





# **Family Assistance Legislation Amendment (Early Childhood Education and Care Coronavirus Response and Other Measures) Act 2021**

**No. 26, 2021**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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

*[Assented to 26 March 2021]*

The Parliament of Australia enacts:

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*No. 26, 2021      Family Assistance Legislation Amendment (Early Childhood Education  
and Care Coronavirus Response and Other Measures) Act 2021      1*

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## 1 Short title

This Act is the *Family Assistance Legislation Amendment (Early Childhood Education and Care Coronavirus Response and Other Measures) Act 2021*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 March 2021
2. Schedule 1, Parts 1 to 3	The day after this Act receives the Royal Assent.	27 March 2021
3. Schedule 1, Part 4	Immediately after the commencement of items 1 to 6 of Schedule 1 to the <i>Family Assistance Legislation Amendment (Improving Assistance for Vulnerable and Disadvantaged Families) Act 2020</i> .	1 July 2021
4. Schedule 1, Parts 5 and 6	The day after this Act receives the Royal Assent.	27 March 2021
5. Schedule 1, items 40 to 43	The day after this Act receives the Royal Assent.	27 March 2021
6. Schedule 1, item 44	1 July 2020.	1 July 2020
7. Schedule 1, items 45 to 51	The day after this Act receives the Royal Assent.	27 March 2021
8. Schedule 1, Part 8	The day after this Act receives the Royal Assent.	27 March 2021

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Note: This table relates only to the provisions of this Act as originally enacted.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.

### **3 Schedules**

Legislation 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

### Part 1—Emergencies and disasters

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

##### **1 After subsection 85BA(2)**

Insert:

- (2A) To avoid doubt, circumstances prescribed by the Minister’s rules for the purposes of subparagraph (1)(c)(iii) may include circumstances relating to an emergency or disaster.

Note: *Emergency or disaster* is defined in subsection 205C(2) of the Family Assistance Administration Act.

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

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

Insert:

*emergency or disaster* has the meaning given by subsection 205C(2).

##### **3 Paragraph 67GB(1)(d)**

After “section 205A”, insert “or 205C”.

##### **4 Section 70**

After “section 205A”, insert “or 205C”.

##### **5 Paragraph 71H(1)(a)**

After “205A”, insert “or 205C”.

##### **6 After subsection 71H(1)**

Insert:

- (1A) If:

- (a) an amount is paid under section 205C (business continuity payments—emergency or disaster) in respect of a child care service; and
  - (b) the provider of the service is not eligible for the whole or a part of the payment;
- then that whole or part is a debt due to the Commonwealth by the provider.

**7 Paragraph 71H(2)(a)**

After “205A”, insert “or 205C”.

**8 Subsection 93A(6) (paragraph (bc) of the definition of family assistance payment)**

After “205A”, insert “or 205C”.

**9 Paragraph 104(c)**

After “business continuity payments”, insert “—reports not given”.

**10 Paragraph 108(2)(d)**

After “business continuity payments”, insert “—reports not given”.

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

After “205A”, insert “or 205C”.

**12 Subparagraph 176(2)(d)(iii)**

After “205A”, insert “or 205C”.

**13 Paragraph 178(1)(b)**

Omit “or 205A”, substitute “, 205A or 205C”.

**14 After subsection 200B(1)**

Insert:

- (1A) The Minister’s rules may prescribe circumstances in which one or more weeks covered wholly or partly by a period of emergency or disaster are to be disregarded for the purposes of subparagraph (1)(b)(iii).

**15 Section 205A (at the end of the heading)**

Add “—reports not given”.

**16 Section 205B (heading)**

Repeal the heading, substitute:

**205B Setting off business continuity payments made under section 205A**

**17 At the end of Division 6 of Part 8A**

Add:

**205C Business continuity payments—emergency or disaster**

- (1) The Secretary may determine that a payment is to be made to an approved provider in relation to a period if the Secretary is satisfied that:
  - (a) an approved child care service of the provider has been adversely affected by an emergency or disaster; and
  - (b) the adverse effect on the service has, or is likely to have, a material adverse financial effect on the provider; and
  - (c) the provider and the service meet the eligibility criteria (if any) specified in the Minister’s rules; and
  - (d) the period is prescribed by the Minister’s rules; and
  - (e) the amount of the payment is:
    - (i) prescribed by the Minister’s rules; or
    - (ii) determined by a method prescribed by the Minister’s rules.
- (2) An *emergency or disaster* is:
  - (a) an emergency or disaster prescribed by the Minister’s rules for the purposes of this paragraph; or
  - (b) a major disaster (within the meaning of the *Social Security Act 1991*); or
  - (c) a Part 2.23B major disaster (within the meaning of the *Social Security Act 1991*).

- (3) The Minister's rules may prescribe any other matters relating to the making of payments under this section.
- (4) The Secretary must pay the amount of any payment under this section to the credit of a bank account nominated and maintained by the approved provider.
- (5) The Secretary must give the approved provider written notice of the payment and of the period to which the payment relates.

## Part 2—AAT review

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

#### 18 Subsection 3(1)

Insert:

*child care provider decision* has the meaning given by  
subsection 138(4).

#### 19 Paragraph 73(b)

After “*Administrative Appeals Tribunal Act 1975*”, insert “(the *AAT Act*)”.

#### 20 Paragraph 73(c)

After “the order”, insert “or the operation of subsection 43(5C) of the  
AAT Act”.

#### 21 Paragraph 73(c)

Omit “by way of family assistance”, substitute “under the family  
assistance law”.

#### 22 Paragraph 111(2)(f)

Repeal the paragraph, substitute:

(f) a child care provider decision;

#### 23 Paragraph 138(1)(a)

Omit “a decision made under Part 8 (approval of providers of child care  
services) in relation to a provider”, substitute “a child care provider  
decision”.

#### 24 Subsection 138(3)

Omit “a decision under Part 8 (approval of providers of child care  
services) in relation to a provider”, substitute “a child care provider  
decision”.

## **25 At the end of section 138**

Add:

### *Meaning of **child care provider decision***

- (4) Each of the following is a **child care provider decision**:
- (a) a decision under Part 4 (overpayments and debt recovery) in relation to a debt of an approved provider;
  - (b) a decision under Part 8 (approval of provider of child care services) in relation to a provider;
  - (c) a decision under section 205C (business continuity payments—emergency or disaster).

## **26 Application**

- (1) Section 73 of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as in force immediately after this Part commences, applies in relation to amounts paid under the family assistance law on or after that commencement.
- (2) Sections 111 and 138 of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as in force immediately after this Part commences, apply in relation to decisions made on or after that commencement.

## Part 3—Delegation of funding agreement powers

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

#### 27 Subsection 3(1)

Insert:

*non-corporate Commonwealth entity* has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

*official* has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

#### 28 Before subsection 221(1)

Insert:

*Delegation to officers*

#### 29 At the end of section 221

Add:

*Funding agreements*

- (5) The Secretary may delegate to an official of a non-corporate Commonwealth entity the Secretary's powers under section 85GA of the Family Assistance Act.
- (6) In exercising a power delegated under subsection (5), an official must comply with any directions of the Secretary.

Note: For *non-corporate Commonwealth entity* and *official*, see subsection 3(1).

**Part 4—Amendments relating to the Family  
Assistance Legislation Amendment  
(Improving Assistance for Vulnerable and  
Disadvantaged Families) Act 2020**

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

**30 Subsection 85CE(5C)**

Omit “12 months”, substitute “52 weeks”.

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

**31 Subsection 204K(1)**

Repeal the subsection (not including the heading), substitute:

- (1) An approved provider that gives the Secretary a certificate under section 85CB of the Family Assistance Act must, no later than the later of the following days, give an appropriate State/Territory body notice that the provider considers the child to whom the certificate relates is or was at risk of serious abuse or neglect:
  - (a) the day that is 6 weeks after the day the certificate takes effect;
  - (b) if the Secretary decides under subsection 85CB(2A) of that Act to extend for the provider the period of 28 days referred to in paragraph 85CB(2)(c) of that Act—the day that decision is made.

Note: A certificate cannot take effect on a day more than 28 days before the certificate is given unless that period is extended by the Secretary under subsection 85CB(2A) of the Family Assistance Act.

## **Part 5—Amendments relating to coronavirus response measures**

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

#### **32 At the end of section 103B**

Add:

***First deadline for 2018-19 income year***

- (4) Despite paragraph (1)(a), the ***first deadline*** for the 2018-19 income year is 31 March 2021.
- (5) Subsection (4) does not prevent the Secretary from allowing an individual a longer period in accordance with this section.

## **Part 6—Arrangements relating to coronavirus response measures**

### **33 Definitions**

In this Part:

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

*relevant period* means the period beginning on 6 April 2020 and ending on 12 July 2020.

### **34 Relevant period not included in determining cessation of enrolment**

Subparagraph 200B(1)(b)(iii) of the Family Assistance Administration Act applies as if the period of 14 weeks mentioned in that subparagraph did not include a week that occurred in the relevant period.

### **35 No requirement to report provision of care to children during relevant period**

- (1) An approved provider is not required under section 204B of the Family Assistance Administration Act to give a report for a week if the week occurred in the relevant period.
- (2) However, for the purposes of the operation of subsection 205A(1) of the Family Assistance Administration Act, the approved provider is taken to have been required to give the report.

### **36 Recovery of business continuity payments during relevant period**

- (1) This item applies in relation to an amount paid under section 205A of the Family Assistance Administration Act to an approved provider in relation to a period that occurred in the relevant period.
- (2) The Minister may, by legislative instrument, make rules determining circumstances in which the whole or part of the amount is taken to be a debt due to the Commonwealth by the provider under Part 4 of the Family Assistance Administration Act.

- (3) Subitem (2) applies despite section 70 of the Family Assistance Administration Act.

### **37 No set-off of business continuity payments during relevant period**

Section 205B of the Family Assistance Administration Act does not apply in relation to a payment made under section 205A of that Act to an approved provider if the payment was made in relation to a period that occurred in the relevant period.

### **38 Certain Minister's rules taken to be valid**

The following, as in force at the commencement of this Schedule, are for all purposes taken to be, and always to have been, valid exercises of the power to make Minister's rules under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999*:

- (a) paragraphs 8(1)(h) and (i) of the *Child Care Subsidy Minister's Rules 2017*;
- (b) section 47AA of the *Child Care Subsidy Minister's Rules 2017*.

### **39 Compensation for acquisition of property**

- (1) If the operation of this Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:
- (a) the Federal Court of Australia; or
  - (b) the Supreme Court of a State or Territory;
- for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

## **Part 7—CCS reconciliation deadlines**

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

#### **40 Section 67CA (paragraph beginning “Even if”)**

Omit “in time”.

#### **41 Paragraph 67CB(4)(b)**

Repeal the paragraph, substitute:

- (b) cannot again become entitled to be paid that CCS before the individual meets the CCS reconciliation conditions for the income year.

#### **42 Subsection 67CB(4) (note)**

After “Note”, insert “1”.

#### **43 At the end of subsection 67CB(4)**

Add:

- Note 2: CCS payments for an income year are capped if the CCS reconciliation conditions for the income year are met after the second deadline for the income year (see subsection 105D(2A)).

#### **44 Paragraph 67CD(10)(d)**

Repeal the paragraph, substitute:

- (d) if a determination was made for the individual under section 67CD for a week in a previous income year and the first deadline for the previous income year has passed—the individual has met the CCS reconciliation conditions for that previous income year.

#### **45 Paragraph 67EC(4)(b)**

Omit “no later than the second deadline for the relevant income year”.

#### **46 At the end of subsection 67EC(4)**

Add:

Note: CCS payments for an income year are capped if the CCS reconciliation conditions for the income year are met after the second deadline for the income year (see subsection 105D(2A)).

**47 Subsection 94A(2) (note)**

Omit “by the second deadline”, substitute “for the income year”.

**48 Subsection 103A(1)**

Omit “, by the second deadline for the relevant income year,”.

**49 After subsection 105D(2)**

Insert:

(2A) However, if:

- (a) the decision on review is a child care decision made under subsection 105E(3); and
- (b) the individual did not meet the CCS reconciliation conditions for the income year by the second deadline for the income year;

the decision must not have the effect that the amount of CCS the individual is entitled to be paid for the income year is more than the amount (less any withholding amounts) the individual was entitled to be paid for the income year before the child care decisions for the individual for the income year were set aside under paragraph 105E(2)(c).

**50 Subsection 105E(3)**

Omit “and by the second deadline for the relevant income year”.

**51 Application**

The amendments made by this Part (other than item 44) apply in relation to the 2018-19 income year and each later income year.

## **Part 8—Provider applications and approvals**

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

#### **52 At the end of subsection 194B(5)**

Add “, unless the Secretary considers that, due to special circumstances, it is appropriate for the approval to take effect on an earlier day”.

#### **53 Subsections 197AB(2) and (4)**

Repeal the subsections.

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*[Minister’s second reading speech made in—  
House of Representatives on 17 February 2021  
Senate on 18 March 2021]*

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(3/21)

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