





# **Family Assistance Legislation Amendment (Child Care Rebate) Act 2011**

**No. 25, 2011**

**An Act to amend the law in relation to child care  
benefit and child care rebate, and for related  
purposes**

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



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**An Act to amend the law in relation to child care  
benefit and child care rebate, and for related  
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*[Assented to 21 April 2011]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Family Assistance Legislation  
Amendment (Child Care Rebate) Act 2011*.

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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 this Act receives the Royal Assent.	21 April 2011
2. Schedule 1, items 1 to 12	The day after this Act receives the Royal Assent.	22 April 2011
3. Schedule 1, item 13	The day after this Act receives the Royal Assent.  However, if Schedule 5 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences on or before that day, the provision(s) do not commence at all.	22 April 2011
4. Schedule 1, items 14 to 21	At the same time as the provision(s) covered by table item 2.	22 April 2011
5. Schedule 1, item 22	The day after this Act receives the Royal Assent.  However, if Part 1 of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences on or before that day, the provision(s) do not commence at all.	22 April 2011
6. Schedule 1, item 23	At the same time as the provision(s) covered by table item 2.	22 April 2011
7. Schedule 1, item 24	The day after this Act receives the Royal Assent.  However, if Part 1 of Schedule 1 to the	22 April 2011

<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>
	<i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011 commences on or before that day, the provision(s) do not commence at all.</i>	
8. Schedule 1, items 25 to 34	At the same time as the provision(s) covered by table item 2.	22 April 2011
9. Schedule 1, item 35	The day after this Act receives the Royal Assent.  However, if Part 1 of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences on or before that day, the provision(s) do not commence at all.	22 April 2011
10. Schedule 1, items 36 to 39	At the same time as the provision(s) covered by table item 2.	22 April 2011
11. Schedule 1, item 40	The day after this Act receives the Royal Assent.  However, if Part 1 of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences on or before that day, the provision(s) do not commence at all.	22 April 2011
12. Schedule 1, items 41 and 42	At the same time as the provision(s) covered by table item 2.	22 April 2011
13. Schedule 1, item 43	The day after this Act receives the Royal Assent.  However, if Schedule 5 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences on or before that day, the provision(s) do not commence at all.	22 April 2011
14. Schedule 1, items 44 to 54	At the same time as the provision(s) covered by table item 2.	22 April 2011

<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>
15. Schedule 1, item 55	The day after this Act receives the Royal Assent.  However, if Schedule 5 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences on or before that day, the provision(s) do not commence at all.	22 April 2011
16. Schedule 1, items 56 to 61	At the same time as the provision(s) covered by table item 2.	22 April 2011
17. Schedule 1, item 62	The day after this Act receives the Royal Assent.  However, if Schedule 5 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences on or before that day, the provision(s) do not commence at all.	22 April 2011
18. Schedule 1, items 63 to 67	At the same time as the provision(s) covered by table item 2.	22 April 2011
19. Schedule 1, items 68 and 69	The day after this Act receives the Royal Assent.  However, if Part 1 of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences on or before that day, the provision(s) do not commence at all.	22 April 2011
20. Schedule 1, item 70	At the same time as the provision(s) covered by table item 2.	22 April 2011
21. Schedule 1, item 71	The day after this Act receives the Royal Assent.  However, if Part 1 of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences on or before that day, the provision(s) do not	22 April 2011

<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>
	commence at all.	
22. Schedule 1, item 72	At the same time as the provision(s) covered by table item 2.	22 April 2011
23. Schedule 1, items 73 to 75	The day after this Act receives the Royal Assent.  However, if Part 1 of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences on or before that day, the provision(s) do not commence at all.	22 April 2011
24. Schedule 1, items 76 to 81	At the same time as the provision(s) covered by table item 2.	22 April 2011
25. Schedule 2, Part 1	Immediately after the commencement of Part 1 of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> .	
26. Schedule 2, Part 2	At the same time as Part 1 of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences.	
27. Schedule 2, Part 3	At the same time as the provision(s) covered by table item 25.	
28. Schedule 3	At the same time as the provision(s) covered by table item 2.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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### **3 Schedule(s)**

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

## **Schedule 1—Amendments to allow weekly payment of child care rebate**

### **Part 1—Amendments**

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

##### **1 Before section 57EA**

Insert:

##### **57EAA Eligibility for child care rebate—for a week**

- (1) An individual is eligible for child care rebate for a week in respect of a child if:
  - (a) a determination is in force under section 50F of the Family Assistance Administration Act during the week 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 %; and
  - (f) the individual has made an election, under paragraph 65EAAAA(1)(a) or (b) of the Family Assistance

Administration Act, to have child care rebate paid weekly and the election is in effect for the week.

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.

## **2 At the end of subsection 57EA(1)**

Add:

; and (f) the individual has made an election, under paragraph 65EAAAA(1)(c) of the Family Assistance Administration Act, to have child care rebate paid quarterly and the election is in effect for the quarter.

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

Insert:

## **Subdivision AA—Child care rebate for a week**

### **84AAA Amount of the child care rebate—for a week**

If the Secretary calculates, under section 65EAAA of the Family Assistance Administration Act, the amount of child care rebate applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week, the amount is worked out as follows:

*Method statement*

- Step 1. Work out the total amount of the individual's approved child care fees for care provided for the child by the approved child care service in the week.
- 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 the care provided for the child by the approved child care service in the week.
- 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 that is attributable to the care provided for the child by the approved child care service in the week.
- 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 from the child care rebate limit for the income year in which the week began, the total of the child care rebate (if any) applicable in respect of the individual and the child for each earlier week that falls wholly in that income year (whether paid weekly or quarterly).
- Step 5. The amount of child care rebate applicable in respect of the individual and the child for care provided for the child by the approved child care service in the week is:
- (a) the step 4 amount reduced by the reduction percentage; or
- (b) if the Secretary determines under section 84AAD that the step 4 amount is not to be reduced—the step 4 amount.

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

*General rule—approved child care fees for care provided for a child in a week*

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

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

- (2) However, the individual's approved child care fees for care provided for the child in the week do not include fees that the individual's partner is liable to pay if:
- (a) paragraphs 57EAA(1)(b) to (e) (as affected by subsections 57EAA(2) and (3)) are satisfied for the partner and the child for the week; or

- (b) the week is a base week for the individual's partner and the child under section 84AC (partner receiving child care rebate quarterly).

*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 or section 219EA of the Family Assistance Administration Act for the care.

#### **84AAC Component of formula—reduction percentage**

- (1) For the purposes of section 84AAA, the *reduction percentage* is:
  - (a) 15%; or
  - (b) if the Secretary specifies a percentage in an instrument under subsection (2)—that percentage.
- (2) The Secretary may, by legislative instrument, specify a percentage for the purposes of paragraph (1)(b).

#### **84AAD Component of formula—Secretary determines that step 4 amount not to be reduced**

- (1) The Secretary may determine in writing that, for the purposes of step 5 of the method statement in section 84AAA as it applies in calculating the amount of child care rebate applicable in respect of an individual and a child specified in the determination, the step 4 amount is not to be reduced.
- (2) A determination under subsection (1) must specify either:
  - (a) the week or weeks to which it is to apply; or
  - (b) that it is to apply to weeks beginning on or after a specified day.

The determination may apply to a week or weeks beginning before the determination is made.
- (3) The Secretary may only make a determination under subsection (1) in respect of an individual and a child:
  - (a) if the amount of fee reduction calculated by the Secretary under subsection 50Z(1) of the Family Assistance Administration Act in respect of the individual and the child for sessions of care provided in a week to which the

determination applies is a nil amount because the CCB % applicable to the individual is zero %; or

- (b) in other circumstances of a kind determined by the Secretary, by legislative instrument.

**4 Section 84AA (method statement, step 4, paragraph (b))**

After “for each earlier quarter in the income year”, insert “(whether paid weekly or quarterly)”.

**5 Subsection 84AB(2)**

Repeal the subsection, substitute:

- (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:
- (a) the base week is also a base week for the individual’s partner and the child; or
  - (b) paragraphs 57EAA(1)(b) to (e) (as affected by subsections 57EAA(2) and (3)) are satisfied for the partner and the child for the week (partner receiving child care rebate weekly).

**6 Subsections 84AB(3), 84B(3) and 84DB(3)**

After “219B”, insert “or section 219EA”.

**7 Section 84E**

Repeal the section, substitute:

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

For the purposes of sections 84AAA, 84AA, 84A and 84DA, *Jobs Education and Training (JET) Child Care fee assistance*, in relation to a week, means the payment of that name that is paid by the Commonwealth to the individual in respect of child care provided by one or more approved child care services to the child in the week.

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

**8 Subsection 84F(1)**

After “sections”, insert “84AAA,”.

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

**9 Section 3 (after paragraph (h) of the definition of *civil penalty provision*)**

Insert:

- (ha) subsection 219EA(2);
- (hb) subsection 219EB(1) or (5);

**10 Section 3 (after paragraph (r) of the definition of *civil penalty provision*)**

Insert:

- (sa) subsection 219QE(1);

**11 Subparagraph 49C(1)(a)(ii)**

Omit “and (4),”, substitute “, (4) and (6),”.

**12 At the end of section 49C**

Add:

- (5) The information or documents required by the Secretary under paragraph (1)(a) may include information or documents relevant to:
  - (a) whether the claimant is eligible for child care rebate; and
  - (b) the amount of child care rebate applicable in respect of the claimant; and
  - (c) determining any other matter in relation to the payment of child care rebate to the claimant.
- (6) A claim for payment of child care benefit by fee reduction for care provided by an approved child care service to a child will be effective even if the claimant does not make an election under section 65EAAAA in relation to the care (weekly or quarterly payments of child care rebate).

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

Insert:

**Subdivision AAA—Election to have child care rebate paid in various ways**

**65EAAAA Individual may elect to have child care rebate paid in various ways**

- (1) An individual may give the Secretary notice in accordance with subsection (2) electing to have child care rebate in respect of the individual and a child for care provided for the child in an income year paid in one of the following ways:
  - (a) weekly into a bank account maintained by the individual alone or jointly or in common with someone else;
  - (b) weekly to one or more approved child care services;
  - (c) quarterly into a bank account maintained by the individual alone or jointly or in common with someone else.

Note: Child care rebate is calculated on the basis of reports given by approved child care services in relation to each week of care under section 219N. A report for care provided in one week may be given up to 2 weeks later. A service may therefore give a report for 2 weeks together. For this reason, payments of child care rebate to an individual for 2 successive weeks may be made together. The effective result is then a fortnightly payment.

- (2) A notice under subsection (1):
  - (a) must be given in the form, and in the manner or way, approved by the Secretary; and
  - (b) must be given before the beginning of the income year to which the notice relates unless:
    - (i) the individual makes a claim after the beginning of the income year for payment of child care benefit by fee reduction for care provided for the child by one or more approved child care services; or
    - (ii) the Secretary makes a determination under subsection (4).
- (3) If an individual gives notice under subsection (1) when making a claim after the beginning of an income year for payment of child care benefit by fee reduction, the election is taken to relate to the income year in which the claim is made.
- (4) The Secretary may determine, in writing, that an individual may give notice under subsection (1) after the income year to which the

notice relates has begun, if the Secretary is satisfied that there are exceptional circumstances justifying the determination.

Note: A determination of entitlement to child care rebate will be made for the income year under Subdivision A of this Division. So if a person is entitled to child care rebate, does not elect to have it paid weekly or quarterly and has not been receiving child care rebate weekly or quarterly as a result of a previous election (see section 65EAAAC), child care rebate will be paid after the end of the income year.

### **65EAAAB Period in which election has effect**

(1) If:

- (a) a notice is given under paragraph 65EAAAA(1)(a) or (b) to have child care rebate paid weekly; and
- (b) the notice is given before the income year to which it relates has begun;

the election takes effect on the first Monday in the income year and continues in effect for each week all or part of which falls in the income year.

(2) If:

- (a) a notice is given under paragraph 65EAAAA(1)(c) to have child care rebate paid quarterly; and
- (b) the notice is given before the income year to which it relates has begun;

the election takes effect on the first day of the first quarter in the income year and continues in effect for each quarter which falls in the income year.

(3) If notice is given under subsection 65EAAAA(1) after the income year to which it relates has begun:

- (a) the Secretary must determine in writing the day on which the election is to take effect; and
- (b) the election continues in effect:
  - (i) if the notice is given under paragraph 65EAAAA(1)(a) or (b) to have child care rebate paid weekly—for each week all or part of which falls in the income year; and
  - (ii) if the notice is given under paragraph 65EAAAA(1)(c) to have child care rebate paid quarterly—for each quarter which falls in the income year.

**65EAAAC Where no election made for an income year**

If an individual does not give notice under subsection 65EAAAA(1) for an income year, child care rebate in respect of the individual and the child for care provided during the income year is to be paid:

- (a) if child care rebate was paid in respect of the individual and the child in relation to the immediately preceding income year—in the same way as it was paid in relation to that year; and
- (b) otherwise—for the income year.

**Subdivision AAB—Weekly payments of child care rebate**

**65EAAA Weekly payments of child care rebate**

If:

- (a) the Secretary is satisfied that an individual is eligible under subsection 57EAA(1) of the Family Assistance Act for child care rebate for a week in respect of a child; and
- (b) the Secretary has calculated an amount of fee reduction under subsection 50Z(1) in respect of the individual and the child for a session or sessions of care provided by an approved child care service in the week;

the Secretary must calculate the amount of the rebate which the Secretary considers is applicable in respect of the individual and the child for care provided for the child by the approved child care service in the week.

Note 1: The individual will not be eligible to have child care rebate paid weekly unless the individual has made an election under paragraph 65EAAAA(1)(a) or (b) to have rebate paid weekly.

Note 2: The calculation is made in accordance with section 84AAA of the Family Assistance Act.

Note 3: The amount of fee reduction calculated under subsection 50Z(1) may be a nil amount (see section 4A).

**65EAAB Where individual elects to have child care rebate paid weekly to approved child care service**

- (1) This section applies if:
-

- (a) the Secretary calculates an amount of child care rebate under section 65EAAA which the Secretary considers is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and
  - (b) the individual has made an election under paragraph 65EAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service.
- (2) The Secretary must notify the approved child care service of the amount calculated.
- (3) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (4) Without limiting subsection (3), the Secretary may approve notification of the amount by making the information available to the approved child care service using an electronic interface. In that case, the approved child care service is taken to have been given the notice on the day on which the information is made available.

Note: The amount is then paid to the approved child care service under subsection 219QC(1).

**65EAAC Where individual elects to have child care rebate paid weekly into own bank account**

- (1) This section applies if:
  - (a) the Secretary calculates an amount of child care rebate under section 65EAAA which the Secretary considers is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and
  - (b) the individual has made an election under paragraph 65EAAA(1)(a) that is in effect for the week to have child care rebate paid weekly into a bank account nominated and maintained by the individual.
- (2) The Secretary must pay the amount of child care rebate calculated under section 65EAAA to the individual, at such time as the Secretary considers appropriate, by paying it to the credit of the bank account.

- (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) The Secretary must give notice to the individual:
- (a) identifying the week or weeks to which the notice relates (the *rebate period*); and
  - (b) stating:
    - (i) the child's name; and
    - (ii) the amount of child care rebate calculated in respect of the rebate period (the *rebate amount*); and
    - (iii) the total amount of the individual's approved child care fees for care provided for the child by the approved child care service during the rebate period, worked out under step 1 of the method statement in section 84AAA of the Family Assistance Act when calculating the rebate amount; and
    - (iv) the total amount (if any) of fee reductions for care provided for the child by the approved child care service during the rebate period, worked out under step 2 of the method statement in section 84AAA of the Family Assistance Act when calculating the rebate amount.
- (5) The calculation and payment of an amount of child care rebate applicable under this section is not ineffective by reason only that any, or all, of the requirements of subsection (4) are not complied with.
- (6) This section is subject to:
- (a) section 65EAAF; and
  - (b) section 65EAB; and
  - (c) Part 4; and
  - (d) Division 3 of Part 8B.

**65EAAD Revising a calculation of weekly child care rebate**

The Secretary may recalculate an amount of child care rebate which the Secretary considers is applicable:

- (a) under section 65EAAA; or
  - (b) under a previous application of this section;
-

in respect of an individual and a child for care provided for the child by an approved child care service in a week, 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 in which all or part of the week falls.

**65EAAE If weekly payment is to an approved child care service, notice of revised calculation must be given to the service**

- (1) This section applies if:
  - (a) the Secretary, under section 65EAAD, recalculates an amount of child care rebate which the Secretary considers is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and
  - (b) the individual has made an election under paragraph 65EAAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service.
- (2) Subject to subsection (3), the Secretary must notify the approved child care service of the recalculated amount.
- (3) The Secretary need not notify the approved child care service of the recalculated amount if the amount is reduced, and the recalculation is for a reason other than the substitution or withdrawal by the service of a report given under section 219N.
- (4) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (5) Without limiting subsection (4), the Secretary may approve notification of the amount by making the information available to the approved child care service using an electronic interface. In that case, the approved child care service is taken to have been given the notice on the day on which the information is made available.

Note: The effect of a recalculation on payments to an approved child care service is dealt with in subsection 219QC(2) and section 219QD.

**65EAAF Effect of revised calculation—payment to the individual**

- (1) This section applies if:
-

**Schedule 1** Amendments to allow weekly payment of child care rebate  
**Part 1** Amendments

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- (a) the Secretary, under section 65EAAD, recalculates an amount of child care rebate which the Secretary considers is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and
  - (b) the individual has made an election under paragraph 65EAAAA(1)(a) that is in effect for the week to have child care rebate paid weekly into a bank account nominated and maintained by the individual.
- (2) If the recalculation increases the amount of child care rebate applicable in respect of the individual and the child for care provided for the child by the service in the week, then subsections 65EAAC(2), (3) and (6) apply to the increase as if the increase were the amount applicable under section 65EAAA.
- (3) If the recalculation decreases the amount of child care rebate applicable in respect of the individual and the child for care provided for the child by the service in the week, the Secretary may set off all or a part of the decrease against an amount of child care rebate applicable under this Subdivision or Subdivision AA for that or any other approved child care service in respect of the individual and the child for a later period in the same income year.
- (4) The Secretary must give notice to the individual:
- (a) identifying the week or weeks to which the notice relates (the **rebate period**); and
  - (b) stating:
    - (i) the child's name; and
    - (ii) the amount of child care rebate as recalculated under this section in respect of the rebate period (the **rebate amount**); and
    - (iii) the total amount of the individual's approved child care fees for care provided for the child by the approved child care service during the rebate period, worked out under step 1 of the method statement in section 84AAA of the Family Assistance Act when recalculating the rebate amount; and
    - (iv) the total amount (if any) of fee reductions for care provided for the child by the approved child care service during the rebate period, worked out under step 2 of the

method statement in section 84AAA of the Family Assistance Act when recalculating the rebate amount.

- (5) The recalculation and payment of an amount of child care rebate applicable under this section is not ineffective by reason only that any, or all, of the requirements of subsection (4) are not complied with.

#### **14 Subsection 65EAA(4)**

Repeal the subsection, substitute:

- (4) This section is subject to:
- (a) section 65EAAF; and
  - (b) section 65EAB; and
  - (c) Part 4; and
  - (d) Division 3 of Part 8B.

#### **15 Subsection 65EAB(3)**

Omit “under this Subdivision in respect of the individual and the child for a later quarter”, substitute “under this Subdivision or Subdivision AAB in respect of the individual and the child for a later period”.

#### **16 Subsection 65EF(2A)**

Repeal the subsection, substitute:

- (2A) If the determination of entitlement is made under section 65EA, the Secretary must reduce the amount to be paid under subsection (1) by:
- (a) the amount of any child care rebate already paid under Subdivision AAB in respect of the individual and the child for a week included in the income year; and
  - (b) the amount of any child care rebate already paid under Subdivision AA in respect of the individual and the child for a quarter included in the income year.

#### **17 Before paragraph 65EF(2B)(c)**

Insert:

- (ca) under Subdivision AAB in respect of the individual and the child for a week all or part of which falls in the income year; and

**18 Subsection 65EF(2E)**

Repeal the subsection, substitute:

- (2E) However, the Secretary must reduce the amount to be paid under subsection (2D) by the amount of any child care rebate already paid:
- (a) under Subdivision AAB in respect of the deceased individual and the child for a week wholly or partly included in the period; and
  - (b) under Subdivision AA in respect of the deceased individual and the child for a quarter wholly or partly included in the period.

**19 After paragraph 66(1)(f)**

Insert:

- (faa) payments under section 219QC or subsection 219QD(2) in respect of child care rebate;

**20 Paragraph 66(2)(aa)**

After “65EAA(3)”, insert “, 65EAAC(3)”.

**21 After paragraph 66(2)(aa)**

Insert:

- (aaa) subsection 65EAAF(3) (about setting off a decrease in a weekly amount of child care rebate against rebate for a later period); and

**22 Paragraph 66(2)(cb)**

Omit “payments under section 219Q or subsection 219QA(2) in respect of fee reduction or payments of enrolment advances under section 219RA”, substitute “various payments”.

**23 After paragraph 66(2)(cb)**

Insert:

- (cba) section 219QD (setting off a recalculated weekly payment of child care rebate against various payments);

**24 Paragraph 66(2)(cc)**

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Omit “payments under section 219Q or subsection 219QA(2) in respect of fee reduction or payments of enrolment advances under section 219RA”, substitute “various payments”.

## **25 After subsection 68(1A)**

Insert:

- (1B) In the case of a person who has made an election under paragraph 65EAAAA(1)(b) to have child care rebate in respect of a child paid weekly to an approved child care service, the amount of child care rebate paid to the person in a week for which the election is in effect consists of the amount that the service is required, under section 219EA, to pass on to the individual for care provided for the child in the week.

## **26 Section 70**

Omit “or subsection 219QA(2),”, substitute “, subsection 219QA(2), section 219QC or subsection 219QD(2),”.

Note: The heading to section 71 is altered by inserting “, **child care rebate**” after “**child care benefit**”.

## **27 After paragraph 71B(1)(c)**

Insert:

- or (d) an approved child care service is required under section 219EA to pass on an amount to an individual (the *recipient*) in respect of care provided for a child by the service in a week, but the recipient was not entitled to child care rebate in respect of the week;

## **28 Paragraph 71B(3)(a)**

Repeal the paragraph, substitute:

- (a) one of the following payments is made to a financial institution for the credit of an account kept with the institution (the *incorrect account*):
- (i) a payment under section 219Q or subsection 219QA(2) in respect of fee reduction;
  - (ii) a payment under section 219QC or subsection 219QD(2) in respect of child care rebate;
  - (iii) a payment under section 219RA of an enrolment advance; and

**29 Paragraph 71CAA(1)(a)**

After “by way of child care rebate”, insert “for a week under Subdivision AAB or”.

**30 Subparagraph 71CAA(4)(a)(i)**

After “for an income year,”, insert “for a week in an income year.”.

**31 Paragraph 71CAB(1)(a)**

Repeal the paragraph, substitute:

- (a) an amount (the *received amount*) has been paid to an individual by way of child care rebate 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
- (aa) the amount is paid under Subdivision AAB of Division 4AA of Part 3 (weekly payment), Subdivision AA of that Division (quarterly payment), or both Subdivision AAB and Subdivision AA of that Division (both weekly and quarterly payment during the period); and

Note: The heading to subsection 71CAB(1) is replaced by the heading “*Overpayment of rebate arising from CCB by fee reduction—for a week or a quarter*”.

**32 After section 71CA**

Insert:

**71CB Debts arising in respect of child care rebate payment not remitted—debt owed by service**

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

**33 Subparagraph 71G(1)(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) such an amount would be paid, but for a set off under subsection 82(2) or section 219QA, 219QD, 219RC or 219RE; and

**34 After subsection 71G(2)**

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Insert:

*Weekly payments of child care rebate*

(2A) If:

(a) either:

- (i) an amount is paid under section 219QC or subsection 219QD(2) to a person that is an approved child care service (weekly payments of child care rebate); or
- (ii) such an amount would be paid, but for a set off under subsection 82(2) or section 219QA, 219QD, 219RC or 219RE; and

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

so much of the amount of the child care rebate paid as relates to that period of care is a debt due to the Commonwealth by the service immediately before its approval was suspended or cancelled.

(2B) If:

- (a) an amount is required to be set off under subsection 219QD(3) against the payment of another amount to a person that is an approved child care service (payment where recalculation reduces the amount of child care rebate); and
- (b) the service's approval is suspended or cancelled under this Act; and
- (c) the amount has not already been set off against another amount under subsection 219QD(3) by the day the service's approval is suspended or cancelled;

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

Note 1: The heading to section 71G is replaced by the heading "**Debts arising where child care services approval is suspended or cancelled—debt owed by service**".

Note 2: The following heading to subsection (1) is inserted "*Child care benefit—fee reduction*".

Note 3: The following heading to subsection (3) is inserted "*Enrolment advances*".

### **35 After paragraph 82(2)(a)**

- (aa) setting off the amount of the debt against one or more payments under section 219QC or subsection 219QD(2) in respect of child care rebate;

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

Omit “71CA,”.

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

After “71CAB,”, insert “71CA, 71CB,”.

**38 Subsection 93A(6) (paragraphs (b) to (bb) of the definition of *family assistance payment*)**

Repeal the paragraphs, substitute:

- (b) a payment under section 219Q or subsection 219QA(2) (payments in respect of fee reduction); or
- (ba) a payment under section 219QC or subsection 219QD(2) (payments in respect of child care rebate); or
- (bb) a payment of an enrolment advance under section 219RA; or
- (bc) a payment under section 219RD (business continuity payments); or
- (bd) a payment of child care rebate under section 65EAA (including as that section applies because of subsection 65EAAF(2)); or
- (be) a payment of child care rebate under section 65EAA (including as that section applies because of subsection 65EAB(2)); or
- (bf) a payment of child care rebate under section 65EF; or

**39 Paragraphs 104(d) to (da)**

Repeal the paragraphs, substitute:

- (d) a decision by the Secretary under section 219Q or subsection 219QA(2) to pay an amount in respect of fee reduction; or
- (da) a decision by the Secretary under section 219QC or subsection 219QD(2) to pay an amount in respect of child care rebate; or
- (db) a decision under section 219RD (business continuity payments); or

- (dc) a calculation of an amount of child care rebate for a week under section 65EAAA, or a recalculation of such an amount under section 65EAAD; or
- (dd) a decision by the Secretary under subsection 65EAAAA(4) (allowing election after beginning of income year to be paid child care rebate weekly or quarterly) or under subsection 65EAAAB(3) (day on which new payment arrangement begins); or
- (de) a calculation of an amount of child care rebate for a quarter under section 65EAA, or a recalculation of such an amount under section 65EAB; or

#### **40 Paragraphs 108(2)(da) to (db)**

Repeal the paragraphs, substitute:

- (da) a decision by the Secretary under section 219Q or subsection 219QA(2) to pay an amount in respect of fee reduction; or
- (db) a decision by the Secretary under section 219QC or subsection 219QD(2) to pay an amount in respect of child care rebate; or
- (dc) a decision under section 219RD (business continuity payments); or
- (dd) a calculation of an amount of child care rebate for a week under section 65EAAA, or a recalculation of such an amount under section 65EAAD; or
- (de) a decision by the Secretary under subsection 65EAAAA(4) (allowing election after beginning of income year to be paid child care rebate weekly or quarterly) or under subsection 65EAAAB(3) (day on which new payment arrangement begins); or
- (df) a calculation of an amount of child care rebate for a quarter under section 65EAA, or a recalculation of such an amount under section 65EAB; or

#### **41 Subparagraph 108(2)(fa)(i)**

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

#### **42 Subparagraph 111(2)(a)(viii)**

Omit “57G(2)”, substitute “57G(3) or 57G(5)”.

**43 After subparagraph 111(2)(a)(ix)**

Insert:

- (ixa) paragraph 65EAAAA(2)(a);
- (ixb) subsection 65EAAB(3) or 65EAAE(4);

**44 After subparagraph 111(2)(a)(xiv)**

Insert:

- (xiva) subsection 219QE(3);
- (xivb) paragraph 219QE(5)(a);

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

After “subsection”, insert “57EAA(1),”.

**46 Subparagraph 154(4A)(d)(i)**

After “under”, insert “Subdivision AAB or”.

**47 After subparagraph 173(1)(d)(v)**

Insert:

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

**48 Paragraph 175(a)**

After “other than child care rebate”, insert “for a week under Subdivision AAB or”.

**49 Paragraph 175AA(a)**

After “child care rebate”, insert “for a week under Subdivision AAB or”.

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

Repeal the subparagraph, substitute:

- (iii) in the case of an approved child care service—an amount is paid under section 219Q or subsection 219QA(2) in respect of fee reduction, under section 219QC or subsection 219QD(2) in respect of

child care rebate or under section 219RA as an enrolment advance; or

**51 After paragraph 176(2)(a)**

Insert:

- (aa) the element of the offence that a payment in respect of child care rebate is paid to the service under section 219QC or subsection 219QD(2); and

**52 Subparagraph 176(3)(d)(iii)**

Repeal the subparagraph, substitute:

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

**53 After paragraph 176(4)(a)**

Insert:

- (aa) the element of the offence that a payment in respect of child care rebate is paid to the service under section 219QC or subsection 219QD(2); and

**54 Paragraph 178(1)(b)**

After “payments in respect of fee reduction,” insert “payments in respect of weekly child care rebate,”.

**55 Subparagraph 195(2)(b)(i)**

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

**56 At the end of subsection 200(1)**

Add:

- ; (i) suspend, for a maximum of 3 weeks, payment under section 219QC or subsection 219QD(2) in respect of child care rebate.

**57 After subsection 200(3B)**

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Insert:

*Revocation of suspension of payment in respect of child care rebate*

- (3C) If the Secretary suspends payment in respect of child care rebate, the Secretary may at any time, by notice to the service revoke the suspension. If the suspension is revoked, all payments under section 219QC or subsection 219QD(2) that would have been paid but for the suspension must be paid.

**58 Subsection 201(1)**

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

**59 Paragraphs 201B(1)(a) and (2)(c)**

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

**60 Before section 219A**

Insert:

**Subdivision A—Obligations relating to enrolment**

**61 Before section 219B**

Insert:

**Subdivision B—Obligations relating to child care benefit by fee reduction**

**62 After section 219E**

Insert:

**Subdivision C—Obligations relating to weekly child care rebate**

**219EA Obligation to pass on weekly child care rebate**

- (1) This section applies if:
- (a) the Secretary calculates under section 65EAAA, or recalculates under section 65EAAD, the amount of the child

care rebate that is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and

- (b) the Secretary has notified the service of the amount in accordance with subsection 65EAAB(2), or the recalculated amount in accordance with subsection 65EAAE(2).
- (2) Subject to subsection (5), the service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to the individual, except to the extent that the service is required to remit the amount to the Secretary under section 219QE.

Note 1: This amount must be passed on, even if the payment of child care rebate has been suspended under paragraph 200(1)(i).

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

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

Penalty: 60 penalty units.

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

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

- (5) If:

- (a) the Secretary, on recalculating under section 65EAAD the amount in which the Secretary considers child care rebate is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week, reduces the amount; and
- (b) the amount is reduced for a reason other than the substitution or withdrawal by the service of a report given under section 219N;

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

- (6) If:

- (a) the service reduces the amount by which it charges an individual in respect of care in anticipation of the Secretary's calculation of the amount of child care rebate applicable for

the service in respect of the individual and a child for a week;  
and

(b) the service was an approved child care service at the time the care was provided;

the service is taken to have passed on to the individual an amount equal to the anticipated child care rebate.

(7) The amount is taken to have been passed on to the individual on the day on which the Secretary notified the service of the amount in accordance with subsection 65EAAB(2) or 65EAAE(2).

### **219EB Obligation to provide additional material in section 219E statements**

(1) If:

(a) an approved child care service is required to pass on an amount under section 219EA to an individual in respect of care provided for a child by the service in a week; and

(b) the care is provided in a statement period for the service described in subsection 219E(4) or set out in rules made under paragraph 219E(6)(c);

the service must set out the additional matters specified in subsection (4) in relation to the care in the statement given to the individual or another person under section 219E for the statement period.

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) the approved child care service is required to pass on an amount under section 219EA to an individual in respect of care provided for a child by the service in a week; and

(b) the care is provided in a statement period for the service described in subsection 219E(4) or set out in rules made under paragraph 219E(6)(c); and

(c) the service does not set out the additional matters specified in subsection (4) in relation to the care in the statement given to the individual or another person under section 219E for the statement period.

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 additional matters required to be set out in the statement given under section 219E for the statement period are:

- (a) the amount of the fees for which the individual to whom the amount is passed on would have been liable for the care if any fee reduction under section 219B had been passed on but no amount of child care rebate had been passed on under section 219EA for the care; and
- (b) the amount of child care rebate required to be passed on under section 219EA.

- (5) If:

- (a) an approved child care service has, under subsection (1), included a matter in a statement (the *earlier statement*) given to an individual or other person under section 219E in relation to care provided by the service during a statement period; and
- (b) under subsection 65EAAE(2), the service is notified on a day (the *notification day*) of a recalculated amount in respect of the care;

the service must, before the end of the first statement period starting after the notification day, give the individual or other person either a statement setting out the additional matters specified in subsection (4) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

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

- (6) An approved child care service commits an offence if:

- (a) an approved child care service has, under subsection (1), included a matter in a statement (the *earlier statement*) given to an individual or other person under section 219E in relation to care provided by the service during a statement period; and
- (b) under subsection 65EAAE(2), the service is notified on a day (the *notification day*) of a recalculated amount in respect of the care; and

- (c) the service does not, before the end of the first statement period starting after the notification day, give the individual or other person either a statement setting out the additional matters specified in subsection (4) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

Penalty: 60 penalty units.

- (7) Subsection (6) is an offence of strict liability.

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

## **Subdivision D—Obligations relating to records**

### **63 Before section 219H**

Insert:

## **Subdivision E—Reporting and other obligations**

### **64 After paragraph 219N(4)(a)**

Insert:

- (aa) any information required by the Secretary that is relevant to:
- (i) determining whether an individual is eligible to receive child care rebate; or
  - (ii) determining the amount in which child care rebate is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week, a quarter or an income year; or
  - (iii) making a determination of entitlement in relation to the care under Division 4AA of Part 3; or
  - (iv) determining any other matter in relation to the payment of child care rebate to an individual; and

### **65 After subsection 219P(1)**

Insert:

- (1A) If the approval of a child care service is suspended or cancelled, the person who operated the child care service immediately before the service's approval was suspended or cancelled must fulfil the obligations under the following provisions in respect of care that

occurred before the approval was suspended or cancelled as if it had not been:

- (a) section 219EA;
- (b) section 219QE.

**66 Subsection 219P(2)**

After “subsection (1)”, insert “or (1A)”.

**67 After paragraph 219Q(3)(b)**

Insert:

- (ba) section 219QD (set off where amount of applicable child care rebate reduced on recalculation); and

**68 Paragraph 219QA(3)(a)**

Omit “subsection 219QA(2)”, substitute “subsection (2) of this section”.

**69 After paragraph 219QA(3)(a)**

Insert:

- (aa) one or more payments under section 219QC or subsection 219QD(2) in respect of child care rebate; or

**70 Subparagraph 219QB(1)(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) such an amount would be paid, but for a set off under subsection 82(2) or section 219QA, section 219QD, section 219RC or section 219RE, or the imposition of a sanction under paragraph 200(1)(h); and

**71 After Division 2 of Part 8A**

Insert:

**Division 2A—Weekly payments in respect of child care rebate to approved child care services**

**219QC Weekly payments of child care rebate**

(1) If:

- (a) the Secretary, under section 65EAAA, calculates the amount in which the Secretary considers child care rebate is

applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and

(b) the individual has made an election under paragraph 65EAAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service; the Secretary must pay the amount calculated to the credit of a bank account nominated and maintained by the service.

(2) If:

(a) the Secretary, on recalculating under section 65EAAD the amount in which the Secretary considers child care rebate is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week, increases the amount; and

(b) the individual has made an election under paragraph 65EAAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service; the Secretary must pay to the credit of a bank account nominated and maintained by the service an amount equal to the increase.

*Relationship with other provisions*

(3) This section is subject to:

(a) Part 4 (overpayments and debt recovery); and

(b) section 219QA (set off where amount of applicable fee reduction reduced on recalculation); and

(c) section 219QD (set off where amount of applicable child care rebate reduced on recalculation); and

(d) section 219RC (set off where enrolment ceases); and

(e) section 219RE (set off where a payment under section 219RD is made); and

(f) paragraph 200(1)(i) (suspending payment in respect of child care rebate).

**219QD Payments and set offs where recalculation results in reduced weekly child care rebate**

(1) This section applies if:

- (a) the Secretary, on recalculating under section 65EAAD the amount in which the Secretary considers child care rebate is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week, reduces the amount; and
  - (b) the individual has made an election under paragraph 65EAAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service; and
  - (c) the amount is reduced because of the substitution or withdrawal by the service of a report given under section 219N.
- (2) The Secretary must pay the amount as last recalculated to the credit of a bank account nominated and maintained by the service.
- (3) The amount as calculated, or recalculated, immediately before the last recalculation must be set off against a later payment to the service of an amount in respect of:
- (a) one or more payments under section 219Q or subsection 219QA(2) in respect of fee reduction; or
  - (b) one or more payments under section 219QC or subsection (2) of this section in respect of child care rebate; or
  - (c) one or more enrolment advances under section 219RA.

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

- (1) If:
- (a) either:
    - (i) an amount is paid to an approved child care service under section 219QC or subsection 219QD(2) for a week; or
    - (ii) such an amount would be paid, but for a set off under subsection 82(2), section 219QA, section 219QD, section 219RC or section 219RE, or the imposition of a sanction under paragraph 200(1)(i); and
  - (b) it is not reasonably practicable for the service to pass on to the individual within the time required under subsection 219EA(2) the child care rebate in respect of which the amount was or would have been paid;

the service must immediately remit to the Secretary an amount equal to the amount that could not be passed on.

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

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

Penalty: 60 penalty units.

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

**72 After paragraph 219RA(2)(b)**

Insert:

- (ba) section 219QD (set off where amount of applicable child care rebate reduced on recalculation); and

**73 Paragraph 219RC(b)**

Omit “or section 219QA”, substitute “, section 219QA or section 219QD”.

**74 At the end of section 219RC**

Add:

- ; or (e) any weekly payment of child care rebate that is to be paid to the service in relation to that or another enrolment.”.

**75 After paragraph 219RE(a)**

Insert:

- (aa) any amount that is to be paid to the service in respect of weekly child care rebate; or

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

Insert:

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(caa) about the amount of child care rebate applicable in respect of a person and a child for a week under Subdivision AAB of Division 4AA of Part 3; or

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

### **77 Application**

The amendments made by this Schedule apply in relation to income years beginning on or after 1 July 2011.

### **78 Transitional—elections made before 1 July 2011**

- (1) This item applies if an individual gives the Secretary notice, by the time and in the form and manner or way approved by the Secretary, electing to have child care rebate in respect of the individual and a child for care provided for the child in the 2011-2012 income year paid in one of the following ways:
    - (a) weekly into a bank account maintained by the individual alone or jointly or in common with someone else;
    - (b) weekly to one or more approved child care services;
    - (c) quarterly into a bank account maintained by the individual alone or jointly or in common with someone else.
  - (2) For the purposes of the Family Assistance Act and the Family Assistance Administration Act:
    - (a) if the notice is of the kind described in paragraph (1)(a) of this item—the individual is taken to have given notice under paragraph 65EAAAA(1)(a) of the Family Assistance Administration Act in relation to the 2011-2012 income year; and
    - (b) if the notice is of the kind described in paragraph (1)(b) of this item—the individual is taken to have given notice under paragraph 65EAAAA(1)(b) of the Family Assistance Administration Act in relation to the 2011-2012 income year; and
    - (c) if the notice is of the kind described in paragraph (1)(c) of this item—the individual is taken to have given notice under paragraph 65EAAAA(1)(c) of the Family Assistance Administration Act in relation to the 2011-2012 income year.
  - (3) If an individual does not give notice of the kind described in subitem 1, child care rebate (if any) in respect of the individual and the child for care provided during the 2011-2012 income year is to be paid:
-

- (a) if child care rebate was paid quarterly in respect of the individual and the child in relation to the 2010-2011 income year—quarterly; and
  - (b) otherwise—for the income year.
- (4) To avoid doubt, this item applies even if the Secretary approves the time, the form or the manner or way, in which the election is to be given before the day on which this item commences.

**79 Continued application of section 71B of the Family Assistance Administration Act**

The amendment made by item 28 of this Schedule does not affect section 71B of the Family Assistance Administration Act as it applies in relation to payments made before the commencement of that item.

**80 Continued application of section 93A of the Family Assistance Administration Act**

The amendment made by item 38 of this Schedule does not affect section 93A of the Family Assistance Administration Act as it applies in relation to payments made before the commencement of that item.

**81 Continued application of section 176 of the Family Assistance Administration Act**

The amendments made by items 50 and 52 do not affect section 176 of the Family Assistance Administration Act as it applies in relation to payments obtained before the commencement of those items.

**Schedule 2** Amendments to be made if the Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011 is passed after Schedule 1 commences

**Part 1** Amendment of the A New Tax System (Family Assistance) (Administration) Act 1999

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**Schedule 2—Amendments to be made if the  
Family Assistance and Other  
Legislation Amendment (Child Care  
and Other Measures) Act 2011 is  
passed after Schedule 1 commences**

**Part 1—Amendment of the A New Tax System  
(Family Assistance) (Administration) Act  
1999**

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

**1 Subsection 3(1) (after paragraph (a) of the definition of  
*child care service payment*)**

Insert:

(aa) a payment under section 219QC or subsection 219QD(2) in respect of child care rebate; or

**2 Subsection 65EAAE(2)**

Omit “Subject to subsection (3), the”, substitute “The”.

**3 Subsection 65EAAE(3)**

Repeal the subsection.

**4 Paragraph 108(2)(daaa)**

Repeal the paragraph.

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

Insert:

(dba) a decision under subsection 218RA(1A) not to pay enrolment advance; or

**6 Subsection 219EA(2)**

Omit “Subject to subsection (5), the”, substitute “The”.

**7 Subsection 219EA(5)**

Repeal the subsection.

**8 Paragraph 219QC(3)(d)**

After “ceases”, insert “or where notification of decision to cease operating service”.

**9 Subsection 219QD(1)**

Repeal the subsection, substitute:

(1) This section applies if:

- (a) the Secretary, on recalculating under section 65EAAD the amount in which the Secretary considers child care rebate is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week, reduces the amount (including to nil); and
- (b) the individual has made an election under paragraph 65EAAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service.

**10 Subsection 219QD(2)**

After “amount”, insert “(if any)”.

**11 Subsection 219QD(3)**

Omit all the words after “against”, substitute:

one or more child care service payments that are to be made to the service (the *first service*) or to another approved child care service operated by the person who operates the first service.

Note: For *child care service payment* see subsection 3(1).

**12 Subparagraph 219RC(3)(b)(ii)**

After “section 219QA”, insert “section 219QD”.

**13 Application**

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**Schedule 2** Amendments to be made if the Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011 is passed after Schedule 1 commences

**Part 1** Amendment of the A New Tax System (Family Assistance) (Administration) Act 1999

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- (1) The amendments made by items 2, 3, 6, 7, 9 and 10 of this Schedule apply in relation to recalculations done under section 65EAAD of the Family Assistance Administration Act on or after the commencement of those items in respect of weeks beginning before, on or after that commencement.
  - (2) The amendment made by item 11 of this Schedule applies in relation to payments that are to be made on or after the commencement of that item.

Amendments to be made if the Family Assistance and Other Legislation Amendment  
(Child Care and Other Measures) Act 2011 is passed after Schedule 1 commences

**Schedule 2**

Amendment of the Family Assistance and Other Legislation Amendment (Child Care  
and Other Measures) Act 2011 **Part 2**

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**Part 2—Amendment of the Family Assistance and  
Other Legislation Amendment (Child Care  
and Other Measures) Act 2011**

*Family Assistance and Other Legislation Amendment (Child  
Care and Other Measures) Act 2011*

**14 Items 5 and 6 of Schedule 1**

Repeal the items.

**Schedule 2** Amendments to be made if the Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011 is passed after Schedule 1 commences

**Part 3** Other consequential amendments

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## **Part 3—Other consequential amendments**

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

#### **15 After paragraph 97C(1)(b) of Schedule 1**

Insert:

(ba) subsection 219QD(3) of that Act (about set off where amount of weekly child care rebate reduced on recalculation); and

**Schedule 3—Amendments to be made if the  
Family Assistance and Other  
Legislation Amendment (Child Care  
and Other Measures) Act 2011 already  
passed**

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

**1 Subsection 3(1) (after paragraph (a) of the definition of  
*child care service payment*)**

Insert:

- (aa) a payment under section 219QC or subsection 219QD(2) in respect of child care rebate; or

**2 Before Subdivision AA of Division 4AA of Part 3**

Insert:

**Subdivision AAA—Election to have child care rebate paid in  
various ways**

**65EAAAA Individual may elect to have child care rebate paid in  
various ways**

- (1) An individual may give the Secretary notice in accordance with subsection (2) electing to have child care rebate in respect of the individual and a child for care provided for the child in an income year paid in one of the following ways:
- (a) weekly into a bank account maintained by the individual alone or jointly or in common with someone else;
  - (b) weekly to one or more approved child care services;
  - (c) quarterly into a bank account maintained by the individual alone or jointly or in common with someone else.

Note: Child care rebate is calculated on the basis of reports given by approved child care services in relation to each week of care under section 219N. A report for care provided in one week may be given up

to 2 weeks later. A service may therefore give a report for 2 weeks together. For this reason, payments of child care rebate to an individual for 2 successive weeks may be made together. The effective result is then a fortnightly payment.

- (2) A notice under subsection (1):
- (a) must be given in the form, and in the manner or way, approved by the Secretary; and
  - (b) must be given before the beginning of the income year to which the notice relates unless:
    - (i) the individual makes a claim after the beginning of the income year for payment of child care benefit by fee reduction for care provided for the child by one or more approved child care services; or
    - (ii) the Secretary makes a determination under subsection (4).
- (3) If an individual gives notice under subsection (1) when making a claim after the beginning of an income year for payment of child care benefit by fee reduction, the election is taken to relate to the income year in which the claim is made.
- (4) The Secretary may determine, in writing, that an individual may give notice under subsection (1) after the income year to which the notice relates has begun, if the Secretary is satisfied that there are exceptional circumstances justifying the determination.

Note: A determination of entitlement to child care rebate will be made for the income year under Subdivision A of this Division. So if a person is entitled to child care rebate, does not elect to have it paid weekly or quarterly and has not been receiving child care rebate weekly or quarterly as a result of a previous election (see section 65EAAAC), child care rebate will be paid after the end of the income year.

### **65EAAAB Period in which election has effect**

- (1) If:
- (a) a notice is given under paragraph 65EAAAA(1)(a) or (b) to have child care rebate paid weekly; and
  - (b) the notice is given before the income year to which it relates has begun;
- the election takes effect on the first Monday in the income year and continues in effect for each week all or part of which falls in the income year.

- (2) If:
- (a) a notice is given under paragraph 65EAAAA(1)(c) to have child care rebate paid quarterly; and
  - (b) the notice is given before the income year to which it relates has begun;
- the election takes effect on the first day of the first quarter in the income year and continues in effect for each quarter which falls in the income year.
- (3) If notice is given under subsection 65EAAAA(1) after the income year to which it relates has begun:
- (a) the Secretary must determine in writing the day on which the election is to take effect; and
  - (b) the election continues in effect:
    - (i) if the notice is given under paragraph 65EAAAA(1)(a) or (b) to have child care rebate paid weekly—for each week all or part of which falls in the income year; and
    - (ii) if the notice is given under paragraph 65EAAAA(1)(c) to have child care rebate paid quarterly—for each quarter which falls in the income year.

#### **65EAAAC Where no election made for an income year**

If an individual does not give notice under subsection 65EAAAA(1) for an income year, child care rebate in respect of the individual and the child for care provided during the income year is to be paid:

- (a) if child care rebate was paid in respect of the individual and the child in relation to the immediately preceding income year—in the same way as it was paid in relation to that year; and
- (b) otherwise—for the income year.

#### **Subdivision AAB—Weekly payments of child care rebate**

#### **65EAAA Weekly payments of child care rebate**

If:

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- (a) the Secretary is satisfied that an individual is eligible under subsection 57EAA(1) of the Family Assistance Act for child care rebate for a week in respect of a child; and
- (b) the Secretary has calculated an amount of fee reduction under subsection 50Z(1) in respect of the individual and the child for a session or sessions of care provided by an approved child care service in the week;

the Secretary must calculate the amount of the rebate which the Secretary considers is applicable in respect of the individual and the child for care provided for the child by the approved child care service in the week.

Note 1: The individual will not be eligible to have child care rebate paid weekly unless the individual has made an election under paragraph 65EAAA(1)(a) or (b) to have rebate paid weekly.

Note 2: The calculation is made in accordance with section 84AAA of the Family Assistance Act.

Note 3: The amount of fee reduction calculated under subsection 50Z(1) may be a nil amount (see section 4A).

**65EAAB Where individual elects to have child care rebate paid weekly to approved child care service**

- (1) This section applies if:
  - (a) the Secretary calculates an amount of child care rebate under section 65EAAA which the Secretary considers is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and
  - (b) the individual has made an election under paragraph 65EAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service.
- (2) The Secretary must notify the approved child care service of the amount calculated.
- (3) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (4) Without limiting subsection (3), the Secretary may approve notification of the amount by making the information available to the approved child care service using an electronic interface. In that case, the approved child care service is taken to have been

given the notice on the day on which the information is made available.

Note: The amount is then paid to the approved child care service under subsection 219QC(1).

**65EAAC Where individual elects to have child care rebate paid weekly into own bank account**

- (1) This section applies if:
  - (a) the Secretary calculates an amount of child care rebate under section 65EAAA which the Secretary considers is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and
  - (b) the individual has made an election under paragraph 65EAAA(1)(a) that is in effect for the week to have child care rebate paid weekly into a bank account nominated and maintained by the individual.
- (2) The Secretary must pay the amount of child care rebate calculated under section 65EAAA to the individual, at such time as the Secretary considers appropriate, by paying it to the credit of the bank account.
- (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) The Secretary must give notice to the individual:
  - (a) identifying the week or weeks to which the notice relates (the **rebate period**); and
  - (b) stating:
    - (i) the child's name; and
    - (ii) the amount of child care rebate calculated in respect of the rebate period (the **rebate amount**); and
    - (iii) the total amount of the individual's approved child care fees for care provided for the child by the approved child care service during the rebate period, worked out under step 1 of the method statement in section 84AAA of the Family Assistance Act when calculating the rebate amount; and

- (iv) the total amount (if any) of fee reductions for care provided for the child by the approved child care service during the rebate period, worked out under step 2 of the method statement in section 84AAA of the Family Assistance Act when calculating the rebate amount.
- (5) The calculation and payment of an amount of child care rebate applicable under this section is not ineffective by reason only that any, or all, of the requirements of subsection (4) are not complied with.
- (6) This section is subject to:
  - (a) section 65EAAF; and
  - (b) section 65EAB; and
  - (c) Part 4; and
  - (d) Division 3 of Part 8B.

**65EAAD Revising a calculation of weekly child care rebate**

The Secretary may recalculate an amount of child care rebate which the Secretary considers is applicable:

- (a) under section 65EAAA; or
- (b) under a previous application of this section;

in respect of an individual and a child for care provided for the child by an approved child care service in a week, 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 in which all or part of the week falls.

**65EAAE If weekly payment is to an approved child care service, notice of revised calculation must be given to the service**

- (1) This section applies if:
  - (a) the Secretary, under section 65EAAD, recalculates an amount of child care rebate which the Secretary considers is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and
  - (b) the individual has made an election under paragraph 65EAAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service.

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

Note: The effect of a recalculation on payments to an approved child care service is dealt with in subsection 219QC(2) and section 219QD.

### **65EAAF Effect of revised calculation—payment to the individual**

- (1) This section applies if:
    - (a) the Secretary, under section 65EAAD, recalculates an amount of child care rebate which the Secretary considers is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and
    - (b) the individual has made an election under paragraph 65EAAA(1)(a) that is in effect for the week to have child care rebate paid weekly into a bank account nominated and maintained by the individual.
  - (2) If the recalculation increases the amount of child care rebate applicable in respect of the individual and the child for care provided for the child by the service in the week, then subsections 65EAAAC(2), (3) and (6) apply to the increase as if the increase were the amount applicable under section 65EAAA.
  - (3) If the recalculation decreases the amount of child care rebate applicable in respect of the individual and the child for care provided for the child by the service in the week, the Secretary may set off all or a part of the decrease against an amount of child care rebate applicable under this Subdivision or Subdivision AA for that or any other approved child care service in respect of the individual and the child for a later period in the same income year.
  - (4) The Secretary must give notice to the individual:
-

- (a) identifying the week or weeks to which the notice relates (the *rebate period*); and
  - (b) stating:
    - (i) the child's name; and
    - (ii) the amount of child care rebate as recalculated under this section in respect of the rebate period (the *rebate amount*); and
    - (iii) the total amount of the individual's approved child care fees for care provided for the child by the approved child care service during the rebate period, worked out under step 1 of the method statement in section 84AAA of the Family Assistance Act when recalculating the rebate amount; and
    - (iv) the total amount (if any) of fee reductions for care provided for the child by the approved child care service during the rebate period, worked out under step 2 of the method statement in section 84AAA of the Family Assistance Act when recalculating the rebate amount.
- (5) The recalculation and payment of an amount of child care rebate applicable under this section is not ineffective by reason only that any, or all, of the requirements of subsection (4) are not complied with.

### **3 Paragraphs 108(2)(da) to (db)**

Repeal the paragraphs, substitute:

- (da) a decision by the Secretary under section 219Q or subsection 219QA(2) to pay an amount in respect of fee reduction; or
- (db) a decision by the Secretary under section 219QC or subsection 219QD(2) to pay an amount in respect of child care rebate; or
- (dc) a decision under subsection 219RA(1A) not to pay an enrolment advance; or
- (dd) a decision under section 219RD (business continuity payments); or
- (de) a calculation of an amount of child care rebate for a week under section 65EAAA, or a recalculation of such an amount under section 65EAAD; or
- (df) a decision by the Secretary under subsection 65EAAAA(4) (allowing election after beginning of income year to be paid

child care rebate weekly or quarterly) or under subsection 65EAAAB(3) (day on which new payment arrangement begins); or

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

#### **4 After subparagraph 111(2)(a)(ix)**

Insert:

- (ixa) paragraph 65EAAAA(2)(a);  
(ixb) subsection 65EAAAB(3) or 65EAAAE(3);

#### **5 After section 219E**

Insert:

### **Subdivision C—Obligations relating to weekly child care rebate**

#### **219EA Obligation to pass on weekly child care rebate**

- (1) This section applies if:
- (a) the Secretary calculates under section 65EAAA, or recalculates under section 65EAAD, the amount of the child care rebate that is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and
  - (b) the Secretary has notified the service of the amount in accordance with subsection 65EAAAB(2), or the recalculated amount in accordance with subsection 65EAAAE(2).
- (2) The service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to the individual, except to the extent that the service is required to remit the amount to the Secretary under section 219QE.

Note 1: This amount must be passed on, even if the payment of child care rebate has been suspended under paragraph 200(1)(i).

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

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

Penalty: 60 penalty units.

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

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

- (5) If:

(a) the service reduces the amount by which it charges an individual in respect of care in anticipation of the Secretary's calculation of the amount of child care rebate applicable for the service in respect of the individual and a child for a week; and

(b) the service was an approved child care service at the time the care was provided;

the service is taken to have passed on to the individual an amount equal to the anticipated child care rebate.

- (6) The amount is taken to have been passed on to the individual on the day on which the Secretary notified the service of the amount in accordance with subsection 65EAAB(2) or 65EAAE(2).

**219EB Obligation to provide additional material in section 219E statements**

- (1) If:

(a) an approved child care service is required to pass on an amount under section 219EA to an individual in respect of care provided for a child by the service in a week; and

(b) the care is provided in a statement period for the service described in subsection 219E(4) or set out in rules made under paragraph 219E(6)(c);

the service must set out the additional matters specified in subsection (4) in relation to the care in the statement given to the individual or another person under section 219E for the statement period.

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) the approved child care service is required to pass on an amount under section 219EA to an individual in respect of care provided for a child by the service in a week; and

- (b) the care is provided in a statement period for the service described in subsection 219E(4) or set out in rules made under paragraph 219E(6)(c); and
- (c) the service does not set out the additional matters specified in subsection (4) in relation to the care in the statement given to the individual or another person under section 219E for the statement period.

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 additional matters required to be set out in the statement given under section 219E for the statement period are:

- (a) the amount of the fees for which the individual to whom the amount is passed on would have been liable for the care if any fee reduction under section 219B had been passed on but no amount of child care rebate had been passed on under section 219EA for the care; and
- (b) the amount of child care rebate required to be passed on under section 219EA.

- (5) If:

- (a) an approved child care service has, under subsection (1), included a matter in a statement (the *earlier statement*) given to an individual or other person under section 219E in relation to care provided by the service during a statement period; and
- (b) under subsection 65EAAE(2), the service is notified on a day (the *notification day*) of a recalculated amount in respect of the care;

the service must, before the end of the first statement period starting after the notification day, give the individual or other person either a statement setting out the additional matters specified in subsection (4) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

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

- (6) An approved child care service commits an offence if:
-

- (a) an approved child care service has, under subsection (1), included a matter in a statement (the *earlier statement*) given to an individual or other person under section 219E in relation to care provided by the service during a statement period; and
- (b) under subsection 65EAAE(2), the service is notified on a day (the *notification day*) of a recalculated amount in respect of the care; and
- (c) the service does not, before the end of the first statement period starting after the notification day, give the individual or other person either a statement setting out the additional matters specified in subsection (4) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

Penalty: 60 penalty units.

- (7) Subsection (6) is an offence of strict liability.

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

## **Subdivision D—Obligations relating to records**

### **6 After Division 2 of Part 8A**

Insert:

## **Division 2A—Weekly payments in respect of child care rebate to approved child care services**

### **219QC Weekly payments of child care rebate**

- (1) If:
  - (a) the Secretary, under section 65EAAA, calculates the amount in which the Secretary considers child care rebate is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week; and
  - (b) the individual has made an election under paragraph 65EAAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service;

the Secretary must pay the amount calculated to the credit of a bank account nominated and maintained by the service.

- (2) If:
- (a) the Secretary, on recalculating under section 65EAAD the amount in which the Secretary considers child care rebate is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week, increases the amount; and
  - (b) the individual has made an election under paragraph 65EAAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service;
- the Secretary must pay to the credit of a bank account nominated and maintained by the service an amount equal to the increase.

*Relationship with other provisions*

- (3) This section is subject to:
- (a) Part 4 (overpayments and debt recovery); and
  - (b) section 219QA (set off where amount of applicable fee reduction reduced on recalculation); and
  - (c) section 219QD (set off where amount of applicable child care rebate reduced on recalculation); and
  - (d) section 219RC (set off where enrolment ceases or where notification of decision to cease operating service); and
  - (e) section 219RE (set off where a payment under section 219RD is made); and
  - (f) paragraph 200(1)(i) (suspending payment in respect of child care rebate).

**219QD Payments and set offs where recalculation results in reduced weekly child care rebate**

- (1) This section applies if:
- (a) the Secretary, on recalculating under section 65EAAD the amount in which the Secretary considers child care rebate is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week, reduces the amount (including to nil); and

- (b) the individual has made an election under paragraph 65EAAAA(1)(b) that is in effect for the week to have child care rebate paid weekly to the approved child care service.
- (2) The Secretary must pay the amount (if any) as last recalculated to the credit of a bank account nominated and maintained by the service.
- (3) The amount as calculated, or recalculated, immediately before the last recalculation must be set off against one or more child care service payments that are to be made to the service (the *first service*) or to another approved child care service operated by the person who operates the first service.

Note: For *child care service payment* see subsection 3(1).

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

- (1) If:
  - (a) either:
    - (i) an amount is paid to an approved child care service under section 219QC or subsection 219QD(2) for a week; or
    - (ii) such an amount would be paid, but for a set off under subsection 82(2), section 219QA, section 219QD, section 219RC or section 219RE, or the imposition of a sanction under paragraph 200(1)(i); and
  - (b) it is not reasonably practicable for the service to pass on to the individual within the time required under subsection 219EA(2) the child care rebate in respect of which the amount was or would have been paid;

the service must immediately remit to the Secretary an amount equal to the amount that could not be passed on.

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

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

Penalty: 60 penalty units.

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

**7 Paragraph 219RC(1)(b)**

Omit “or section 219QA”, substitute “section 219QA or section 219QD”.

**8 Subparagraph 219RC(3)(b)(ii)**

After “section 219QA,”, insert “section 219QD,”.

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

**9 After paragraph 97C(1)(b) of Schedule 1**

Insert:

- (ba) subsection 219QD(3) of that Act (about set off where amount of weekly child care rebate reduced on recalculation); and

**10 Application**

The amendments made by this Schedule apply in relation to income years beginning on or after 1 July 2011.

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*[Minister's second reading speech made in—  
House of Representatives on 23 February 2011  
Senate on 22 March 2011]*

(14/11)

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