22 Subsection 71G(2)**

Omit “, or it ceased to operate”.

**23 Paragraph 71G(3)(b)**

Repeal the paragraph, substitute:

- (b) the service's approval is suspended or cancelled under this Act; and

**24 Paragraph 71G(3)(c)**

Omit “, or the service ceases to operate”.

**25 Subsection 71G(3)**

Omit “, or it ceased to operate”.

---

**26 Transitional**

- (1) In this item, and in item 27:  
*application day*, for an approved child care service, has the meaning given by item 91 of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.
- (2) The *A New Tax System (Family Assistance) (Administration) Act 1999*, as applying to an approved child care service before the first Monday after its application day, has effect as if section 71G of that Act were as follows:

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

If:

- (a) an amount by way of advance determined under section 219Q is paid to a person that is an approved child care service to reimburse the service the amount of the fee reductions made by the service for care provided by the service to a child; and
- (b) during, or after, the reporting period in respect of which the advance is paid, the service's approval is suspended or cancelled under this Act;

so much of the amount of the advance as has not been used by the service to reimburse itself for the care it provided to the child at reduced fees, by the day the service's approval is suspended or cancelled, is a debt due to the Commonwealth by the service.

**27 Application**

- (1) The amendments made by this Part apply to decisions relating to suspension or cancellation made after the commencement of this Schedule.
- (2) However, the amendments made by items 18 to 25 only apply in relation to an approved child care service on or after its application day.

**Part 3—Responsibility for debts owed by an  
approved child care service**

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

**28 After section 68**

Insert:

**68A Recovery from approved child care service**

The amount of a debt due under this Part by an approved child care service is payable by the operator of the service.

## **Schedule 4—Civil penalties and other compliance measures**

### **Part 1—Amendments**

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

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

Insert:

*civil penalty order* has the meaning given by section 219TSC.

##### **2 Subsection 3(1) (definition of *civil penalty provision*)**

Repeal the definition, substitute:

*civil penalty provision* means any of the following:

- (a) subsection 204(1);
- (b) subsection 219AC(1A) or (1B);
- (c) subsection 219AG(1A);
- (d) subsection 219B(2);
- (e) subsection 219BB(1);
- (f) subsection 219BC(1);
- (g) subsection 219BD(1);
- (h) subsection 219E(1);
- (i) subsection 219EA(2);
- (j) subsection 219F(1) or (2);
- (k) subsection 219G(1), (3) or (4);
- (l) subsection 219L(1), (2) or (3);
- (m) subsection 219M(1);
- (n) subsection 219N(5A);
- (o) subsection 219NA(4);
- (p) subsection 219NB(1);
- (q) subsection 219P(1);
- (r) subsection 219QB(1);
- (s) section 219TSB.

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

Insert:

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

### **4 Subsection 196(2)**

After “offence”, insert “or is of a civil penalty provision”.

### **5 At the end of subsection 196(2)**

Add:

Note: Enforcement under this Division of this and other conditions is not limited or affected by other compliance measures in this Act (for example, infringement notices, proceedings for civil penalty orders and prosecutions).

### **6 Section 204**

Before “If”, insert “(1)”.

### **7 Section 204 (penalty)**

Repeal the penalty.

### **8 At the end of section 204**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(2) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: 20 penalty units.

### **9 Before subsection 219AC(1)**

Insert:

*Civil penalties*

- (1A) An approved child care service contravenes this subsection 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.
-

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

- (1B) An approved child care service contravenes this subsection 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.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

Note 1: The heading to section 219AC is replaced by the heading “**Failure to notify**”.

Note 2: The following heading to subsection 219AC(1) is inserted “*Offences*”.

## **10 Before subsection 219AG(1)**

Insert:

### *Civil penalty*

- (1A) An approved child care service contravenes this subsection 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.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

Note 1: The heading to section 219AG is replaced by the heading “**Failure to update enrolment information**”.

Note 2: The following heading to subsection 219AG(1) is inserted “*Offence*”.

## **11 Subsection 219B(2) (penalty)**

Repeal the penalty.

## **12 Subsection 219B(2) (note)**

Repeal the note, substitute:

Note 1: 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).

Note 2: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

## **13 After subsection 219B(2)**

---

Insert:

(2A) An approved child care service commits an offence if the service contravenes subsection (2).

Penalty: 60 penalty units.

(2B) Subsection (2A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**14 Subsection 219B(6)**

Repeal the subsection.

**15 Subsection 219BB(1) (penalty)**

Repeal the penalty.

**16 At the end of subsection 219BB(1)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

**17 Subsection 219BB(2)**

Repeal the subsection, substitute:

(2) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: 60 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**18 Subsection 219BC(1) (penalty)**

Repeal the penalty.

**19 At the end of subsection 219BC(1)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

**20 Subsection 219BC(2)**

---

Repeal the subsection, substitute:

- (2) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: 60 penalty units.

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

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **21 Subsection 219BD(1) (penalty)**

Repeal the penalty.

## **22 At the end of subsection 219BD(1)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

## **23 After subsection 219BD(1)**

Insert:

- (1A) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: 60 penalty units.

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

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **24 Subsection 219BD(3)**

Repeal the subsection.

## **25 Subsection 219E(1) (penalty)**

Repeal the penalty.

## **26 At the end of subsection 219E(1)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

## **27 Subsection 219E(1A)**

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Repeal the subsection, substitute:

(1A) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: 60 penalty units.

(1B) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **28 At the end of subsection 219EA(2)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

### **29 Subsection 219EA(3)**

Repeal the subsection.

### **30 Subsection 219F(1) (penalty)**

Repeal the penalty.

Note: The following heading to subsection 219F(1) is inserted "*Records must be kept*".

### **31 At the end of subsection 219F(1)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

### **32 After subsection 219F(1)**

Insert:

(1A) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: 60 penalty units.

(1B) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **33 Subsections 219F(2) and (2A)**

Repeal the subsections, substitute:

---

*Records to be kept for at least 36 months—civil penalty*

- (2) An approved child care service contravenes this subsection if the service stops keeping the records referred to in subsection (1) before the later of the following times:
- (a) the end of the period of 36 months starting at the end of the year in which the care was provided to which the information or event related;
  - (b) a time ordered by a court during proceedings for an offence against this Act, or for the contravention of a civil penalty provision, if an application for the order is made during:
    - (i) the period mentioned in paragraph (a); or
    - (ii) proceedings relevant to a previous application of this paragraph.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

*Records to be kept for at least 36 months—offence*

- (2A) An approved child care service commits an offence if the service stops keeping the records referred to in subsection (1) before the later of the following times:
- (a) the end of the period of 36 months starting at the end of the year in which the care was provided to which the information or event related;
  - (b) a time ordered by a court during proceedings for an offence against this Act, or for the contravention of a civil penalty provision, if an application for the order is made during:
    - (i) the period mentioned in paragraph (a); or
    - (ii) proceedings relevant to a previous application of this paragraph.

Penalty: 60 penalty units.

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

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **34 At the end of section 219F**

Add:

---

*Meaning of offence against this Act*

(4) In this section:

*offence against this Act* includes an offence against Chapter 7 of the *Criminal Code* that relates to this Act.

**35 Subsection 219G(1) (penalty)**

Repeal the penalty.

**36 At the end of subsection 219G(1)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

**37 Subsection 219G(1A)**

Repeal the subsection, substitute:

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

(1B) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**38 Subsection 219G(3) (penalty)**

Repeal the penalty.

**39 At the end of subsection 219G(3)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

**40 After subsection 219G(3)**

Insert:

(3A) A person commits an offence if the person contravenes subsection (3).

Penalty: 60 penalty units.

(3B) Subsection (3A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### **41 Subsection 219G(4) (penalty)**

Repeal the penalty.

Note: The following heading to subsection 219G(4) is inserted “*Notification if premises changes*”.

#### **42 At the end of subsection 219G(4)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

#### **43 After subsection 219G(4)**

Insert:

(4A) A person commits an offence if the person contravenes subsection (4).

Penalty: 60 penalty units.

(4B) Subsection (4A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### **44 Subsection 219G(6)**

Repeal the subsection.

#### **45 Section 219J**

Repeal the section, substitute:

#### **219J Identity cards**

(1) The Secretary must issue an identity card to an authorised officer.

*Form of identity card*

(2) The identity card must:

- (a) be in the form approved by the Secretary; and
- (b) contain a recent photograph of the authorised officer.

*Offence*

- (3) A person commits an offence if:
- (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an authorised officer; and
  - (c) the person does not, as soon as practicable after so ceasing, return the identity card to the Secretary.

Penalty: 1 penalty unit.

- (4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Defence: card lost or destroyed*

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

*Authorised officer must carry card*

- (6) An authorised officer must carry his or her identity card at all times when exercising powers as an authorised officer.

**46 After subsection 219K(1)**

Insert:

*Access to monitor compliance*

- (1A) An authorised officer may enter the premises of an approved child care service, at any time during the service's hours of operation, for the purposes of monitoring the service's compliance with a condition for the continued approval of the service.

Note: The authorised officer could also inspect certain records while on the premises (see paragraph (1)(a)).

Note: The following heading to subsection 219K(1) is inserted "*Access to inspect records*".

**47 Subsections 219K(2) and (3)**

Repeal the subsections, substitute:

---

*Access must be by consent*

- (2) An authorised officer is not authorised to enter premises under subsection (1) or (1A) unless the occupier of the premises, or another person who apparently represents the occupier, has consented to the entry and the officer has shown his or her identity card to that occupier or person.
- (3) An authorised officer must, before obtaining the consent of the occupier or another person in accordance with subsection (2), inform that occupier or person that he or she may refuse consent.
- (3A) A consent has no effect unless the consent is voluntary.
- (3B) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (3C) A consent that is not limited as mentioned in subsection (3B) has effect until the consent is withdrawn.
- (3D) The authorised officer must leave the premises if the consent ceases to have effect.

Note: The following heading to subsection 219K(4) is inserted “*Services must cooperate with authorised officers*”.

#### **48 Subsection 219L(1) (penalty)**

Repeal the penalty.

Note: The following heading to subsection 219L(1) is inserted “*Obligation to produce records referred to in subsection 219F(1)*”.

#### **49 At the end of subsection 219L(1)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

#### **50 After subsection 219L(1)**

Insert:

- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

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(1B) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### 51 Subsection 219L(2) (penalty)

Repeal the penalty.

Note: The following heading to subsection 219L(2) is inserted “*Obligation to produce records referred to in subsection 219G(2)*”.

#### 52 At the end of subsection 219L(2)

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

#### 53 After subsection 219L(2)

Insert:

(2A) A person commits an offence if the person contravenes subsection (2).

Penalty: 60 penalty units.

(2B) Subsection (2A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### 54 Subsection 219L(3)

Omit “power to inspect the records”, substitute “powers under section 219K”.

Note: The following heading to subsection 219L(3) is inserted “*Obligation to provide reasonable facilities and assistance*”.

#### 55 Subsection 219L(3) (penalty)

Repeal the penalty.

#### 56 At the end of subsection 219L(3)

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

#### 57 After subsection 219L(3)

Insert:

---

(3A) A person commits an offence if the person contravenes subsection (3).

Penalty: 10 penalty units.

(3B) Subsection (3A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**58 Subsection 219L(3A)**

Repeal the subsection.

**59 Subsection 219M(1) (penalty)**

Repeal the penalty.

**60 At the end of subsection 219M(1)**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

**61 At the end of section 219M**

Add:

(3) A person commits an offence if the person contravenes subsection (1).

Penalty for an offence against subsection (3): 60 penalty units.

**62 After subsection 219N(5)**

Insert:

(5A) An approved child care service contravenes this subsection 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.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

**63 At the end of subsection 219NA(4)**

Add:

---

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Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

#### **64 Section 219NB**

Before “If”, insert “(1)”.

#### **65 Section 219NB (penalty)**

Repeal the penalty.

#### **66 At the end of section 219NB**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

- (2) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: 60 penalty units.

#### **67 Section 219P**

Before “If”, insert “(1)”.

#### **68 Section 219P (penalty)**

Repeal the penalty.

#### **69 At the end of section 219P**

Add:

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

#### **70 Subsection 219QB(1) (penalty)**

Repeal the penalty.

#### **71 At the end of subsection 219QB(1)**

Add:

---

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

**72 After subsection 219QB(1)**

Insert:

(1A) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: 60 penalty units.

**73 Section 219TSA**

Repeal the section.

**74 Subsection 219TSB(1)**

Omit “(1)”.

**75 At the end of subsection 219TSB(1)**

Add:

Note: This is a civil penalty provision. This Part provides for pecuniary penalties for breaches of civil penalty provisions.

**76 Subsection 219TSB(2)**

Repeal the subsection.

**77 At the end of subsection 219TSC(1)**

Add:

Note: These proceedings before the court do not limit, nor are they affected by, other compliance measures in this Act (for example, sanctions under section 200).

**78 At the end of subsection 219TSC(3)**

Add:

- ; and (e) the likely impact of the penalty on:
- (i) the person; and
  - (ii) if the person is an approved child care service—the continued operation of the service.

**79 Section 219TSD**

Repeal the section, substitute:

---

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

### *General rule*

- (1) The pecuniary penalty payable by a person, in respect of the person's contravention of a civil penalty provision, must not exceed:
  - (a) if the person is not a body corporate—200 penalty units; or
  - (b) if the person is a body corporate—400 penalty units.

### *Exception for certain civil penalty provisions*

- (2) Subsection (1) does not apply to subsection 219EA(2) or 219L(3). The pecuniary penalty payable by a person, in respect of the person's contravention of either of these civil penalty provisions, must not exceed:
  - (a) if the person is not a body corporate—30 penalty units; or
  - (b) if the person is a body corporate—60 penalty units.

## **80 After section 219TSG**

Insert:

### **219TSGA Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Act in respect of the same conduct.

Note: This subsection does not prevent other compliance measures under this Act (for example, sanctions under section 200) from being imposed in respect of the same conduct.

### **219TSGB Civil proceedings after criminal proceedings**

Neither the Federal Court of Australia nor the Federal Magistrates Court may make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been

convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

**219TSGC Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
  - (a) the civil proceedings are dismissed; and
  - (b) costs must not be awarded in relation to the civil proceedings.

**219TSGD Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

**219TSGE Evidence given in proceedings for penalty not admissible in criminal proceedings**

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

However, this does not apply to criminal proceedings in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

**219TSGF Minister requiring person to assist in applications for civil penalty orders**

- (1) A person commits an offence if:
- (a) the Minister requests, in writing, the person to give all reasonable assistance in connection with an application for a civil penalty order; and
  - (b) the person fails to comply with the request.

Penalty: 10 penalty units.

Note: This section does not abrogate or affect the law relating to legal professional privilege, or any other immunity, privilege or restriction that applies to the disclosure of information, document or other things.

- (2) A request under subsection (1) is not a legislative instrument.
- (3) The Minister can request a person to assist under subsection (1) if, and only if:
- (a) it appears to the Minister that the person is unlikely to have:
    - (i) contravened the civil penalty provision to which the application relates; or
    - (ii) committed an offence constituted by the same, or substantially the same, conduct as the conduct to which the application relates; and
  - (b) the Minister suspects or believes that the person can give information relevant to the application.
- (4) The Minister cannot request a person to assist under subsection (1) if the person is or has been a lawyer for the person suspected of contravening the civil penalty provision to which the application relates.
- (5) The Federal Court of Australia or the Federal Magistrates Court may order a person to comply with a request under subsection (1) in a specified way. Only the Minister may apply to the court for an order under this subsection.
- (6) For the purposes of this section, it does not matter whether the application for the civil penalty order has actually been made.

**81 Section 219TSH (definition of *penalty unit*)**

Repeal the definition.

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**82 Subsection 219TSK(1) (table)**

Repeal the table, substitute:

<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 (other than subsection 219EA(2), 219L(3) or 219M(1))	30.
2	The notice relates to more than 1 alleged contravention of a civil penalty provision (other than subsection 219EA(2), 219L(3) or 219M(1))	the number obtained by multiplying 30 by: (a) if the number of alleged contraventions is less than 8— that number; or (b) otherwise—8.
3	The notice relates to a single alleged contravention of subsection 219EA(2) or 219L(3)	4.
4	The notice relates to more than 1 alleged contravention of subsection 219EA(2) or 219L(3)	the number obtained by multiplying 4 by: (a) if the number of alleged contraventions is less than 8— that number; or (b) otherwise—8.
5	The notice relates to a single alleged contravention of subsection 219M(1)	80.
6	The notice relates to more than 1 alleged contravention of subsection 219M(1)	the number obtained by multiplying 80 by: (a) if the number of alleged contraventions is less than 8— that number; or (b) otherwise—8.

**83 Subsection 219TSK(2) (table)**

Repeal the table, substitute:

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#### Number of penalty units

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Item	In this case ...	the number of penalty units is ...
1	The notice relates to a single alleged contravention of a civil penalty provision (other than subsection 219EA(2), 219L(3) or 219M(1))	15.
2	The notice relates to more than 1 alleged contravention of a civil penalty provision (other than subsection 219EA(2), 219L(3) or 219M(1))	the number obtained by multiplying 15 by: (a) if the number of alleged contraventions is less than 8— that number; or (b) otherwise—8.
3	The notice relates to a single alleged contravention of subsection 219EA(2) or 219L(3)	2.
4	The notice relates to more than 1 alleged contravention of subsection 219EA(2) or 219L(3)	the number obtained by multiplying 2 by: (a) if the number of alleged contraventions is less than 8— that number; or (b) otherwise—8.
5	The notice relates to a single alleged contravention of subsection 219M(1)	40.
6	The notice relates to more than 1 alleged contravention of subsection 219M(1)	the number obtained by multiplying 40 by: (a) if the number of alleged contraventions is less than 8— that number; or (b) otherwise—8.

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#### 84 At the end of section 219TSN

Add:

Note: This Division also does not limit, nor is it affected by, other compliance measures in this Act (for example, sanctions under section 200).

#### 85 After section 220

Insert:

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## **220A Minister requiring person to assist in criminal proceedings**

- (1) A person commits an offence if:
- (a) the Minister requests, in writing, the person to give all reasonable assistance in connection with criminal proceedings for an offence against this Act; and
  - (b) the person fails to comply with the request.

Penalty: 10 penalty units.

Note: This section does not abrogate or affect the law relating to legal professional privilege, or any other immunity, privilege or restriction that applies to the disclosure of information, document or other things.

- (2) A request under subsection (1) is not a legislative instrument.
- (3) The Minister can request a person to assist under subsection (1) if, and only if:
- (a) it appears to the Minister that the person is unlikely:
    - (i) to be a defendant in the proceedings; or
    - (ii) to have contravened a civil penalty provision constituted by the same, or substantially the same, conduct as the conduct to which the proceedings relates; and
  - (b) the Minister suspects or believes that the person can give information relevant to the proceedings.
- (4) The Minister cannot request a person to assist under subsection (1) if the person is or has been a lawyer for a defendant or likely defendant in the proceedings.
- (5) A court may order a person to comply with a request under subsection (1) in a specified way. Only the Minister may apply to the court for an order under this subsection.
- (6) For the purposes of this section, it does not matter whether criminal proceedings for the offence have actually begun.
- (7) In this section:
- offence against this Act*** includes an offence against Chapter 7 of the *Criminal Code* that relates to this Act.

## Part 2—Application

### 86 Application of amendments—general

- (1) Subject to item 87, the amendments made by this Schedule apply in relation to conduct happening wholly after the commencement of this Schedule.
- (2) In this item:  
*conduct* means an act, an omission to perform an act or a state of affairs.

### 87 Application of amendments about keeping records

- (1) This item applies if:
  - (a) immediately before the commencement of this Schedule, subsection 219F(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* required an approved child care service to keep records for a period; and
  - (b) but for the repeal of that subsection by this Schedule, that period would have ended at a time (the *retention time*) after that commencement.

Note: Different records will have different retention times depending on when the period for keeping them started (see subsections 219F(1) and (2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* as in force immediately before the commencement of this Schedule).

#### *Application of civil penalty provision*

- (2) Subsection 219F(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (as amended by this Schedule) applies in relation to the service and those records as if the period mentioned in paragraph (a) of that subsection were the period:
  - (a) starting at commencement; and
  - (b) ending at the retention time.

#### *Application of offence provision*

- (3) Subsection 219F(2A) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (as amended by this Schedule) applies in

relation to the service and those records as if the period mentioned in paragraph (a) of that subsection were the period:

- (a) starting at commencement; and
- (b) ending at the retention time.

## Schedule 5—Other measures

### Part 1—Amendments

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

##### **1 Subsection 57F(2)**

Repeal the subsection, substitute:

(2) If:

(a) a limit mentioned in paragraph (1)(c) does not apply under a determination in force under section 50H of the Family Assistance Administration Act for the individual in the week; but

(b) the circumstances in which such a limit applies were applicable to the individual in that week;

then that limit is taken, for the purposes of that paragraph, to be the weekly limit of hours applicable to the individual in the week.

Note: If the only limit applicable to the individual in the week was the limit of 24 hours under subsection 53(3), then the condition in paragraph (1)(c) would not be satisfied.

##### **2 Paragraph 73(1)(a)**

Omit “by the service”.

##### **3 Section 84A**

After “or 65EB”, insert “, or subsection 65EC(1),”.

##### **4 Subsection 84B(3)**

Repeal the subsection, substitute:

*Disregard amounts passed on to reduce fees*

(3) For the purposes of this section, disregard any amount passed on to the individual under section 219B of the Family Assistance Administration Act.

##### **5 Subclause 3(1) of Schedule 4 (table item 22)**

Repeal the item, substitute:

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22	CCTR limit	1 July	December	highest December quarter before reference quarter (but not earlier than December quarter 2007)	\$1.00
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***A New Tax System (Family Assistance) (Administration) Act  
1999***

**6 Subsection 50(4)**

Omit “The service uses these determinations as a basis for reducing the claimant’s fees for sessions of care provided”, substitute “The Secretary takes these determinations into account when calculating the rate at which, and the amount in which, fee reduction is applicable in respect of the care provided to the child”.

**7 After section 64D**

Insert:

**64DA When variations must not be made**

The Secretary must not vary a determination of a weekly limit of hours under this Subdivision if:

- (a) the application for variation was not made until after the end of the income year following the one in which the relevant circumstance listed in section 54, 55 or 56 of the Family Assistance Act first applies; and
- (b) but for this section:
  - (i) the effect of making the variation would be to increase the weekly limit of hours under the determination; and
  - (ii) making the variation would have that effect for a period that ended before the start of the income year that precedes the one in which the application was made.

**8 Subparagraphs 64E(1)(c)(i) and (ii)**

Repeal the subparagraphs, substitute:

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- (i) the day from which the variation has effect (see section 64EA); and
- (ii) if the variation is to have effect for a period of one or more weeks—the period of one or more weeks that the variation is to have the effect; and

**9 Subparagraphs 64E(1)(c)(iii) and (iv)**

Omit “, or had,” (wherever occurring).

**10 After section 64E**

Insert:

**64EA When variations take effect**

- (1) If a determination of a weekly limit of hours is varied by the Secretary under this Subdivision, the variation has effect from the start of the week in which the circumstance:
  - (a) listed in section 54, 55 or 56 of the Family Assistance Act; and
  - (b) in relation to which the variation is made;first applies.
- (2) However, if:
  - (a) the variation was made on application; and
  - (b) the application was not made until after the end of the income year following the one in which the circumstance first applies; and
  - (c) the effect of the variation is to increase the weekly limit of hours under the determination;then the variation has effect only from the start of the income year that precedes the one in which the application was made.

**11 After paragraph 66(1)(e)**

Insert:

- (ea) child care tax rebate;

**12 After paragraph 108(2)(f)**

Insert:

- (fa) a decision under section 201B to publicise information about:

- (i) the doing of one or more of the things mentioned in paragraphs 200(1)(a) to (h); or
- (ii) a suspension under subsection 201A(1); or

**13 At the end of subsection 109A(1)**

Add:

Note: If an application is made for review of a decision relating to a person's child care benefit entitlement for an income year under this section and the review affects the person's entitlement to child care tax rebate for the year, the person's entitlement to that rebate is automatically reviewed: see Division 5.

**14 At the end of subsection 111(1)**

Add:

Note: If an application is made for review of a decision relating to a person's child care benefit entitlement for an income year under this section and the review affects the person's entitlement to child care tax rebate for the year, the person's entitlement to that rebate is automatically reviewed: see Division 5.

**15 At the end of subsection 142(1)**

Add:

Note: If an application is made for review of a decision relating to a person's child care benefit entitlement for an income year under this section and the review affects the person's entitlement to child care tax rebate for the year, the person's entitlement to that rebate is automatically reviewed: see Division 5.

**16 At the end of Part 5**

Add:

**Division 5—Automatic review of child care tax rebate decisions**

**152A Automatic review of child care tax rebate decisions**

- (1) This section applies if:
  - (a) an application (the *original application*) has been made under section 109A, 111 or 142 for review of a decision relating to a person's child care benefit entitlement in respect of one or more sessions of care provided by an approved child care service to a child during an income year; and

- (b) an amount of child care tax rebate is applicable in respect of the person and the child for the income year; and
  - (c) the result of the review affects the person's child care benefit entitlement in respect of the session or sessions of care.
- (2) This Act has effect as if the original application included an application for review of any determination of entitlement for child care tax rebate for the person in respect of the child for the income year.

**17 Paragraph 195(1)(d)**

Omit "a determination under section 206 is in force", substitute "the service is covered by a determination in force under section 206".

**18 Section 197**

Omit "a determination under section 206 is in force", substitute "the service is covered by a determination in force under section 206".

**19 Paragraph 200(1)(c)**

After "of", insert "any".

**20 After section 201A**

Insert:

**201B Publicising sanctions or suspensions**

- (1) If the Secretary:
- (a) does one or more of the things mentioned in paragraphs 200(1)(a) to (h); or
  - (b) suspends the approval of a service under subsection 201A(1);
- the Secretary may publicise this in any way the Secretary thinks appropriate.
- (2) Without limiting subsection (1), the Secretary may publicise information that includes the following:
- (a) the name and address of the service;
  - (b) the name of the operator of the service;
  - (c) if the information relates to the doing of one or more of the things mentioned in paragraphs 200(1)(a) to (h):
    - (i) the day when each thing done starts to have effect; and

- (ii) the things done; and
  - (iii) each condition for the continued approval of the service that the service has not complied, or is not complying, with; and
  - (iv) the day (if any) when each thing done ceases to have effect;
- (d) if the information relates to a suspension under subsection 201A(1):
- (i) the day when the suspension starts to have effect; and
  - (ii) the grounds for the suspension; and
  - (iii) the day (if any) when the suspension ceases to have effect.

## **21 At the end of section 206**

Add:

Note: Guidelines under this section may refer to one or more classes of approved child care services (see subsection 13(3) of the *Legislative Instruments Act 2003*).

## **22 Subsection 207(1)**

Repeal the subsection, substitute:

*Initial allocation of child care places*

- (1) The Secretary must allocate child care places to an approved child care service covered by a determination in force under section 206. The Secretary must do so in accordance with the determination.

## **23 Section 219E**

Repeal the section, substitute:

### **219E Obligation to provide statements**

- (1) If:
- (a) a determination is in force under section 50F that an individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and
  - (b) a session or sessions of care are provided by an approved child care service to the child during a period (the *statement period*) described in subsection (4); and

- (c) the service is required to pass on an amount under section 219B for the session or sessions;

the service must, within 4 weeks after the end of the statement period for the session or sessions, give to the individual or some other person applicable under rules made under subsection (6) a statement setting out the matters specified in subsection (5) in relation to the session or sessions.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

- (2) An approved child care service commits an offence if:
  - (a) a determination is in force under section 50F that an individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and
  - (b) a session or sessions of care are provided by the service to the child during a period (the *statement period*) described in subsection (4); and
  - (c) the service is required to pass on an amount under section 219B for the session or sessions; and
  - (d) the service does not, within 4 weeks after the end of the statement period for the session or sessions, give to the individual or some other person applicable under rules made under subsection (6) a statement setting out the matters specified in subsection (5) in relation to the session or sessions.

Penalty: 60 penalty units.

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

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) The statement periods in relation to the service, the individual and the child are as follows:
  - (a) the first statement period is the period of 4 weeks starting at the latest of:
    - (i) the service's application day applicable under item 91 of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*; and
    - (ii) 1 January 2009; and

(iii) the day when the determination under section 50F came into force;  
or, if that day is not a Monday, the period of 4 weeks starting on the first Monday after that day; and

(b) the later statement periods are each subsequent period of 4 weeks during which a session or sessions of care are provided by the service to the child.

Note: The rules may specify different statement periods for particular approved child care services or classes of approved child care services (see subsection (6)).

(5) The matters required to be set out in a statement for a statement period are:

- (a) the start and end of the statement period; and
- (b) the amount that would have been the fees payable for the session or sessions of care provided by the service to the child during the statement period if no amount had been passed on under section 219B for the session or sessions; and
- (c) the amount of fee reductions required to be passed on under section 219B for the session or sessions; and
- (d) any other information the Secretary specifies in the rules (if any) made under subsection (6).

Note: The amount of fee reductions required to be set out in the statement may be a nil amount (see section 4A).

(6) The Secretary may, by legislative instrument, make rules dealing with any of the following matters:

- (a) how statements should be given;
- (b) to whom the statements should be given;
- (c) for particular approved child care services or classes of approved child care services—different statement periods;
- (d) other information that must be given in the statements.

## **24 Subsection 221(4)**

After “officer”, insert “, except an SES employee or acting SES employee.”.

## **25 Subsections 224A(1) and (2)**

After “Part 8”, insert “or 8C”.

Note: The heading to section 224A is altered by adding at the end “**or 8C**”.

**26 At the end of section 224A**

Add:

- (4) For the purposes of this section, a notice of a decision of an officer under Part 8C is:
  - (a) an infringement notice under section 219TSI; or
  - (b) a notice of suspension under section 219TSQ.

## **Part 2—Application**

### **27 Application—amendments about CCMS**

The amendments made by items 2, 4 and 6 apply in relation to a session or sessions of care provided by an approved child care service to a child during a week falling wholly after the service's application day (within the meaning of item 91 of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*).

### **28 Application—amendment about further CCTR determinations**

The amendment made by item 3 applies in relation to care provided by an approved child care service to a child on or after 1 July 2006.

### **29 Application—amendments about varying determinations of a weekly limit of hours**

The amendments made by items 7 to 10 apply in relation to applications for variations if the applications are made after the commencement of those items.

### **30 Application—amendments about publicising sanctions or suspensions**

The amendments made by items 12 and 20 apply in relation to:

- (a) a thing done under subsection 200(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* after the commencement of this item (whether or not the thing is done in relation to non-compliance happening before that commencement); and
- (b) a decision to suspend under subsection 201A(1) of that Act made after that commencement (whether or not the grounds for the suspension happen before that commencement).

### **31 Application—amendments about CCTR review**

The amendments made by items 13 to 16 apply to decisions made after the commencement of those items.

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*[Minister's second reading speech made in—  
House of Representatives on 29 May 2008  
Senate on 16 June 2008]*

(118/08)

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74 *Family Assistance Legislation Amendment (Child Care Budget and Other Measures)*  
Act 2008 No. 53, 2008