



Family Assistance Legislation Amendment (Child Care) Act 2009

No. 50, 2009

**An Act to amend the law relating to family
assistance, and for other 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) Act 2009

No. 50, 2009

An Act to amend the law relating to family assistance, and for other purposes

[Assented to 24 June 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Family Assistance Legislation
Amendment (Child Care) Act 2009*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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.	24 June 2009
2. Schedules 1, 2 and 3	The day on which this Act receives the Royal Assent.	24 June 2009
3. Schedule 4, Part 1	The day after this Act receives the Royal Assent.	25 June 2009
4. Schedule 4, Part 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
5. Schedule 5, Parts 1, 2 and 3	The day on which this Act receives the Royal Assent.	24 June 2009
6. Schedule 5, Part 4	The 28th day after the day on which this Act receives the Royal Assent.	22 July 2009

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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Changing name of rebate

Part 1—Specific amendments

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1)

Insert:

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

2 Subsection 3(1) (definition of *child care tax rebate*)

Repeal the definition.

3 Division 5 of Part 3 (heading)

Repeal the heading, substitute:

Division 5—Eligibility for child care rebate

4 Division 4A of Part 4 (heading)

Repeal the heading, substitute:

Division 4A—Child care rebate

5 Subdivision A of Division 4A of Part 4 (heading)

Repeal the heading, substitute:

Subdivision A—Child care rebate for a quarter

6 Subdivision B of Division 4A of Part 4 (heading)

Repeal the heading, substitute:

Subdivision B—Child care rebate for an income year

7 Subsection 84F(1)

Omit “*child care tax rebate limit*”, substitute “*child care rebate limit*”.

Note: The heading to section 84F is altered by omitting “*child care tax rebate limit*” and substituting “*child care rebate limit*”.

8 Clause 2 of Schedule 4 (table item 22)

Repeal the item, substitute:

22 Child care rebate limit CCR limit [section 84F]

9 Subclause 3(1) of Schedule 4 (table item 22)

Omit “CCTR limit”, substitute “CCR limit”.

10 Subclause 3(6) of Schedule 4

Omit “CCTR limit”, substitute “CCR limit”.

Note: The heading to subclause 3(6) of Schedule 4 is altered by omitting “*CCTR limit*” and substituting “*CCR limit*”.

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

11 Division 4AA of Part 3 (heading)

Repeal the heading, substitute:

Division 4AA—Child care rebate

12 Subdivision AA of Division 4AA of Part 3 (heading)

Repeal the heading, substitute:

Subdivision AA—Quarterly payments of child care rebate

13 Subdivision A of Division 4AA of Part 3 (heading)

Repeal the heading, substitute:

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

14 Division 5 of Part 5 (heading)

Repeal the heading, substitute:

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

Part 2—Bulk amendments

15 Amendment of Acts

The specified provisions of the Acts listed in this Part are amended by omitting “child care tax rebate” and substituting “child care rebate”.

A New Tax System (Family Assistance) Act 1999

16 Subsection 3(1) (paragraph (da) of the definition of *family assistance*)

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

18 Subsection 3(6)

19 Subsection 57EA(1)

Note: The heading to section 57EA is altered by omitting “**child care tax rebate**” and substituting “**child care rebate**”.

20 Subsection 57F(1)

Note: The heading to section 57F is altered by omitting “**child care tax rebate**” and substituting “**child care rebate**”.

21 Section 84AA (wherever occurring)

Note: The heading to section 84AA is altered by omitting “**child care tax rebate**” and substituting “**child care rebate**”.

22 Section 84A (wherever occurring)

Note: The heading to section 84A is altered by omitting “**child care tax rebate**” and substituting “**child care rebate**”.

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

23 Section 65EAA (wherever occurring)

Note: The heading to section 65EAA is altered by omitting “**child care tax rebate**” and substituting “**child care rebate**”.

24 Section 65EAB (wherever occurring)

Note: The heading to section 65EAB is altered by omitting “**child care tax rebate**” and substituting “**child care rebate**”.

25 Section 65EAC (wherever occurring)

Note: The heading to section 65EAC is altered by omitting “**child care tax rebate**” and substituting “**child care rebate**”.

26 Section 65EF (wherever occurring)

Note: The heading to section 65EF is altered by omitting “**child care tax rebate**” and substituting “**child care rebate**”.

27 Section 66 (wherever occurring)

28 Subsection 84A(3)

29 Subsection 92A(2)

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

31 Paragraph 104(da)

32 Paragraph 108(2)(db)

33 Paragraphs 154(4A)(c) and (d)

34 Subparagraph 173(1)(d)(vi) (wherever occurring)

35 Paragraph 175(a)

36 Paragraph 175AA(a)

Note: The heading to section 175AA is altered by omitting “**child care tax rebate**” and substituting “**child care rebate**”.

37 Section 219TA (paragraph (ha) of the definition of *relevant benefit*)

38 Paragraph 224(1)(ca)

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

39 Subitem 36(2) of Schedule 2

Income Tax Assessment Act 1997

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

41 Subsection 52-150(1)

Part 3—Transitional

42 Operation of laws

- (1) If, before the commencement of item 1 of this Schedule (the *commencement time*), a thing was done in relation to child care tax rebate, then, for the purposes of the operation of any law of the Commonwealth after the commencement time, the thing is taken to have been done in relation to child care rebate.
- (2) If, before the commencement time, a thing was omitted to be done in relation to child care tax rebate, then, for the purposes of the operation of any law of the Commonwealth after the commencement time, the omission is taken to have happened in relation to child care rebate.
- (3) Subitems (1) and (2) do not have the effect of changing the time at which the thing was actually done or omitted to have been done.
- (4) The Minister may, by writing, determine either or both of the following:
 - (a) that subitem (1) does not apply in relation to a specified thing done;
 - (b) that subitem (2) does not apply in relation to a specified thing omitted to have been done.A determination under this subitem has effect accordingly.
- (5) A determination under subitem (4) is not a legislative instrument.
- (6) For the purposes of this item:

doing a thing includes making an instrument.

omitting to do a thing includes failing to make an instrument.

43 References in instruments

- (1) If:
 - (a) an instrument was in force immediately before the commencement time; and
 - (b) the instrument refers to child care tax rebate (including by way of abbreviation);the reference has effect after the commencement time as if it were a reference to child care rebate.

- (2) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified reference. A determination under this subitem has effect accordingly.
- (3) A determination under subitem (2) is not a legislative instrument.

44 Regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including any saving or application provisions) relating to the amendments or repeals made by this Schedule.

Schedule 2—Child care rebate in substitution

Part 1—Amendments

A New Tax System (Family Assistance) Act 1999

1 After subsection 57F(1)

Insert:

Eligibility relating to child care benefit in substitution

- (1A) An individual is eligible for child care rebate for a period in respect of a child if:
- (a) care is provided by one or more approved child care services to the child during at least one week in the period (whether or not the week finished in that period); and
 - (b) the care is covered by:
 - (i) a determination under section 53D of the Family Assistance Administration Act that the individual is entitled to be paid child care benefit by single payment/in substitution because of the death of another individual; or
 - (ii) a determination under subsection 53E(1) of the Family Assistance Administration Act in relation to the individual and the death of another individual; and
 - (c) under Subdivision G of Division 4, one or more of the following is the weekly limit of hours applicable to the deceased individual in the week:
 - (i) the 50 hour limit (see section 54);
 - (ii) the more than 50 hour limit (see section 55);
 - (iii) the 24 hour care limit under section 56.

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

Note 1: The heading to section 57F is altered by adding at the end “**or a period**”.

Note 2: The following heading to subsection 57F(1) is inserted “*Eligibility relating to child care benefit by fee reduction or for past period*”.

2 Paragraph 57F(2)(a)

Repeal the paragraph, substitute:

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

Note: The following heading to subsection 57F(2) is inserted “*Operation of condition in paragraph (1)(c) or (1A)(c)*”.

3 Subsection 57F(2) (note)

Repeal the note, substitute:

- Note 1: For a limit in paragraph (1A)(c), the individual concerned is the deceased individual.
- Note 2: If the only limit applicable to the individual concerned in the week was the limit of 24 hours under subsection 53(3), then the condition in paragraph (1)(c) or (1A)(c) would not be satisfied.

4 Subsection 57F(3)

Omit “, to be applicable to the individual”, substitute “or (1A)(c), to be applicable to the individual concerned”.

5 At the end of subsection 57F(3)

Add:

- Note: For the purposes of paragraph (1A)(c), the individual concerned is the deceased individual.

6 Subsection 84B(2)

Repeal the subsection, substitute:

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

- (2) However, if the base week is also:
 - (a) a base week for the individual’s partner and the child; or
 - (b) a base week, for the purposes of section 84DA, for the individual’s partner and the child;the amount of the individual’s ***approved child care fees*** for the child in the base week is the amount of fees payable for care provided during the week that is covered by a determination

mentioned in paragraph 84C(c) in respect of the individual and the child.

7 After Subdivision B of Division 4A of Part 4

Insert:

Subdivision BA—Child care rebate relating to child care benefit in substitution

84DA Amount of the child care rebate—relating to child care benefit in substitution

If a determination of entitlement for child care rebate under section 65ECA of the Family Assistance Administration Act is in force in respect of:

- (a) a period (the *entitlement period*); and
- (b) an individual (the *substitute individual*), and a deceased individual, for child care provided by one or more approved child care services to a child during that period;

the amount of the rebate which the substitute individual is entitled to be paid in respect of the child for that period is worked out as follows:

Method statement

- Step 1. Work out the rebate periods. The entitlement period will be the *rebate period* if it is entirely within an income year. However, if the entitlement period is spread over 2 income years, the part of the entitlement period in each of those years will be a *rebate period*.
- Step 2. Work out the total amount of the deceased individual's approved child care fees for the child in each base week for the deceased individual and the child in each rebate period.
- Step 3. Work out the amount (if any) of the substitute individual's entitlement to child care benefit by single payment/in substitution for the care for the child in each base week for the deceased individual and the child in each rebate period.

Step 4. Work out the total amount of Jobs Education and Training (JET) Child Care fee assistance (if any) that the deceased individual was eligible to receive for the child in each base week for the deceased individual and the child in each rebate period.

Step 5. Work out, for each rebate period, the lesser of the following amounts for the child:

(a) the amount worked out using the formula:

$$50\% \times \left(\text{Step 2 amount} - \text{Step 3 amount} - \text{Step 4 amount} \right)$$

(b) the child care rebate limit for the income year that includes the rebate period.

Add the results if there are 2 rebate periods.

Step 6. The result is the amount of the substitute individual's child care rebate for the child for the entitlement period.

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

General rule—approved child care fees for a base week for the deceased individual and a child

(1) For the purposes of section 84DA, the amount of the deceased individual's ***approved child care fees*** for a child in a base week for the deceased individual and the child is the amount of fees for which:

(a) the deceased individual; or

(b) the deceased individual's partner during the week;

is liable for care provided by an approved child care service or services for the child during the week. Subject to subsection (2), it does not matter whether there is any entitlement to child care benefit for that care.

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

- (2) However, if the base week is also:
- (a) a base week for the deceased individual's partner and the child; or
 - (b) a base week, for the purposes of section 84A, for the deceased individual's partner and the child;
- the amount of the deceased individual's **approved child care fees** for the child in the base week is the amount of fees payable for care provided during the week that is covered by a determination mentioned in paragraph 84DC(c) in respect of the deceased individual and the child.

Disregard amounts passed on to reduce fees

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

84DC Component of formula—*base week*

For the purposes of section 84DA, a week is a **base week** for a deceased individual for a child in a rebate period if:

- (a) all or part of the week falls within the rebate period; and
- (b) care is provided by one or more approved child care services to the child during the week; and
- (c) the care is covered by:
 - (i) a determination under section 53D of the Family Assistance Administration Act that the substitute individual is entitled to be paid child care benefit by single payment/in substitution because of the death of the deceased individual; or
 - (ii) a determination under subsection 53E(1) of the Family Assistance Administration Act in relation to the substitute individual and the death of the deceased individual; and
- (d) paragraph 57F(1A)(c) (as affected by subsections 57F(2) and (3)) is satisfied for the week.

84DD Component of formula—*amount of the substitute individual's entitlement to child care benefit*

The *amount* of a substitute individual's entitlement to child care benefit by single payment/in substitution for the care of a child in a base week for the deceased individual and the child in a rebate period is:

- (a) for a substitute individual in respect of whom a determination is made under section 53D of the Family Assistance Administration Act because of the death of the deceased individual—so much of the amount in which the substitute individual is determined to be entitled to be paid child care benefit for the rebate period as is attributable to that week; and
- (b) for a substitute individual in respect of whom a determination is made under subsection 53E(1) of that Act because of the death of the deceased individual—a nil amount, to the extent that the determination relates to the session or sessions of care provided during that week.

8 Section 84E

Omit “and 84A”, substitute “, 84A and 84DA”.

9 At the end of section 84E

Add:

Note: The individual may be a deceased individual (see step 4 of the method statement in section 84DA).

10 Subsection 84F(1)

Omit “and 84A”, substitute “, 84A and 84DA”.

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

11 After section 65EC

Insert:

65ECA Determining entitlement, or no entitlement, to child care rebate—eligibility for child care benefit in substitution

- (1) This section applies in respect of an individual and a child for a period if:
- (a) the Secretary has determined under section 53D that the individual 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 and the period; or
 - (b) the Secretary has determined under subsection 53E(1) or (2) that the individual is not entitled to be paid child care benefit by single payment/in substitution because of the death of another individual in respect of the child and the period.

Determining entitlement to child care rebate

- (2) If the Secretary is satisfied:
- (a) that the individual is eligible under subsection 57F(1A) of the Family Assistance Act for child care rebate in respect of the child and the period; and
 - (b) that, if the individual were to be entitled under this subsection to child care rebate in respect of that eligibility, the amount of rebate would be more than a nil amount;
- the Secretary must determine that the individual is entitled to be paid child care rebate because of the death of another individual in respect of the child and the period. The determination must include the amount of rebate to which the Secretary considers the individual to be entitled.

- (3) Subsections 65EA(3) and 65EB(3) do not limit subsection (2).

Determining no entitlement to child care rebate

- (4) If:
- (a) the Secretary is not satisfied that the individual is eligible under subsection 57F(1A) of the Family Assistance Act for child care rebate in respect of the child and the period; or
 - (b) the Secretary is satisfied that the individual is so eligible, but is not satisfied that, if the individual were to be entitled to child care rebate in respect of that eligibility, the amount of rebate would be more than a nil amount;

the Secretary must determine that the individual is not entitled to be paid child care rebate because of the death of the other individual in respect of the child and the period.

12 Paragraphs 65EE(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) for a determination under a provision other than section 65ECA:
 - (i) the income year in respect of which the determination is made; and
 - (ii) whether, under the determination, the individual is entitled to be paid child care rebate in respect of the income year; and
- (b) for a determination under section 65ECA:
 - (i) the period in respect of which the determination is made; and
 - (ii) whether, under the determination, the individual is entitled to be paid child care rebate in respect of the period; and

13 After subsection 65EF(2C)

Insert:

Rebate because of eligibility for child care benefit in substitution

- (2D) If a determination is made under section 65ECA that an individual is entitled to be paid child care rebate:
 - (a) because of the death of another individual; and
 - (b) in respect of a child and a period;the Secretary must pay the amount to which the individual is determined to be entitled, at such time as the Secretary considers appropriate, to the credit of a bank account nominated and maintained by the individual.
- (2E) However, the Secretary must reduce the amount to be paid under subsection (2D) by the amount of any child care rebate already paid under Subdivision AA in respect of the deceased individual and the child for a quarter wholly or partly included in the period.

Note: The following heading to subsection 65EF(1) is inserted "*Rebate because of eligibility for child care benefit by fee reduction or for past period*".

14 Subsection 65EF(3)

After “(1)”, insert “or (2D)”.

Note 1: The following heading to subsection 65EF(3) is inserted “*Secretary may direct payment in a different way*”.

Note 2: The following heading to subsection 65EF(4) is inserted “*Payment is subject to other provisions*”.

15 Subsection 109A(1) (note)

Repeal the note, substitute:

Note: If an application is made under this section for review of a decision about a person’s entitlement to child care benefit, and a decision has also been made about the person’s entitlement to child care rebate, that decision about rebate may be automatically reviewed: see Division 5.

16 Subsection 111(1) (note)

Repeal the note, substitute:

Note: If an application is made under this section for review of a decision about a person’s entitlement to child care benefit, and a decision has also been made about the person’s entitlement to child care rebate, that decision about rebate may be automatically reviewed: see Division 5.

17 Subsection 142(1) (note)

Repeal the note, substitute:

Note: If an application is made under this section for review of a decision about a person’s entitlement to child care benefit, and a decision has also been made about the person’s entitlement to child care rebate, that decision about rebate may be automatically reviewed: see Division 5.

18 Section 152A

Repeal the section, substitute:

152A Decisions relating to entitlement to child care benefit by fee reduction or for past period

If:

- (a) an application (the *original application*) has been made under section 109A, 111 or 142 for review of a decision (the *CCB decision*) relating to an individual’s entitlement to child care benefit; and

- (b) the CCB decision was in respect of one or more sessions of care provided by an approved child care service to a child during a period in an income year; and
 - (c) a decision (the **CCR decision**) has been made under section 65EA, 65EB or 65EC in relation to the individual's entitlement to child care rebate in respect of the child and the period; and
 - (d) the result of the review varies or sets aside the CCB decision (whether or not it also substitutes a new decision);
- this Act has effect as if the original application included an application for review of the CCR decision.

152B Decisions relating to entitlement to child care benefit by single payment/in substitution

If:

- (a) an application (the **original application**) has been made under section 109A, 111 or 142 for review of a decision (the **CCB decision**) relating to an individual's entitlement to child care benefit by single payment/in substitution; and
 - (b) the CCB decision was in respect of one or more sessions of care provided by an approved child care service to a child during a period; and
 - (c) a decision (the **CCR decision**) has been made under section 65ECA in relation to the individual's entitlement to child care rebate in respect of the child and the period; and
 - (d) the result of the review varies or sets aside the CCB decision (whether or not it also substitutes a new decision);
- this Act has effect as if the original application included an application for review of the CCR decision.

19 Paragraph 154(4A)(c)

Omit "or 57F(1)", substitute ", 57F(1) or 57F(1A)".

Part 2—Application and transitional

20 Application

- (1) The amendments made by this Schedule (other than by items 15 to 18 of this Schedule) apply in relation to care provided by an approved child care service to a child on or after 1 July 2007.
- (2) The amendments made by items 15 to 18 of this Schedule apply in relation to each application made on or after the commencement of those items:
 - (a) under section 109A, 111 or 142 of the *A New Tax System (Family Assistance) (Administration) Act 1999*; and
 - (b) for review of a decision relating to an individual's entitlement to child care benefit.

21 Transitional—service's application day happens after the period for which child care rebate is applicable

- (1) This item 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 rebate period (within the meaning of section 84DA of the Family Assistance Act); 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 that period.
- (2) The Family Assistance Act has effect in relation to that care as if subsection 84DB(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:
 - (a) the deceased individual; or

(b) the deceased individual's partner;
is liable, is taken to be a reference to the fees for which the deceased individual, or the deceased individual's partner, would have been liable if they had not been so reduced.

22 Transitional—service's application day happens during the period for which child care rebate is applicable

- (1) This item 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 rebate period (within the meaning of section 84DA of the Family Assistance Act); 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 that period (other than during the last week that falls wholly or partly in that period).
- (2) The Family 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 84DB(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:
- (a) the deceased individual; or
 - (b) the deceased individual's partner;
- is liable, is taken to be a reference to the fees for which the deceased individual, or the deceased individual's partner, would have been liable if they had not been so reduced.

Schedule 3—Recovery of debts

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

1 Sections 65EA, 65EB and 65EC

Repeal the sections, substitute:

65EA Determining entitlement, or no entitlement, to child care rebate—eligibility for child care benefit by fee reduction

- (1) This section applies in respect of an individual and a child for a period in 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 period; 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 period.

Determining entitlement to child care rebate

- (2) If the Secretary is satisfied:
 - (a) that the individual is eligible under subsection 57F(1) of the Family Assistance Act for child care rebate in respect of:
 - (i) the child for the income year; and
 - (ii) the care provided during the period; and
 - (b) that, if the individual were to be entitled under this subsection to child care rebate in respect of that eligibility, the amount of rebate would be more than a nil amount; and
 - (c) that a determination under this subsection, or subsection 65EB(2), has not already been made in respect of the individual and the child for the income year;the Secretary must determine that the individual is entitled to be paid child care rebate in respect of the child for the income year.

The determination must include the amount of rebate to which the Secretary considers the individual to be entitled.

Note: A determination may be made under section 65EC if a determination under this subsection, or subsection 65EB(2), has already been made in respect of the individual and the child for a period in the income year.

Determining no entitlement to child care rebate

- (3) If:
- (a) the Secretary is not satisfied that the individual is eligible under subsection 57F(1) of the Family Assistance Act for child care rebate in respect of:
 - (i) the child for the income year; and
 - (ii) the care provided during the period; or
 - (b) the Secretary is satisfied that the individual is so eligible, but is not satisfied that, if the individual were to be entitled to child care rebate in respect of that eligibility, the amount of rebate would be more than a nil amount;
- the Secretary must determine that the individual is not entitled to be paid child care rebate in respect of the child for the care provided during the period.

65EB Determining entitlement, or no entitlement, to child care rebate—eligibility for child care benefit for past period

- (1) This section applies in respect of an individual, a child and care provided to the child during a period in an income year if:
- (a) the Secretary has determined under section 52E that the individual is entitled to be paid child care benefit for the period 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 period in respect of the child.

Determining entitlement to child care rebate

- (2) If the Secretary is satisfied:
- (a) that the individual is eligible under subsection 57F(1) of the Family Assistance Act for child care rebate in respect of:
 - (i) the child for the income year; and

- (ii) the care provided during the period; and
- (b) that, if the individual were to be entitled under this subsection to child care rebate in respect of that eligibility, the amount of rebate would be more than a nil amount; and
- (c) that a determination under this subsection, or subsection 65EA(2), has not already been made in respect of the individual and the child for the income year;

the Secretary must determine that the individual is entitled to be paid child care rebate in respect of the child for the income year. The determination must include the amount of rebate to which the Secretary considers the individual to be entitled.

Note: A determination may be made under section 65EC if a determination under this subsection, or subsection 65EA(2), has already been made in respect of the individual and the child for a period in the income year.

Determining no entitlement to child care rebate

- (3) If:
 - (a) the Secretary is not satisfied that the individual is eligible under subsection 57F(1) of the Family Assistance Act for child care rebate in respect of:
 - (i) the child for the income year; and
 - (ii) the care provided during the period; or
 - (b) the Secretary is satisfied that the individual is so eligible, but is not satisfied that, if the individual were to be entitled to child care rebate in respect of that eligibility, the amount of rebate would be more than a nil amount;

the Secretary must determine that the individual is not entitled to be paid child care rebate in respect of the child for the care provided during the period.

65EC Later determinations of entitlement to child care rebate

- (1) If:
 - (a) a determination is made under subsection 65EA(2) or 65EB(2), or this subsection because of a previous application of this subsection, in respect of an individual and a child for an income year (the *earlier rebate determination*); and
 - (b) a determination is later made under section 51B or 52E or subsection 51C(1) or 52G(1) in respect of the individual and

the child and one or more sessions of care provided by an approved child care service during a period in 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 the individual is entitled to be paid an increased amount of child care rebate;

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

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

2 Transitional—entitlement to child care rebate

- (1) This item applies to a determination if:
 - (a) the determination was made under one of the following provisions of the *A New Tax System (Family Assistance) Act 1999*:
 - (i) subsection 65EA(2) or (3);
 - (ii) subsection 65EB(2) or (3);
 - (iii) subsection 65EC(1); and
 - (b) the determination was in force immediately before the commencement of this item.
- (2) The determination has effect, after the commencement of this item, as if it had been made under that provision as amended by this Act.

3 Sections 71CAA and 71CAB

Repeal the sections, substitute:

71CAA Debts arising in respect of child care rebate where no entitlement

No entitlement to rebate arising from CCB by fee reduction

- (1) If:
 - (a) an amount has been paid to an individual by way of child care rebate for a quarter under Subdivision AA of

Division 4AA of Part 3 in respect of a period during which the individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and

- (b) the individual is not entitled to rebate in respect of the child and that period;

the amount is a debt due to the Commonwealth by the individual.

Note 1: For paragraph (b), the individual will not be entitled to rebate if a determination of no entitlement has been made under subsection 65EA(3) in respect of the child and the period.

Note 2: A determination of no entitlement under subsection 65EA(3) could arise as a decision substituted on review under Part 5.

(2) If:

- (a) an amount has been paid to an individual by way of child care rebate in respect of a child for an income year as a result of:

- (i) a determination under subsection 65EA(2) in respect of a period of care covered by a determination made under section 51B or subsection 51C(1); or
(ii) a determination under subsection 65EC(1) in respect of a period of care covered by a determination made under section 51B or subsection 51C(1); and

- (b) the individual is not entitled to rebate in respect of the child and that period;

the amount is a debt due to the Commonwealth by the individual.

No entitlement to rebate arising from CCB for past period

(3) If:

- (a) an amount has been paid to an individual by way of child care rebate in respect of a child for an income year as a result of:

- (i) a determination under subsection 65EB(2) in respect of a period of care covered by a determination made under section 52E or subsection 52G(1); or
(ii) a determination under subsection 65EC(1) in respect of a period of care covered by a determination made under section 52E or subsection 52G(1); and

- (b) the individual is not entitled to rebate in respect of the child and that period;

the amount is a debt due to the Commonwealth by the individual.

No entitlement to rebate arising from CCB by fee reduction or for past period—other situations

- (4) If:
- (a) an amount has been paid to an individual by way of child care rebate:
 - (i) for an income year, or for a quarter in an income year, in respect of a child; and
 - (ii) in circumstances other than those mentioned in subsection (1), (2), (3) or (5); and
 - (b) the individual is not entitled to rebate for that year in respect of the child;
- the amount is a debt due to the Commonwealth by the individual.

No entitlement to rebate arising from CCB by single payment/in substitution

- (5) If:
- (a) an amount has been paid to an individual by way of child care rebate in respect of a child for a period:
 - (i) as a result of a determination under subsection 65ECA(2) in respect of a period of care covered by a determination made under section 53D or subsection 53E(1); or
 - (ii) in other circumstances because of the death of another individual; and
 - (b) the individual is not entitled to rebate in respect of the child and that period;
- the amount is a debt due to the Commonwealth by the individual.

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

Overpayment of rebate arising from CCB by fee reduction—for a quarter

- (1) If:
- (a) an amount (the **received amount**) has been paid to an individual by way of child care rebate for a quarter:
 - (i) under Subdivision AA of Division 4AA of Part 3; and

(ii) in respect of a period during which the individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and

(b) the received amount is greater than the amount (the **correct amount**) of rebate to which the individual is entitled under subsection 65EA(2) or 65EC(1) in respect of the child and that period;

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

Note: A determination of entitlement under subsection 65EA(2) or 65EC(1) could arise as a decision substituted on review under Part 5.

Overpayment of rebate arising from CCB by fee reduction—for an income year

(2) If:

(a) an amount (the **received amount**) has been paid to an individual by way of child care rebate in respect of a child for an income year in respect of a period of care covered by a determination made under section 51B or subsection 51C(1); and

(b) the received amount is greater than the amount (the **correct amount**) of rebate to which the individual is entitled under subsection 65EA(2) or 65EC(1) in respect of the child and that period;

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

Note: A determination of entitlement under subsection 65EA(2) or 65EC(1) could arise as a decision substituted on review under Part 5.

Overpayment of rebate arising from CCB for past period

(3) If:

(a) an amount (the **received amount**) has been paid to an individual by way of child care rebate in respect of a child for an income year in respect of a period of care covered by a determination made under section 52E or subsection 52G(1); and

(b) the received amount is greater than the amount (the **correct amount**) of rebate to which the individual is entitled under

subsection 65EB(2) or 65EC(1) in respect of the child and that period;

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

Note: A determination of entitlement under subsection 65EB(2) or 65EC(1) could arise as a decision substituted on review under Part 5.

Overpayment of rebate arising from CCB in substitution

(4) If:

(a) an amount (the **received amount**) has been paid to an individual by way of child care rebate in respect of a child for a period of care covered by a determination made under section 53D or subsection 53E(1); and

(b) the received amount is greater than the amount (the **correct amount**) of rebate to which the individual is entitled under subsection 65ECA(2) in respect of the child and that period;

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

Note: A determination of entitlement under subsection 65ECA(2) could arise as a decision substituted on review under Part 5.

71CAC Debts arising in respect of child care rebate paid to wrong account

Subject to subsection 93A(5), if:

(a) a payment by way of child care rebate is made to a financial institution for the credit of an account kept with the institution (the **incorrect account**); and

(b) the Secretary is satisfied that the amount paid to the institution was intended to be paid for the credit of an account kept in the name of someone who was not the person or one of the persons in whose name or names the incorrect account was kept;

an amount equal to the amount of the payment made to the institution is a debt due to the Commonwealth by the person, or jointly and severally by the persons, in whose name or names the incorrect account was kept.

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

After “71CAB,”, insert “71CAC,”.

5 Application

- (1) The amendments made by item 1 of this Schedule apply in relation to care provided by an approved child care service to a child on or after 1 July 2008.
- (2) The amendments made by items 3 and 4 of this Schedule apply in relation to:
 - (a) payments under, or purportedly under, Subdivision AA of Division 4AA of Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* on or after 1 July 2008; and
 - (b) payments under, or purportedly under, subsection 65EF(1) of that Act in relation to care provided by an approved child care service to a child on or after 1 July 2008; and
 - (c) payments under, or purportedly under, subsection 65EF(2D) of that Act in relation to care provided by an approved child care service to a child on or after 1 July 2007.

Schedule 4—Civil penalties

Part 1—Civil penalties in regulations

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

1 Subsection 3(1) (at the end of the definition of *civil penalty provision*)

Add:

- ; (t) a provision (if any) of the regulations that is declared to be a civil penalty provision in accordance with paragraph 235(1A)(b).

2 Subsection 219TSD(2)

Repeal the subsection, substitute:

Exception for certain civil penalty provisions

- (2) Subsection (1) does not apply to subsection 219EA(2) or 219L(3) or to a provision of the regulations declared to be a civil penalty provision. The pecuniary penalty payable by a person, in respect of the person's contravention of subsection 219EA(2) or 219L(3), 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.

Note: The penalties for contraventions of provisions of the regulations declared to be civil penalty provisions must not exceed 250 penalty units for bodies corporate and 50 penalty units for other persons (see subsection 235(1A)).

3 Subsection 219TSK(1) (table items 1 and 2)

Omit “subsection 219EA(2), 219L(3) or 219M(1)”, substitute “a provision mentioned in item 3, 5 or 7”.

4 Subsection 219TSK(1) (at the end of the table)

Add:

- 7 The notice relates to a single alleged 24.

Schedule 4 Civil penalties
Part 1 Civil penalties in regulations

contravention of a civil penalty provision that is a provision of the regulations

- | | | |
|---|---|--|
| 8 | The notice relates to more than 1 alleged contravention of a civil penalty provision that is a provision of the regulations | the number obtained by multiplying 24 by:
(a) if the number of alleged contraventions is less than 8— that number; or
(b) otherwise—8. |
|---|---|--|

5 Subsection 219TSK(2) (table items 1 and 2)

Omit “subsection 219EA(2), 219L(3) or 219M(1)”, substitute “a provision mentioned in item 3, 5 or 7”.

6 Subsection 219TSK(2) (at the end of the table)

Add:

- | | | |
|-------|---|--|
| 7 | The notice relates to a single alleged contravention of a civil penalty provision that is a provision of the regulations | 12. |
| <hr/> | | |
| 8 | The notice relates to more than 1 alleged contravention of a civil penalty provision that is a provision of the regulations | the number obtained by multiplying 12 by:
(a) if the number of alleged contraventions is less than 8— that number; or
(b) otherwise—8. |

7 Paragraph 235(1)(b)

Omit “Act;”, substitute “Act.”.

8 Subsection 235(1)

Omit “and, in particular, may make regulations prescribing penalties of a fine not exceeding 10 penalty units for any breach of the regulations.”.

9 After subsection 235(1)

Insert:

Offences and civil penalties

(1A) Without limiting subsection (1), the regulations may:

- (a) prescribe penalties for offences against the regulations that do not exceed a fine of 10 penalty units; and
- (b) declare that specified provisions of the regulations are civil penalty provisions for the purposes of this Act, and prescribe penalties for contraventions of such provisions that do not exceed:
 - (i) for a body corporate—250 penalty units; or
 - (ii) in any other case—50 penalty units.

Part 2—Consequential amendments

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

10 Subsection 3(1) (paragraph (i) of the definition of *civil penalty provision*)

Repeal the paragraph.

11 Section 219EA

Repeal the section.

12 Subsection 219TSD(2)

Omit “subsection 219EA(2) or 219L(3)” (wherever occurring), substitute “subsection 219L(3)”.

13 Subsection 219TSK(1) (table items 3 and 4)

Omit “subsection 219EA(2) or 219L(3)”, substitute “subsection 219L(3)”.

14 Subsection 219TSK(2) (table items 3 and 4)

Omit “subsection 219EA(2) or 219L(3)”, substitute “subsection 219L(3)”.

Schedule 5—Other amendments

Part 1—Child care rebate for final quarter

A New Tax System (Family Assistance) Act 1999

1 Section 84AA

Omit “must, under subsection 65EAA(1) of the Family Assistance Administration Act, calculate”, substitute “calculates, under subsection 65EAA(1) of the Family Assistance Administration Act,”.

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

2 After subsection 65EAA(1)

Insert:

(1A) However, the Secretary may decide not to calculate an amount of rebate for the quarter if the quarter is the last quarter of the income year.

Note: The Secretary may prefer to pay rebate for the last quarter as part of the individual’s entitlement to rebate for the entire income year (see Subdivision A).

Note: The heading to subsection 65EAA(1) is altered by omitting “*must calculate and pay*” and substituting “*calculates and pays*”.

3 Application

The amendments made by this Part apply in relation to the last quarter of the 2008-09 income year and of later income years.

Part 2—CCB % provisions

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

4 At the end of subsection 52H(1)

Add:

Note: A determination under subsection 52G(1) may cease to have effect under section 60.

5 At the end of subsection 53F(1)

Add:

Note: A determination under subsection 53E(1) may cease to have effect under section 60A.

6 Sections 60 and 60A

Repeal the sections, substitute:

60 Variation where no entitlement for child care benefit for a past period because CCB % is zero %, and claimant gives information so that CCB % can be recalculated

Variations

- (1) If:
- (a) a determination is made under subsection 52G(1) in response to a claim by an individual for child care benefit for a past period for care provided to a child by an approved child care service; and
 - (b) when making the determination, subsection 55B(2) caused the Secretary not to be satisfied that, if the claimant were to be entitled to be paid child care benefit, the entitlement would be more than a nil amount; and
 - (c) the claimant complies with:
 - (i) if subparagraph 55B(2)(c)(i) applies to the claimant—subsection (3); and

- (ii) if subparagraph 55B(2)(c)(ii) applies to the claimant—
subsection (4);
for the purposes of having the Secretary reconsider the claim;
and
 - (d) 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;
the Secretary must vary the determination.
- (2) For the purposes of the family assistance law, the variation has the
effect that the determination is taken:
- (a) to cease to be a determination made under subsection 52G(1);
and
 - (b) to be a determination made under section 52E, at the time of
the variation, in relation to the claim.
- Section 52J does not apply in relation to paragraph (b).

Condition for variations

- (3) The claimant complies with this subsection if the claimant gives
the Secretary:
- (a) the information needed to work out the number of children in
care of a particular kind; and
 - (b) the tax file number of each of the TFN determination
persons;
within 2 years after the end of the income year during which the
determination was made under subsection 52G(1).
- (4) The claimant complies with this subsection if the claimant:
- (a) informs the Secretary that the claimant no longer opts to have
a CCB % of zero % applicable to him or her, and wants his or
her claim reconsidered on the basis of the CCB % worked out
under Schedule 2 to the Family Assistance Act; and
 - (b) gives the Secretary the tax file number of each of the TFN
determination persons;
within 2 years after the end of the income year during which the
determination was made under subsection 52G(1).

60A Variation where no entitlement for child care benefit by single payment/in substitution because CCB % is zero %, and claimant gives information so that CCB % can be recalculated

Variations

- (1) If:
- (a) a determination is made under subsection 53E(1) in response to a claim by an individual, in respect of a child, for child care benefit by single payment/in substitution because of the death of another individual; and
 - (b) when making the determination, subsection 55A(2) or 55B(2) caused the Secretary not to be satisfied that, if the claimant were to be entitled to be paid child care benefit, the entitlement would be more than a nil amount; and
 - (c) the claimant complies with:
 - (i) if subsection 55A(2) applies to the claimant—subsection (3); and
 - (ii) if subparagraph 55B(2)(c)(i) applies to the claimant—subsection (4); and
 - (iii) if subparagraph 55B(2)(c)(ii) applies to the claimant—subsection (5);for the purposes of having the Secretary reconsider the claim; and
 - (d) the Secretary is satisfied that, if the claimant were to be entitled to be paid child care benefit in respect of the claim, the amount of the entitlement would be more than a nil amount;

the Secretary must vary the determination.

- (2) For the purposes of the family assistance law, the variation has the effect that the determination is taken:
- (a) to cease to be a determination made under subsection 53E(1); and
 - (b) to be a determination made under section 53D, at the time of the variation, in relation to the claim.

Section 53G does not apply in relation to paragraph (b).

Condition for variations

- (3) The claimant complies with this subsection if:
- (a) the claimant gives the Secretary an estimate of the amount needed to calculate the CCB % used in calculating the amount of the benefit; and
 - (b) the estimate is so given within 2 years after the end of the income year during which the determination was made under subsection 52G(1); and
 - (c) the Secretary considers the estimate reasonable.
- (4) The claimant complies with this subsection if the claimant gives the Secretary:
- (a) the information needed to work out the number of children in care of a particular kind; and
 - (b) the tax file number of each of the TFN determination persons;
- within 2 years after the end of the income year during which the determination was made under subsection 53E(1).
- (5) The claimant complies with this subsection if the claimant:
- (a) informs the Secretary that the claimant no longer opts to have a CCB % of zero % applicable to him or her, and wants his or her claim reconsidered on the basis of the CCB % worked out under Schedule 2 to the Family Assistance Act; and
 - (b) gives the Secretary the tax file number of each of the TFN determination persons;
- within 2 years after the end of the income year during which the determination was made under subsection 53E(1).

7 Paragraphs 60B(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the CCB % is zero % because any or all of the following provisions apply:
 - (i) subsection 55(2);
 - (ii) subparagraph 55B(1)(c)(i) or (ii);
 - (iii) section 55C; and
- (c) later, the claimant:

- (i) if subsection 55(2) applies—gives the Secretary an estimate of the amount needed to calculate the CCB %, which the Secretary considers reasonable; and
- (ii) if subparagraph 55B(1)(c)(i) applies—gives the Secretary the information needed to work out the number of children the individual has in care of a particular kind; and
- (iii) if subparagraph 55B(1)(c)(ii) applies—informs the Secretary that he or she wants the CCB % to be worked out under Schedule 2 to the Family Assistance Act, gives the Secretary the tax file number of each TFN determination person and an estimate of the amount needed to have the CCB % recalculated under that Act, which the Secretary considers reasonable; and
- (iv) if section 55C applies—gives the Secretary the tax file number of each TFN determination person;

8 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 7 July 2008.

**Part 3—Obligations and permissions of an approved
child care service are those of the operator**

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

9 After section 195

Insert:

**195A Obligations and permissions of an approved child care service
are those of the operator**

For the purposes of the family assistance law, and an instrument
under that law:

- (a) when an obligation is imposed by that law or instrument on
an approved child care service it is taken to be imposed on
the person operating the service; and
- (b) when a permission is conferred by that law or instrument on
an approved child care service it is taken to be conferred on
the person operating the service.

10 Application

- (1) Section 195A of the *A New Tax System (Family Assistance)
(Administration) Act 1999* (as inserted by this Part) applies in relation to
obligations imposed, and permissions conferred, before, at or after the
commencement of this Part.
- (2) For the purposes of section 195A of the *A New Tax System (Family
Assistance) (Administration) Act 1999* (as inserted by this Part), Part 2
of Schedule 1 to the *Family Assistance Legislation Amendment (Child
Care Management System and Other Measures) Act 2007* is taken to
form part of the family assistance law.

11 Part 8A (heading)

Repeal the heading, substitute:

Schedule 5 Other amendments

Part 3 Obligations and permissions of an approved child care service are those of the operator

Part 8A—Obligations, and advances, relating to approved child care services

12 Division 1 of Part 8A (heading)

Repeal the heading, substitute:

Division 1—Obligations relating to approved child care services

Part 4—Manner of notifying cessation of operation

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

13 Subsection 3(1) (paragraph (m) of the definition of *civil penalty provision*)

After “219M(1)”, insert “or (4)”.

14 Subsection 219M(2)

Repeal the subsection, substitute:

- (2) The notice must be given in the form, and in the manner or way, approved by the Secretary.

Note 1: The heading to section 219M is altered by omitting “**Obligation to notify Secretary**” and substituting “**Obligations**”.

Note 2: The following heading to subsection 219M(1) is inserted “*Obligation to notify Secretary*”.

15 Subsection 219M(3) (penalty)

Omit “for an offence against subsection (3)”.

16 At the end of section 219M

Add:

Obligation to give further information on request

- (4) An operator of an approved child care service contravenes this subsection if:
- (a) the operator notifies the Secretary under subsection (1) of the operator’s intention to cease operating the service; and
 - (b) the Secretary requests the operator, in writing, to give the Secretary specified information about the intended cessation of the service; and
 - (c) the operator fails to comply with the request in accordance with subsection (6).

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

Schedule 5 Other amendments

Part 4 Manner of notifying cessation of operation

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

Penalty: 60 penalty units.

- (6) Information requested under subsection (4) must be given:
- (a) in the form, and in the manner or way, approved by the Secretary; and
 - (b) within 7 days after the day on which the request was given.

17 Subsection 219TSK(1) (table items 5 and 6)

After “219M(1)”, insert “or (4)”.

18 Subsection 219TSK(2) (table items 5 and 6)

After “219M(1)”, insert “or (4)”.

19 Application

The amendments made by this Part apply in relation to notices given under subsection 219M(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* after the commencement of this Part.

*[Minister’s second reading speech made in—
House of Representatives on 14 May 2009
Senate on 15 June 2009]*

(70/09)
