



Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022

No. 66, 2022

**An Act to amend the law relating to family
assistance to provide more affordable early
childhood education and care, 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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No. 66, 2022

**An Act to amend the law relating to family
assistance to provide more affordable early
childhood education and care, and for related
purposes**

[Assented to 29 November 2022]

The Parliament of Australia enacts:

No. 66, 2022 Family Assistance Legislation Amendment (Cheaper Child Care) Act 1
2022

1 Short title

This Act is the *Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022*.

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 4 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 29 November 2022 |
| 2. Schedule 1, Part 1 | 1 July 2023. | 1 July 2023 |
| 3. Schedule 1, Part 2 | The day after this Act receives the Royal Assent. | 30 November 2022 |
| 4. Schedules 2 and 3 | 1 July 2023. | 1 July 2023 |
| 5. Schedule 4, Part 1 | The day after this Act receives the Royal Assent. | 30 November 2022 |
| 6. Schedule 4, Parts 2 and 3 | 1 July 2023. | 1 July 2023 |
| 7. Schedule 5 | The later of: (a) 1 January 2023; and (b) the day after this Act receives the Royal Assent. | 1 January 2023 |
| 8. Schedule 6, Part 1 | At the same time as the provisions covered by table item 7. | 1 January 2023 |
| 9. Schedule 6, Part 2 | Immediately after the commencement of the provisions covered by table item 7. | 1 January 2023 |

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 10. Schedules 7 and 8 | The day after this Act receives the Royal Assent. | 30 November 2022 |

Note: This table relates only to the provisions of this Act as originally enacted.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

4 Review of this Act

- (1) The Minister must cause an independent review to be conducted of the operation of the amendments made by this Act.
- (2) Without limiting subsection (1), the review must consider the impact of the amendments made by this Act on:
- (a) the cost of child care fees and the loss of subsidies to price increases and inflation; and
 - (b) the creation of new and additional child care places; and
 - (c) changes to service gaps across Australia, particularly in rural, regional and remote Australia; and
 - (d) changes to Indigenous children's attendance, specifically any increase in the number of Indigenous children attending child care; and
 - (e) the number of early childhood educators and any workforce gaps; and
 - (f) any increase to the workforce participation rate; and
 - (g) any increases in productivity.

-
- (3) The persons who conduct the review must consider both quantitative and qualitative research in conducting the review.
 - (4) The review must commence no later than 1 July 2024.
 - (5) The persons who conduct the review must give the Minister a written report of the review within 3 months of the commencement of the review.
 - (6) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Schedule 1—Child care subsidy rates

Part 1—Main amendments

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1)

Insert:

fourth income (other rate) threshold has the meaning given by subclause 3A(6) of Schedule 2.

2 Subsection 3(1) (definition of *fourth income threshold*)

Repeal the definition.

3 Subsection 3(1)

Insert:

lower income (base rate) threshold has the meaning given by subclause 3(4) of Schedule 2.

lower income (other rate) threshold has the meaning given by subclause 3A(6) of Schedule 2.

4 Subsection 3(1) (definition of *lower income threshold*)

Repeal the definition.

5 Subsection 3(1)

Insert:

second income (other rate) threshold has the meaning given by subclause 3A(6) of Schedule 2.

6 Subsection 3(1) (definition of *second income threshold*)

Repeal the definition.

7 Subsection 3(1)

Insert:

third income (other rate) threshold has the meaning given by subclause 3A(6) of Schedule 2.

8 Subsection 3(1) (definition of *third income threshold*)

Repeal the definition.

9 Subsection 3(1)

Insert:

upper income (base rate) threshold has the meaning given by subclause 3(4) of Schedule 2.

upper income (other rate) threshold has the meaning given by subclause 3A(6) of Schedule 2.

10 Subsection 3(1) (definition of *upper income threshold*)

Repeal the definition.

11 Subclause 3(1) of Schedule 2 (table)

Repeal the table, substitute:

| Applicable percentage | | |
|------------------------------|--|--|
| Item | If the individual's adjusted taxable income for the income year in which the CCS fortnight starts is: | Then the applicable percentage for the individual is: |
| 1 | equal to or below the lower income (base rate) threshold | 90% |
| 2 | above the lower income (base rate) threshold and below the upper income (base rate) threshold | see subclause (2) |
| 3 | equal to or above the upper income (base rate) threshold | 0% |

12 Subclause 3(2) of Schedule 2 (formula)

Repeal the formula, substitute:

$$90 - \left(\frac{\text{Individual's adjusted taxable income} - \text{Lower income (base rate) threshold}}{5,000} \right)$$

13 Subclause 3(3) of Schedule 2

Repeal the subclause.

14 Subclause 3(4) of Schedule 2

Repeal the subclause, substitute:

(4) In this Act:

lower income (base rate) threshold means \$80,000.

Note: This amount is indexed annually in line with CPI increases (see Schedule 4). However, the amount will not be indexed in 2023 (see subclause 3(9) of Schedule 4).

upper income (base rate) threshold means the lower income (base rate) threshold plus \$450,000.

15 Subclause 3A(1) of Schedule 2

Omit “An individual’s”, substitute “Subject to subclause (2), an individual’s”.

16 At the end of subclause 3A(1) of Schedule 2

Add:

; and (c) the individual’s adjusted taxable income for the income year in which the CCS fortnight starts is below the upper income (other rate) threshold.

Note: If the individual’s adjusted taxable income for the income year in which the CCS fortnight starts is equal to or above the upper income (other rate) threshold, the individual’s applicable percentage for the session of care is determined in accordance with clause 3.

17 Subclauses 3A(2) to (5) of Schedule 2

Repeal the subclauses, substitute:

(2) If the individual’s applicable percentage for the session of care would be a higher percentage if it were determined in accordance with clause 3 than the percentage determined in accordance with

Schedule 1 Child care subsidy rates

Part 1 Main amendments

this clause, the individual's *applicable percentage* for the session of care is that percentage determined in accordance with clause 3.

What is the applicable percentage?

- (3) If this clause applies in relation to the individual for the session of care, the individual's *applicable percentage* for the session of care is determined by the following table.

| Applicable percentage | | |
|------------------------------|--|--|
| Item | If the individual's adjusted taxable income for the income year in which the CCS fortnight starts is: | Then the applicable percentage for the individual is: |
| 1 | equal to or below the lower income (other rate) threshold | 95% |
| 2 | above the lower income (other rate) threshold and below the second income (other rate) threshold | see subclause (4) |
| 3 | equal to or above the second income (other rate) threshold and below the third income (other rate) threshold | 80% |
| 4 | equal to or above the third income (other rate) threshold and below the fourth income (other rate) threshold | see subclause (5) |
| 5 | equal to or above the fourth income (other rate) threshold and below the upper income (other rate) threshold | 50% |

- (4) If table item 2 applies, the individual's *applicable percentage* for the session of care is the lesser of:

- (a) 95%; and
(b) the percentage worked out using the following formula and rounding the result to 2 decimal places:

$$115 - \left(\frac{\text{Individual's adjusted taxable income} - \text{Lower income (other rate) threshold}}{3,000} \right)$$

- (5) If table item 4 applies, the individual’s ***applicable percentage*** for the session of care is the percentage worked out using the following formula and rounding the result to 2 decimal places:

$$80 - \left(\frac{\text{Individual's adjusted taxable income} - \text{Third income (other rate) threshold}}{3,000} \right)$$

- (6) In this Act:

fourth income (other rate) threshold means the lower income (other rate) threshold plus \$274,290.

lower income (other rate) threshold means \$72,466.

Note: This amount is indexed annually in line with CPI increases (see Schedule 4).

second income (other rate) threshold means the lower income (other rate) threshold plus \$105,000.

third income (other rate) threshold means the lower income (other rate) threshold plus \$184,290.

upper income (other rate) threshold means the lower income (other rate) threshold plus \$284,290.

18 Paragraph 13(2)(b) of Schedule 2

Omit “lower income threshold”, substitute “lower income (base rate) threshold”.

19 Clause 2 of Schedule 4 (table item 18)

Repeal the item, substitute:

| | | | |
|-----|---|---|---|
| 18 | Lower income (base rate) threshold for CCS | CCS lower income (base rate) threshold | subclause 3(4) of Schedule 2 definition of <i>lower income (base rate) threshold</i> |
| 18A | Lower income (other rate) threshold for CCS | CCS lower income (other rate) threshold | subclause 3A(6) of Schedule 2 definition of <i>lower income (other rate) threshold</i> |

Schedule 1 Child care subsidy rates

Part 1 Main amendments

20 Subclause 3(1) of Schedule 4 (table item 18)

Repeal the item, substitute:

| | | | | | |
|-----|---|---|----------|--|--------|
| 18 | CCS lower income (base rate) threshold | first day of first CCS fortnight of income year | December | highest December quarter before reference quarter (but not earlier than December quarter 2015) | \$1.00 |
| 18A | CCS lower income (other rate) threshold | first day of first CCS fortnight of income year | December | highest December quarter before reference quarter (but not earlier than December quarter 2015) | \$1.00 |

21 At the end of clause 3 of Schedule 4

Add:

No indexation for CCS lower income (base rate) threshold in 2023

- (9) The CCS lower income (base rate) threshold is not to be indexed on the first day of the first CCS fortnight of the income year starting on 1 July 2023.

22 Application of amendments

The amendments of the *A New Tax System (Family Assistance) Act 1999* made by this Part apply in relation to sessions of care provided to a child in a CCS fortnight that starts in the income year in which this item commences or in a later income year.

Part 2—Other amendments

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

23 Paragraph 67CC(2)(d)

After “session of care”, insert “in relation to which the individual is the claimant”.

24 Application of amendments

Paragraph 67CC(2)(d) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as amended by this Part, applies in relation to a week for which a report described in that paragraph has not been given to the Secretary, whether the week started before, on or after the commencement of this item.

Family Assistance Legislation Amendment (Child Care Subsidy) Act 2021

25 Part 2 of Schedule 2

Repeal the Part.

Schedule 2 Reporting and publication of certain information relating to approved providers

Part 1 Reporting of certain financial information by large child care providers

Schedule 2—Reporting and publication of certain information relating to approved providers

Part 1—Reporting of certain financial information by large child care providers

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

1 Subsection 3(1) (definition of *large centre-based day care provider*)

Repeal the definition.

2 Subsection 3(1)

Insert:

large child care provider has the meaning given by section 4A.

3 Section 4A (heading)

Repeal the heading, substitute:

4A Meaning of *large child care provider*

4 Subsection 4A(1)

Repeal the subsection, substitute:

- (1) A provider is a *large child care provider*, for a financial year, if, at any time in the financial year:
 - (a) the provider operates 25 or more approved child care services; or
 - (b) the provider is one of 2 or more related providers who together operate 25 or more approved child care services; or
 - (c) the provider proposes to operate, or is one of 2 or more related providers who propose to together operate, 25 or more approved child care services.
-

Note: The approved child care services may be any of the types referred to in the table in subclause 2(3) of Schedule 2 to the Family Assistance Act.

5 Paragraph 194C(e)

Omit “large centre-based day care provider”, substitute “large child care provider”.

6 Division 4 of Part 8A (heading)

Omit “large centre-based day care providers”, substitute “large child care providers”.

7 Section 203A (heading)

Omit “large centre-based day care providers”, substitute “large child care providers”.

8 Paragraph 203A(1)(a)

Omit “large centre-based day care provider”, substitute “large child care provider”.

9 Section 203B

Omit “large centre-based day care provider”, substitute “large child care provider”.

10 After section 203B

Insert:

203BA Requirement for large child care provider to report financial information

- (1) A provider that is a large child care provider for a financial year must give the Secretary a report in accordance with subsection (2).
- (2) A report under subsection (1) must:
 - (a) be given in a form and manner approved by the Secretary;
and
 - (b) include financial information of a kind prescribed by the Minister’s rules relating to:
 - (i) a financial year; or

Schedule 2 Reporting and publication of certain information relating to approved providers

Part 1 Reporting of certain financial information by large child care providers

- (ii) if a different period is prescribed by the Minister’s rules—the prescribed period; and
- (c) be given:
 - (i) within 3 months after the end of the period that applies under paragraph (b); or
 - (ii) if a different period for giving the report is prescribed by the Minister’s rules—within the prescribed period.

Civil penalty

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

Constitutional basis—additional operation of this section

- (4) In addition to section 85AB of the Family Assistance Act, this section also has the effect it would have if a reference to a large child care provider were expressly confined to a large child care provider that is a corporation to which paragraph 51(xx) of the Constitution applies.

Note: Section 85AB of the Family Assistance Act sets out the constitutional basis of the provisions of this Act in relation to child care subsidy and additional child care subsidy (including provisions in relation to approved providers).

11 Section 203C

After “203A”, insert “or a report received under section 203BA”.

12 Section 204J

Omit “large centre-based day care provider”, substitute “large child care provider”.

Part 2—Publication of certain information relating to approved providers

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

13 Subsection 3(1)

Insert:

ABN (short for Australian Business Number) has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

14 After section 162A

Insert:

162B Secretary may publish certain information relating to approved providers

- (1) The Secretary may publish, by electronic means, the following information in relation to an approved provider:
 - (a) the name of the approved provider;
 - (b) the approved provider's ABN;
 - (c) the name of each child care service in respect of which the approved provider is approved;
 - (d) information given to the Secretary by the approved provider under the family assistance law about the fees charged by the approved provider for child care provided by each child care service referred to in paragraph (c);
 - (e) information in relation to any increases in the fees referred to in paragraph (d) that is prescribed by the Minister's rules;
 - (f) if the approved provider is a large child care provider covered by paragraph 4A(1)(a) or (b)—financial information included in a report given to the Secretary by the provider under subsection 203BA(1);
 - (g) any other information prescribed by the Minister's rules.

Schedule 2 Reporting and publication of certain information relating to approved providers

Part 2 Publication of certain information relating to approved providers

Disclosure of personal information

- (2) For the purposes of:
- (a) paragraph 6.2(b) of Australian Privacy Principle 6; and
 - (b) a provision of a law of a State or Territory that provides that information that is personal may be disclosed if the disclosure is authorised by law;
- the disclosure of personal information under subsection (1) is taken to be a disclosure that is authorised by this Act.

Constitutional basis—additional operation of this section

- (3) In addition to section 85AB of the Family Assistance Act, this section also has the effect it would have if each reference to an approved provider were expressly confined to an approved provider that is a corporation to which paragraph 51(xx) of the Constitution applies.

Note: Section 85AB of the Family Assistance Act sets out the constitutional basis of the provisions of this Act in relation to child care subsidy and additional child care subsidy (including provisions in relation to approved providers).

Schedule 3—Activity test for Aboriginal or Torres Strait Islander children

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1)

Insert:

Aboriginal or Torres Strait Islander child has the meaning given by subclause 15A(3) of Schedule 2.

Aboriginal or Torres Strait Islander child result has the meaning given by clause 15A of Schedule 2.

Aboriginal or Torres Strait Islander person has the meaning given by subclause 15A(4) of Schedule 2.

2 Subclause 11(1) of Schedule 2 (at the end of the table)

Add:

| | | |
|---|---|---|
| 6 | Aboriginal or Torres Strait Islander child result in clause 15A | Aboriginal or Torres Strait Islander child result in clause 15A |
|---|---|---|

3 At the end of Division 1 of Part 5 of Schedule 2

Add:

15A Aboriginal or Torres Strait Islander child result

- (1) The *Aboriginal or Torres Strait Islander child result* is 36.
- (2) The Aboriginal or Torres Strait Islander child result applies to an individual for a CCS fortnight, in relation to a child, if:
 - (a) the individual is eligible for CCS for a session of care provided to the child in the CCS fortnight; and
 - (b) the child is an Aboriginal or Torres Strait Islander child; and

- (c) the Secretary has been notified, in a manner approved by the Secretary, that the child is an Aboriginal or Torres Strait Islander child.

Meaning of Aboriginal or Torres Strait Islander child

- (3) A child is an **Aboriginal or Torres Strait Islander child** if:
 - (a) all of the following apply:
 - (i) the child is of Aboriginal descent or of Torres Strait Islander descent (or both);
 - (ii) the child identifies as a person of that descent;
 - (iii) the child is accepted by the community in which the child lives as being of that descent; or
 - (b) the child is biologically related to an Aboriginal or Torres Strait Islander person; or
 - (c) the child is a member of a class prescribed by the Minister's rules.

Meaning of Aboriginal or Torres Strait Islander person

- (4) A person is an **Aboriginal or Torres Strait Islander person** if:
 - (a) the person is of Aboriginal descent or of Torres Strait Islander descent (or both); and
 - (b) the person identifies as a person of that descent; and
 - (c) the person is accepted by the community in which the person lives as being of that descent.

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

4 At the end of section 67FB

Add:

- (4) To avoid doubt, subsection (1) does not require an individual who is eligible for CCS or ACCS for an Aboriginal or Torres Strait Islander child to notify the Secretary that the child is an Aboriginal or Torres Strait Islander child.

5 Paragraph 105C(1)(b)

Omit “either”, substitute “one of the following applies”.

6 Subparagraph 105C(1)(b)(i)

Omit “or”.

7 After subparagraph 105C(1)(b)(i)

Insert:

- (ia) the information is that a child for whom the individual is eligible for CCS or ACCS is an Aboriginal or Torres Strait Islander child, and the information was notified to the Secretary in a manner approved by the Secretary;

8 Application of amendments

The amendments of the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule apply in relation to sessions of care provided to a child in a CCS fortnight that starts in the income year in which this item commences or in a later income year.

9 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments made by this Schedule.
- (2) To avoid doubt, rules made for the purposes of subitem (1) may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of an Act.

Schedule 4—Dealing with serious non-compliance

Part 1—Arrangements to comply with family assistance law

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

1 After paragraph 194C(d)

Insert:

- (da) the provider has arrangements in place to ensure that the provider and the following persons comply with the family assistance law:
 - (i) the persons mentioned in paragraphs (c) and (d);
 - (ii) each person that the provider, or a person mentioned in subparagraph (i), is responsible for managing; and

2 After paragraph 194D(d)

Insert:

- (da) the provider of the service has arrangements in place to ensure that the following persons comply with the family assistance law:
 - (i) the persons mentioned in paragraphs (c) and (d);
 - (ii) each person that a person mentioned in subparagraph (i) is responsible for managing; and

3 Paragraph 194E(1)(g)

Repeal the paragraph.

4 Application of amendments

Application for approval of a provider

- (1) The amendments of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Part apply in relation to an

application for approval of a provider under Division 1 of Part 8 of that Act if the application:

- (a) is made on or after the commencement of this item; or
- (b) was made before the commencement of this item but had not been determined before that commencement.

Application for variation of a provider's approval to add a service

- (2) The amendments of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Part apply in relation to an application by an approved provider under subsection 196A(1) of that Act for a variation of the provider's approval to add a child care service to the approval if the application:
 - (a) is made on or after the commencement of this item; or
 - (b) was made before the commencement of this item but had not been determined before that commencement.

Continued satisfaction of eligibility rules

- (3) For the purposes of applying subsection 195A(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* on or after the commencement of this item in relation to an approved provider that was approved under Division 1 of Part 8 of that Act before that commencement, or an approved child care service of the approved provider in respect of which the provider was approved under that Division before that commencement:
 - (a) the reference in paragraph 195A(1)(a) of that Act to the provider eligibility rules in section 194C of that Act is a reference to the rules in that section as amended by this Part; and
 - (b) the reference in paragraph 195A(1)(b) of that Act to the service eligibility rules in section 194D of that Act is a reference to the rules in that section as amended by this Part.
- (4) Subitem (3) is enacted for the avoidance of doubt and is not intended to limit the operation of subsection 195A(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* apart from that subitem.

Part 2—Electronic transfer of gap fees

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

5 Subsection 201B(1)

Omit “must take”, substitute “must, subject to subsections (1A) and (1B), take”.

6 Subsection 201B(1)

After “pays the provider”, insert “, using an electronic funds transfer system,”.

7 After subsection 201B(1)

Insert:

Exceptions to requirement to pay fees using an electronic funds transfer system

- (1A) The Secretary may decide that a particular individual is not to be required to pay the provider an amount required under subsection (1) using an electronic funds transfer system if the Secretary is satisfied that circumstances prescribed by the Minister’s rules exist in relation to the individual.
- (1B) If the Secretary is satisfied that exceptional circumstances exist in relation to a particular child care service, the Secretary may direct that all, or a part, of the amount that is to be paid by an individual to the provider of the service under subsection (1) is not required to be paid using an electronic funds transfer system.
- (1C) A direction under subsection (1B) is not a legislative instrument.

Part 3—Information for session reports

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

8 Paragraph 204B(2)(c)

Omit “required by the Secretary”, substitute “prescribed by the Secretary’s rules”.

9 Application of amendment

The amendment of section 204B of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Part applies in relation to a report that is required to be given under that section for a week that starts on or after the commencement of this item.

Schedule 5—Child care discount for early childhood workforce

A New Tax System (Family Assistance) Act 1999

1 Subclause 2(2) of Schedule 2

After “liable to pay”, insert “, or would, disregarding any discount allowed under section 201BA of the Family Assistance Administration Act, have been liable to pay,”.

2 At the end of subclause 2(2) of Schedule 2

Add:

Note: A discount allowed under section 201BA of the Family Assistance Administration Act may not attract fringe benefits tax in some circumstances: see subsection 47(2) of the *Fringe Benefits Tax Assessment Act 1986*.

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

3 Subsection 3(1)

Insert:

permissible staff discount has the meaning given by subsection 201BA(1).

4 At the end of subsection 201B(1)

Add:

Note: If, under subsection 201BA(1), the provider allows the individual, or the individual’s partner, a permissible staff discount for the week, the amount of the discount is not recoverable from the individual or the individual’s partner: see subsection 201BA(3).

5 After section 201B

Insert:

201BA Provider may allow discount for care provided to child of educator or cook engaged by provider

- (1) A provider to whom a notice is given of a fee reduction decision referred to in item 1 or 2 of the table in subsection 67EB(2) for an individual, for sessions of care provided by a child care service to a child in a week, may allow the individual, or the individual's partner, a discount (a *permissible staff discount*) on the pre-discount fee for the week for the individual, or the individual's partner, if:
- (a) the individual, or the individual's partner, is employed, contracted or otherwise engaged at a child care service by the provider, for any period during that week, as an educator (within the meaning of the Education and Care Services National Law) or a cook; and
 - (b) the child care service referred to in paragraph (a) is not a family day care service or an in home care service.

Note: For *pre-discount fee*, see subsection (4).

- (2) The permissible staff discount that may be allowed to the individual, or the individual's partner, for the week under subsection (1) must not be more than 95% of the pre-discount fee for that week for the individual or the individual's partner.
- (3) If the provider allows the individual, or the individual's partner, a permissible staff discount under subsection (1), the amount of the discount is not recoverable from the individual or the individual's partner.

Note: Providing care of a child in a child care facility to a current employee at a discount may not attract fringe benefits tax in some circumstances: see subsection 47(2) of the *Fringe Benefits Tax Assessment Act 1986*.

Meaning of pre-discount fee

- (4) For the purposes of this section, the *pre-discount fee* for the week for the individual, or the individual's partner, is the difference between:
- (a) the total of the hourly session fees for all sessions of care provided by the child care service to the child in the week; and

- (b) the sum of:
- (i) the fee reduction amount for the fee reduction decision for the individual in relation to those sessions of care; and
 - (ii) the amount of any payment prescribed by the Minister's rules for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act that the individual benefited from in respect of those sessions of care.

6 Application of amendments

The amendments of the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule apply in relation to sessions of care provided to a child in a week that starts on or after the commencement of this item.

Schedule 6—Discount on fee for session of care in prescribed circumstances

Part 1—Main amendments

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

1 Subsection 201B(1A)

Repeal the subsection.

2 Before section 201C

Insert:

201BB Provider may allow discount for session of care because of prescribed event or circumstance

- (1) A provider to whom a notice is given of a fee reduction decision referred to in item 1 or 2 of the table in subsection 67EB(2) for an individual, for sessions of care provided by a child care service to a child in a week, may allow the individual, or the individual's partner, a discount (a *prescribed circumstances discount*) on the pre-discount fee for the week for the individual, or the individual's partner, that is attributable to one or more sessions of care provided by the service to the child in the week if:
 - (a) the Minister's rules prescribe a particular event or circumstance; and
 - (b) each session of care to which the discount relates is provided during the period prescribed by the Minister's rules for that event or circumstance; and
 - (c) any other conditions prescribed by the Minister's rules for that event or circumstance are met.

Note: For *pre-discount fee*, see subsection (4).

- (2) The prescribed circumstances discount that may be allowed to the individual, or the individual's partner, under subsection (1) in relation to a session of care provided in the week may be the whole, or a part, of the pre-discount fee for the week for the

individual, or the individual's partner, that is attributable to the session of care.

- (3) If the provider allows the individual, or the individual's partner, a prescribed circumstances discount under subsection (1), the amount of the discount is not recoverable from the individual or the individual's partner.

Meaning of pre-discount fee

- (4) For the purposes of this section, the *pre-discount fee* for the week for the individual, or the individual's partner, is the difference between:
- (a) the total of the hourly session fees for all sessions of care provided by the child care service to the child in the week; and
 - (b) the sum of:
 - (i) the fee reduction amount for the fee reduction decision for the individual in relation to those sessions of care; and
 - (ii) the amount of any payment prescribed by the Minister's rules for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act that the individual benefited from in respect of those sessions of care; and
 - (iii) the amount of permissible staff discount (if any) allowed to the individual, or the individual's partner, for the week under subsection 201BA(1).

3 Paragraph 201C(1)(b)

Repeal the paragraph, substitute:

- (b) if the provider has, under subsection 201BB(1), allowed the individual, or the individual's partner, a discount in relation to the session of care—the provider charged immediately before the beginning of the period prescribed for the purposes of paragraph 201BB(1)(b).

4 Paragraph 201C(1A)(b)

Repeal the paragraph, substitute:

- (b) if the provider has, under subsection 201BB(1), allowed the individual, or the individual's partner, a discount in relation to the session of care—the provider charged immediately before the beginning of the period prescribed for the purposes of paragraph 201BB(1)(b).

5 Subsection 201C(1B)

Repeal the subsection, substitute:

- (1B) The approved provider of a child care service must not charge an individual to whom, or to whose partner, a permissible staff discount is allowed for a week under subsection 201BA(1), an hourly session fee for a session of care provided by the service that exceeds the hourly session fee that:

- (a) the provider would ordinarily charge an individual to whom a permissible staff discount is not allowed under subsection 201BA(1) for the week; or
- (b) if the provider has, under subsection 201BB(1), allowed the individual, or the individual's partner, a discount in relation to the session of care—the provider charged immediately before the beginning of the period prescribed for the purposes of paragraph 201BB(1)(b).

(1C) If:

- (a) an individual is eligible for CCS for a session of care provided by a child care service to a child; and
- (b) the approved provider of the service has, under subsection 201BB(1), allowed the individual, or the individual's partner, a discount in relation to the session of care;

the provider must not charge the individual, for the session of care, an hourly session fee that exceeds the hourly session fee that the provider charged immediately before the beginning of the period prescribed for the purposes of paragraph 201BB(1)(b).

6 Subsections 201C(2) and (3)

Omit "(1A) or (1B)", substitute "(1A), (1B) or (1C)".

7 Application of amendments

The amendments of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Part apply in relation to sessions of care provided to a child in a week that starts on or after the commencement of this item.

Part 2—Other amendments

A New Tax System (Family Assistance) Act 1999

8 Subclause 2(2) of Schedule 2

After “section 201BA”, insert “or 201BB”.

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

9 Subsection 201B(1) (note)

Omit “Note”, substitute “Note 1”.

10 At the end of subsection 201B(1)

Add:

Note 2: If, under subsection 201BB(1), the provider allows the individual, or the individual’s partner, a discount in relation to a session of care provided to the child in the week, the amount of the discount is not recoverable from the individual or the individual’s partner: see subsection 201BB(3).

11 Application of amendments

The amendments of the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Part apply in relation to sessions of care provided to a child in a week that starts on or after the commencement of this item.

Schedule 7—Additional absences in exceptional circumstances

A New Tax System (Family Assistance) Act 1999

1 Paragraph 10(1)(b)

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

2 At the end of section 10

Add:

- (5) A child care service is taken to have provided a session of care to a child on a day in a financial year if:
 - (a) the service is not taken to have provided the session of care to the child on the day under subsection (2) or (3) only because the day is:
 - (i) before the day the child first attended a session of care provided by the service; or
 - (ii) after the last day the child attended a session of care provided by the service before the child ceased to be enrolled for care by the service; and
 - (b) the Secretary is satisfied that exceptional circumstances exist in relation to:
 - (i) the child; or
 - (ii) the individual in whose care the child is; or
 - (iii) the partner of the individual in whose care the child is; or
 - (iv) an individual with whom the child lives; and
 - (c) the Secretary determines that the exceptional circumstances referred to in paragraph (b) apply in relation to the day.
- (6) A determination under paragraph (5)(c) is not a legislative instrument.

3 Application of amendments

The amendments of the *A New Tax System (Family Assistance) Act 1999* made by this Schedule apply in relation to sessions of care provided to a child in a week that starts on or after the commencement of this item.

Schedule 8—Extending period for passing on fee reduction amounts

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

1 Paragraph 67EA(b)

After “14 days”, insert “or a longer period directed by the Secretary”.

2 Section 71D

After “notice is given”, insert “(or, if that period has been extended under subsection 201A(2A), within the extended period)”.

3 After subsection 201A(2)

Insert:

- (2A) If the Secretary is satisfied that there might be an adverse impact on the individual if the fee reduction amount for the decision is passed on or remitted within the period of 14 days referred to in subsection (1), the Secretary may direct that the period of 14 days is extended by such period as the Secretary considers appropriate.
- (2B) If the Secretary gives a direction under subsection (2A) extending the period of 14 days referred to in subsection (1), subsection (1) has effect as if the reference to 14 days were a reference to the extended period.
- (2C) The Secretary may give more than one direction under subsection (2A) extending the period referred to in subsection (1).

4 Subsection 201A(6) (heading)

Omit “*remittal*”, substitute “*remittance*”.

5 Subsection 201A(6)

Omit “The provider’s notice must be given no later than 14 days after the notice of the fee reduction decision is given.”.

6 At the end of section 201A

Add:

- (7) The provider must give the notice under subsection (6):
- (a) no later than 14 days after the notice of the fee reduction decision was given; or
 - (b) if the Secretary has given a direction under subsection (2A) extending the period of 14 days referred to in subsection (1)—no later than the end of the extended period.

7 Application of amendments

The amendments of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule apply in relation to fee reduction decisions that are made on or after the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 27 September 2022
Senate on 27 October 2022]*

(90/22)
