



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

**No. 81, 1999**

## **Compilation No. 79**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *A New Tax System (Family Assistance) (Administration) Act 1999* that shows the text of the law as amended and in force on 25 March 2015 (the **compilation date**).

This compilation was prepared on 25 March 2015.

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to implement A New Tax System by providing assistance to families, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *A New Tax System (Family Assistance) (Administration) Act 1999*.

### **2 Commencement**

- (1) Sections 1 and 2 and subsection 235(5) commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence immediately after the commencement of the *A New Tax System (Family Assistance) Act 1999*.

## Part 2—Interpretation

### 3 Definitions

- (1) In this Act, unless the contrary intention appears:

**AAT** means the Administrative Appeals Tribunal.

**AAT Act** means the *Administrative Appeals Tribunal Act 1975*.

**advance assessment day**, in relation to a family tax benefit advance, has the meaning given by subsection 35A(3) and paragraph 35B(3)(b).

**agency** means:

- (a) the Department; or
- (b) the Human Services Department.

**amount of the entitlement**, in respect of child care benefit and a person, means:

- (a) in the case of an individual in respect of whom a determination has been made that the individual is entitled to be paid child care benefit by fee reduction in respect of an income year—the amount referred to in section 51B; and
- (b) in the case of an individual in respect of whom a determination has been made that the individual is entitled to be paid child care benefit for a past period for care provided by an approved child care service in an income year—the amount referred to in section 52E; and
- (c) in the case of an individual in respect of whom a determination has been made that the individual is entitled to be paid child care benefit for a past period for care provided by a registered carer—the amount referred to in section 52F; and
- (d) in the case of an individual in respect of whom a determination has been made that the individual is entitled to

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be paid child care benefit by single payment/in substitution because of the death of another individual—the amount referred to in section 53D; and

- (e) in the case of an approved child care service in respect of which a determination has been made that the service is entitled to be paid child care benefit by fee reduction for care provided by the service to a child at risk in respect of a financial year—the amount referred to in section 54B.

***approved centre based long day care service*** means a centre based long day care service in respect of which an approval as a centre based long day care service is in force under Division 1 of Part 8.

***approved child care service*** means:

- (a) an approved centre based long day care service; or
- (b) an approved family day care service; or
- (ba) an approved in-home care service; or
- (c) an approved occasional care service; or
- (d) an approved outside school hours care service.

***approved family day care service*** means a family day care service in respect of which an approval as a family day care service is in force under Division 1 of Part 8.

***approved in-home care service*** means an in-home care service in respect of which an approval as an in-home care service is in force under Division 1 of Part 8.

***approved occasional care service*** means an occasional care service in respect of which an approval as an occasional care service is in force under Division 1 of Part 8.

***approved outside school hours care service*** means an outside school hours care service in respect of which an approval as an outside school hours care service is in force under Division 1 of Part 8.

***audit team***, in relation to an audit of an operator of an approved child care service, means the expert engaged to carry out the audit

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of the operator and any person (other than an authorised officer) assisting the expert.

**Bank** includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the meaning of the *Banking Act 1959*.

**care percentage decision** means a decision to the extent that the decision involves (wholly or partly):

- (a) a determination of an individual's percentage of care for a child that was made, under a provision of Subdivision D of Division 1 of Part 3 of the Family Assistance Act, in relation to a claim for payment of family tax benefit; or
- (b) a determination relating to an individual that has effect, under section 35T of that Act, as if it were a determination made under such a provision.

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

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

**ceases** to be enrolled, in relation to a child to whom an approved child care service provides care, has the meaning given by section 219AD.

**centrelink program** has the same meaning as in the *Human Services (Centrelink) Act 1997*.

**Chief Executive Centrelink** has the same meaning as in the *Human Services (Centrelink) Act 1997*.

**Chief Executive Medicare** has the same meaning as in the *Human Services (Medicare) Act 1973*.

**child care service payment** means:

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- (a) a payment under section 219Q or subsection 219QA(2) in respect of fee reduction; or
- (aa) a payment under section 219QC or subsection 219QD(2) in respect of child care rebate; or
- (b) an enrolment advance under section 219RA; or
- (c) a payment under:
  - (i) subitem 97(5) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*; or
  - (ii) subitem 97A(5) of that Schedule (as modified by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009*); or
- (d) the payment known as Jobs Education and Training (JET) Child Care fee assistance that is paid by the Commonwealth; or
- (e) a payment specified in an instrument under subsection (4A).

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

***civil penalty provision*** means any of the following:

- (a) subsection 204(1);
- (b) subsection 219AC(1A) or (1B);
- (c) subsection 219AG(1A);
- (d) subsection 219B(2);
- (e) subsection 219BB(1);
- (f) subsection 219BC(1);
- (g) subsection 219BD(1);
- (h) subsection 219E(1) or (7);
- (ha) subsection 219EA(2);
- (hb) subsection 219EB(1) or (5);
- (j) subsection 219F(1) or (2);
- (k) subsection 219G(1), (3) or (4);
- (ka) subsection 219GA(6);
- (l) subsection 219L(1), (2) or (3);

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- (la) subsection 219LA(2) or (5);
- (m) subsection 219M(1) or (4);
- (n) subsection 219N(5A);
- (o) subsection 219NA(4);
- (p) subsection 219NB(1);
- (q) subsection 219P(1);
- (r) subsection 219QB(1);
- (sa) subsection 219QE(1);
- (s) section 219TSB;
- (t) a provision (if any) of the regulations that is declared to be a civil penalty provision in accordance with paragraph 235(1A)(b).

**decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**early claim day**, in relation to a claim for payment of family tax benefit by instalment, means the day occurring 97 days before the day that, on the day the claim is made, is the expected day on which the child to whom the claim relates will become an FTB child of the claimant. It does not matter whether the child becomes such an FTB child on the expected day.

**eligibility rules** means rules made under subsection 205(1).

**enrolled** in relation to a child to whom an approved child care service provides care, has the meaning given by subsections 219A(2) and 219AA(2).

**entitled to be paid family tax benefit by instalment**: a person is so entitled at a particular time if a determination under section 16 in relation to the person is in force at that time under which the person is entitled to be paid family tax benefit at or after that time.

**estimated income basis**: family tax benefit is worked out on an **estimated income basis** if it is worked out on the basis referred to in subsection 20(1), (2A) or (3).

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***executive officer***, in relation to an operator of an approved centre based long day care service, means a person, by whatever name called and whether or not a director of the operator, who is concerned in, or takes part in, the management of the operator.

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

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

***family assistance law*** means any one or more of the following:

- (a) this Act;
- (b) the Family Assistance Act;
- (c) any instrument (including regulations) made under this Act or the Family Assistance Act;
- (d) Schedules 5 and 6 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*.

***family tax benefit advance*** means the advance mentioned in Division 2 of Part 3.

***financial institution*** means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

***FTB advance debt*** has the meaning given by section 71A.

***head*** of an agency means:

- (a) in the case of the Department—the Secretary; or
- (b) in the case of the Human Services Department—the Secretary of the Human Services Department.

***Human Services Department*** means the Department administered by the Human Services Minister.

***Human Services Minister*** means the Minister administering the *Human Services (Centrelink) Act 1997*.

***income tax refund*** means an amount payable to a person:

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- (a) in respect of an overpayment of income tax imposed by the *Income Tax Act 1986*; or
- (b) in respect of an overpayment of Medicare levy payable in accordance with Part VIIB of the *Income Tax Assessment Act 1936*; or
- (c) in respect of an overpayment of an amount payable by the person by an assessment made under Part IV of the *Income Tax Assessment Act 1936* because of:
  - (i) subsection 106U(1) of the *Higher Education Funding Act 1988*; or
  - (ii) section 154-60 of the *Higher Education Support Act 2003*; or
  - (iii) section 12ZN of the *Student Assistance Act 1973*; or
- (d) as a refund of a tax offset that is subject to the refundable tax offset rules (see Division 67 of the *Income Tax Assessment Act*).

**income tax return** has the same meaning as in the *Income Tax Assessment Act 1997*.

**indexed actual income:**

- (a) for an individual in relation to family tax benefit—means the amount stated for the individual in a notice under subsection 20B(2); and
- (b) for an individual in relation to child care benefit—means the amount stated for the individual in a notice under subsection 55AB(2).

**indexed estimate:**

- (a) for an individual in relation to family tax benefit—means the amount stated for the individual in a notice under subsection 20A(2); and
- (b) for an individual in relation to child care benefit—means the amount stated for the individual in a notice under subsection 55AA(2).

**instalment amount**, in relation to family tax benefit, has the meaning given by subsection 23(2).



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***instalment period***, in relation to family tax benefit, has the meaning given by subsections 23(2) and (3).

***large long day care centre operator***, in relation to a financial year, means:

- (a) a person who operates, or proposes to operate, 25 or more approved centre based long day care services at any time during the financial year; or
- (b) 2 or more persons who, between them, operate, or propose to operate, 25 or more approved centre based long day care services during the financial year, so long as any of the following apply:
  - (i) one person has, at any time during the financial year, 25% or more of their executive officers in common with another person;
  - (ii) one person owns, at any time during the financial year, 15% or more of another person;
  - (iii) one person is entitled to receive, at any time during the financial year, 15% or more of the dividends paid by another person.

Note: See also subsection (4B).

***maximum amount***, in relation to a family tax benefit advance, has the meaning given by section 35D.

***medicare program*** has the same meaning as in the *Human Services (Medicare) Act 1973*.

***minimum amount***, in relation to a family tax benefit advance that is paid to an individual, means:

- (a) 3.75% of the FTB child rate for one FTB child who is under 13 years of age worked out under clause 7 of Schedule 1 to the Family Assistance Act (disregarding clauses 8 to 11 of that Schedule); or
- (b) if a determination under section 28 of that Act that the individual is eligible for a percentage (the ***section 28 percentage***) of the family tax benefit for FTB children of the

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individual is in force—the section 28 percentage of the paragraph (a) amount; or

- (c) if the amount that would be the minimum amount under paragraph (a) or (b) is not a number of whole cents—the amount rounded down to the nearest cent.

**officer** means an officer of an agency and includes:

- (a) the head of the agency; and
- (aa) if the agency is the Human Services Department:
  - (i) the Chief Executive Centrelink; and
  - (ii) the Chief Executive Medicare; and
- (b) an employee of the agency; and
- (c) any other person engaged by the agency, under contract or otherwise, to exercise powers, or perform duties or functions, of the agency.

**parental leave pay** has the same meaning as in the *Paid Parental Leave Act 2010*.

**personal information** has the same meaning as in the *Privacy Act 1988*.

**primary tax** means any amount due to the Commonwealth directly under a taxation law (within the meaning of the *Taxation Administration Act 1953*), including any such amount that is not yet payable.

**Principal Member** means the Principal Member of the Social Security Appeals Tribunal.

Note: Schedule 3 to the *Social Security (Administration) Act 1999* deals with the constitution and membership of the Social Security Appeals Tribunal.

**protected information** means:

- (a) information about a person that:
  - (i) was obtained by an officer under the family assistance law; and

- (ii) is or was held in the records of the Department or the Human Services Department; or
- (aa) information about a person that was held in the records of the Commonwealth Services Delivery Agency (within the meaning of the *Commonwealth Services Delivery Agency Act 1997* as in force before 1 July 2011); or
- (b) information about a person that:
  - (i) was obtained by an officer under the family assistance law; and
  - (ii) was held in the records of Medicare Australia (within the meaning of the *Medicare Australia Act 1973* as in force before 1 July 2011); or
- (ba) information about a person obtained by an officer under the family assistance law that was held in the records of the Health Insurance Commission; or
- (c) information to the effect that there is no information about a person held in the records of an agency.

**registered carer** means an individual approved as a registered carer under Division 2 of Part 8.

**reporting period**, in respect of an approved child care service, means:

- (a) if paragraph (b) does not apply—a quarter beginning on any 1 January, 1 April, 1 July or 1 October; or
- (b) if the service is covered by a determination made under subsection (5)—the period specified in the determination.

**schooling %**, in respect of an individual, means the schooling % calculated in respect of the individual under subclause 2(2) of Schedule 2 to the Family Assistance Act.

**Secretary** means the Secretary of the Department.

**social security law** has the same meaning as in the *Social Security Act 1991*.

**SSAT** means the Social Security Appeals Tribunal.

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Note: Schedule 3 to the *Social Security (Administration) Act 1999* deals with the constitution and membership of the SSAT.

**SSAT member** means a member of the SSAT (and includes the Principal Member).

Note: Schedule 3 to the *Social Security (Administration) Act 1999* deals with the constitution and membership of the SSAT.

**taxable income %**, in respect of an individual, means the taxable income % calculated in respect of the individual under Part 4 of Schedule 2 to the Family Assistance Act.

**tax file number** has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*.

**TFN claim person:**

- (a) in relation to a claim for family tax benefit under Subdivision A of Division 1 of Part 3, means:
  - (i) the claimant; and
  - (ii) if the claim is for payment of family tax benefit by instalment—the claimant's partner (if any) at the time of the claim; and
  - (iii) if the claim is for payment of family tax benefit for a past period—any partner of the claimant during the past period; or
- (b) in relation to a claim by a claimant who is an individual for child care benefit under Subdivision A of Division 4 of Part 3, means:
  - (i) the claimant; and
  - (ii) if the claim is for payment of child care benefit by fee reduction—the claimant's partner (if any) at the time of the claim; and
  - (iii) if the claim is for payment of child care benefit for a past period for care provided by an approved child care service—any partner of the claimant during the past period; or
- (c) in relation to a claim for a stillborn baby payment in normal circumstances under Division 3 of Part 3, means:

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- (i) the claimant; and
- (ii) the claimant's partner (if any) at the time of the claim;  
or
- (d) in relation to a claim for single income family supplement under Division 4E of Part 3, means:
  - (i) the claimant; and
  - (ii) if the claim is for payment of single income family supplement for a past period—any partner of the claimant during the past period.

***TFN determination person*** means:

- (a) in relation to family tax benefit and:
  - (i) a determination under which the claimant is entitled to be paid family tax benefit by instalment—the claimant or any partner of the claimant at any time since the determination was made; or
  - (ii) a determination under which the claimant is entitled to be paid family tax benefit for a past period—the claimant or any partner of the claimant during the past period; or
- (b) in relation to child care benefit and:
  - (i) a determination under which the claimant who is an individual is conditionally eligible for child care benefit by fee reduction—the claimant or any partner of the claimant at any time since the determination was made; or
  - (ii) a determination under which the claimant who is an individual is entitled to be paid child care benefit for a past period for care provided by an approved child care service—the claimant or any partner of the claimant during the past period; or
- (c) in relation to single income family supplement and a determination under which the claimant is entitled to be paid single income family supplement for a past period—the claimant or any partner of the claimant during the past period.

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**TFN substitution person**, in relation to a claim:

- (a) by an individual for payment of family tax benefit by single payment/in substitution because of the death of another individual based on eligibility for an amount of family tax benefit under section 33 of the Family Assistance Act; or
- (b) by an individual for payment of child care benefit by single payment/in substitution because of the death of another individual for care provided by an approved child care service based on eligibility for an amount of child care benefit under section 46 of the Family Assistance Act; or
- (c) by an individual for payment of a stillborn baby payment in substitution because of the death of another individual; or
- (d) by an individual for payment of single income family supplement by single payment/in substitution because of the death of another individual based on eligibility for an amount of single income family supplement under section 57GG of the Family Assistance Act;

means the deceased individual and any partner of the deceased individual during the period in respect of which the payment is claimed.

- (2) Expressions used in this Act that are defined in the Family Assistance Act have the same meaning as in that Act.
- (4) A reference to a **determination** is a reference to a determination as originally made or, if the determination has been varied, as varied.
- (4A) The Minister may, by legislative instrument, specify a payment for the purposes of paragraph (e) of the definition of **child care service payment** in subsection (1). The payment must be one made to child care services under a scheme or program (however described) administered by the Department.
- (4B) For the purposes of the definition of **large long day care centre operator**, the Minister may, by legislative instrument, vary the number of approved centre based long day care services specified in paragraph (a) or (b) of the definition.

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- (5) For the purposes of paragraph (b) of the definition of ***reporting period***, the Secretary may determine that a specified period that is not a quarter is the reporting period for:
  - (a) one approved child care service; or
  - (b) a class of approved child care services.
- (6) If the Secretary makes a determination under subsection (5), the Secretary must give the service, or services concerned, notice of the reporting period determined in respect of the service.

**3A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

**4 Approval of use of electronic equipment etc. to do things for the purposes of the family assistance law**

- (1) If, under a provision of the family assistance law, the Secretary or another officer may approve the form, manner or way of:
  - (a) making or withdrawing any application or claim; or
  - (b) doing any other thing that is required or permitted to be done for the purposes of that law;then, without limiting that provision, the Secretary or other officer may approve the making or withdrawing of the application or claim, or the doing of the other thing:
  - (c) by the use of a telecommunications system or other electronic equipment; or
  - (d) by the use of software registered with the Secretary.
- (2) A person may apply to have software registered by the Secretary for the purposes of a particular application, claim or other thing, or a class of applications, claims or other things.
- (3) The Secretary may, at his or her discretion, register the software for the purposes of that application, claim or other thing, or class of applications, claims or other things.

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

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

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



## **Part 3—Payment of family assistance**

### **Division 1—Family tax benefit**

#### **Subdivision A—Making claims**

##### **5 Need for a claim**

- (1) The only way that a person can become entitled to be paid family tax benefit is to make a claim in accordance with this Subdivision.
- (2) A claim is not required for an amount of family tax benefit under section 58AA of the Family Assistance Act.

##### **6 Who can claim**

The only persons who can make a claim in accordance with this Subdivision are individuals or approved care organisations.

##### **7 How to claim**

- (1) An individual or approved care organisation (a ***claimant***) may make a claim:
  - (a) for payment of family tax benefit by instalment; or
  - (b) for payment of family tax benefit for a past period; or
  - (c) in the case only of a claimant who is an individual—for payment of family tax benefit by single payment/in substitution because of the death of another individual.

*Form etc. of claim*

- (2) To be effective:
  - (a) a claim must:
    - (i) be made in a form and manner; and
    - (ii) contain any information; and
    - (iii) be accompanied by any documents;

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- required by the Secretary; and
- (aa) in the case of a claim for family tax benefit by instalment—the bank account requirement set out in section 7A must be satisfied in relation to the claim; and
  - (b) in the case of a claim by an individual for payment of family tax benefit by instalment or for a past period—the tax file number requirement in section 8 must be satisfied in relation to the claim; and
  - (c) in the case of a claim by an individual for payment of family tax benefit in substitution because of the death of another individual—the tax file number requirement in section 8A must be satisfied in relation to the claim.
- (3) A claim is not effective if it is made before the early claim day.

**7A Bank account details or statement to be provided for claims for family tax benefit by instalment to be effective**

- (1) This section sets out the bank account requirement that must be satisfied in relation to a claim for the purposes of paragraph 7(2)(aa) (which states what is required for certain claims to be effective).

*Requirement concerning bank account details*

- (2) The requirement is that the claimant provide:
- (a) details of a bank account maintained by the person alone or jointly or in common with someone else into which instalments of family tax benefit are to be paid; or
  - (b) a statement that the claimant will nominate, and provide details of, such a bank account within 28 days after the claim is made.

*How details or statement to be given*

- (3) The bank account details or statement must be provided in the claim.

*Exemption from bank account requirement*

- (4) The Secretary may determine that the requirement in subsection (2) does not apply to a claimant if the Secretary considers that it is appropriate to exempt the claimant from the requirement.

**8 Tax file number requirement to be satisfied for claims for family tax benefit by instalment or for a past period to be effective**

- (1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 7(2)(b) (which states what is required for certain claims to be effective).
- (2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN claim person. However, the requirement does not apply in relation to a TFN claim person if a determination is in force under subsection (7) in relation to the person.

*Statement of tax file number*

- (3) The first kind of statement that can be made is a statement of the TFN claim person's tax file number. Regardless of who the TFN claim person is, this kind of statement can be made by the claimant only.

*Statement that TFN claim person does not know what his or her tax file number is etc.*

- (4) The second kind of statement that can be made is a statement by the TFN claim person that the person:
- (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  - (c) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) whether the person has a tax file number; and

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- (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (5) The third kind of statement that can be made is a statement by the TFN claim person that the person:
  - (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn.

*How statement to be given*

- (6) A statement made by the claimant must be in the claim. A statement made by any other TFN claim person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

*Exemption from tax file number requirement*

- (7) The Secretary may determine that the requirement in subsection (2) does not apply to a TFN claim person if:
  - (a) the person is, or was, the claimant's partner; and
  - (b) the claimant cannot obtain from the person:
    - (i) the person's tax file number; or
    - (ii) a statement by the person under subsection (4) or (5).

**8A Tax file number requirement to be satisfied for claim in substitution because of the death of another individual to be effective**

- (1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 7(2)(c)

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(which states what is required for claims in substitution because of the death of another individual to be effective).

- (2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN substitution person.

*Statement of tax file number*

- (3) The first kind of statement that can be made is a statement of a TFN substitution person's tax file number. Regardless of whom the TFN substitution person is, this kind of statement can be made by the claimant only.

*Statement that TFN substitution person does not know what his or her tax file number is*

- (4) The second kind of statement that can be made is a statement by a TFN substitution person who was the deceased individual's partner during the period in respect of which the payment is claimed to the effect that the TFN substitution person:
- (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  - (c) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) whether the person has a tax file number; and
    - (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (5) The third kind of statement that can be made is a statement by the TFN substitution person who was the deceased individual's partner during the period in respect of which the payment is claimed to the effect that the TFN substitution person:
- (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:

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- (i) if a tax file number is issued to the person—that number; or
- (ii) if the application is refused—that the application has been refused; or
- (iii) if the application is withdrawn—that the application has been withdrawn.

*How statement to be given*

- (6) A statement made by the claimant must be made in the claim. A statement made by a TFN substitution person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

*Exemption from tax file number requirement*

- (7) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant does not know the person's TFN.
- (8) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant cannot obtain a statement referred to in subsection (4) or (5) in respect of the person.

**9 Restrictions on claims for payment of family tax benefit by instalment**

A claim for payment of family tax benefit by instalment is not effective if, at the time (the *determination time*) when the claim would be determined:

- (a) the claimant has previously made a claim for payment of family tax benefit by instalment and that claim has not yet been determined; or
- (b) the claimant is already entitled to be paid family tax benefit by instalment; or
- (c) the following apply:

- (i) a determination under section 16 is in force under which the claimant is not, because of a variation of the determination under subsection 27(5), 27A(3), 28A(2), 28B(2), 28B(3), 29(2), 30(2), 30A(2) or 30B(2), entitled to be paid family tax benefit at the determination time or at any later time;
- (ii) the determination time is before the end of the income year following the one in which the variation mentioned in that subsection took effect.

## **10 Restrictions on claims for payment of family tax benefit for a past period**

### *Restriction where previous claim or instalment determination*

- (1) A claim for payment of family tax benefit for a past period is not effective if:
  - (a) the claimant has previously made a claim for payment of family tax benefit for any of the past period (whether or not the claim has yet been determined); or
  - (b) the claimant was entitled to be paid family tax benefit by instalment at any time in the past period; or
  - (c) the following apply:
    - (i) a determination under section 16 was in force at any time in the past period under which the claimant was not, because of a variation of the determination under subsection 27(5), 27A(3), 28A(2), 28B(2), 28B(3), 29(2), 30(2), 30A(2) or 30B(2), entitled to be paid family tax benefit;
    - (ii) the claim is made before the end of the income year following the one in which the variation mentioned in that subsection took effect.

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*Claim must relate to one income year and be made within a certain period*

- (2) A claim for payment of family tax benefit for a past period is not effective if:
- (a) the period does not fall wholly within one income year; or
  - (b) the period does fall wholly within one income year (the **relevant income year**) but the claim is made after the end of:
    - (i) the first income year after the relevant income year; or
    - (ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the claimant from making the claim before the end of that first income year.
- (2A) The further period referred to in subparagraph (2)(b)(ii) must end no later than the end of the second income year after the relevant income year.

*Claim must be accompanied by instalment claim in some circumstances*

- (3) A claim for payment of family tax benefit for a past period is not effective if:
- (a) the period occurs in the income year in which the claim is made; and
  - (b) at the time the claim is made, the claimant is eligible for family tax benefit; and
  - (c) at the time the claim is made, the claimant is not prevented by section 9 from making an effective claim for payment of family tax benefit by instalment; and
  - (d) the claim is not accompanied by a claim for payment of family tax benefit by instalment.
- (4) A claim for payment of family tax benefit for a past period is not effective if:
- (a) the period occurs in either of the 2 income years before the one in which the claim is made; and



- (b) if the claimant is an individual—at any time during the past period, the claimant, or the claimant's partner, received a social security benefit, social security pension, service pension or income support supplement; and
  - (c) at the time the claim is made, the claimant is eligible for family tax benefit; and
  - (d) if the claimant is an individual—at the time the claim is made, the claimant, or the claimant's partner, is receiving a social security benefit, social security pension, service pension or income support supplement; and
  - (e) at the time the claim is made, the claimant is not prevented by section 9 from making an effective claim for payment of family tax benefit by instalment; and
  - (f) the claim is not accompanied by a claim for payment of family tax benefit by instalment.
- (5) Paragraph (4)(f) does not apply if, at the time the claim for payment of family tax benefit for a past period is made, subsection 32AE(2) applies in respect of the claimant or subsection 32AE(5) applies in respect of the claimant's partner.

## **11 Restrictions on bereavement claims**

*Entitlement must not already have been determined, or be awaiting determination, on a previous claim*

- (1) A claim for payment of family tax benefit by single payment/in substitution because of the death of another individual is not effective if the claimant has previously made a claim for payment of family tax benefit because of the death of that individual (whether or not the claim has yet been determined).

*Single payment/substitution claims must relate to current or previous income year*

- (2) If a claim for payment of family tax benefit by single payment/in substitution because of the death of another individual is based on eligibility for an amount of family tax benefit under

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subsection 32(2) or section 33 of the Family Assistance Act, the claim is not effective if it is made after the end of the income year following the one in which the death mentioned in that provision occurred.

**12 Claim may be withdrawn or varied**

- (1) A claimant may withdraw or vary a claim before the claim is determined.
- (2) The claimant may only do so in a manner determined by the Secretary.
- (3) If a claim is withdrawn, it is taken never to have been made.

**Subdivision B—Determination of claims etc.**

**13 Secretary must determine claim**

- (1) If an effective claim is made, the Secretary must determine the claim in accordance with this Subdivision. If a claim is not effective, it is taken not to have been made.

**14 Restriction on determining claim where income tax assessment not made**

- (1) If, in relation to a claim for payment of family tax benefit made by an individual:
  - (a) the claim is for payment of that benefit for a past period; and
  - (b) the past period falls in an income year (the *past period income year*) that is one of the 2 income years before the one in which the claim is made; and
  - (c) either or both of subsections (2) and (3) apply;the Secretary can only determine the claim if each assessment concerned has been made.
- (2) This subsection applies if:

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- (a) the claimant is required to lodge an income tax return for the past period income year; and
  - (b) at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on the claimant's taxable income for the past period income year.
- (3) This subsection applies if:
- (a) at the time the claim is made, a person is the claimant's partner and that person was the claimant's partner at any time during the past period; and
  - (b) that person is required to lodge an income tax return for the past period income year; and
  - (c) at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on that person's taxable income for the past period income year.

**14A Restriction on determining claim where income tax return not lodged**

- (1) If, in relation to a claim for payment of family tax benefit made by an individual:
- (a) the claim is for payment of that benefit for a past period; and
  - (b) the past period falls in an income year (the ***past period income year***) that is one of the 2 income years before the one in which the claim is made; and
  - (c) either or both of subsections (2) and (3) apply;
- then the claim is taken never to have been made.
- (2) This subsection applies if:
- (a) the claimant is required to lodge an income tax return for the past period income year; and
  - (b) the claimant has not lodged the return before the end of:
    - (i) the first income year after the past period income year;or

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- (ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the claimant from lodging the return before the end of that first income year.
- (3) This subsection applies if:
  - (a) at the time the claim is made, a person is the claimant's partner, and that person was the claimant's partner at any time during the past period; and
  - (b) that person is required to lodge an income tax return for the past period income year; and
  - (c) that person has not lodged the return before the end of:
    - (i) the first income year after the past period income year; or
    - (ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the income tax return before the end of that first income year.
- (4) The further period referred to in subparagraph (2)(b)(ii) or (3)(c)(ii) must end no later than the end of the second income year after the past period income year.

**15 Restriction on determining claim where tax file number not provided etc.**

*Statement that TFN claim person or TFN substitution person does not know what his or her tax file number is etc.*

- (1) If:
  - (a) a TFN claim person makes a statement of the kind set out in subsection 8(4); or
  - (b) a TFN substitution person makes a statement of the kind set out in subsection 8A(4);the Secretary can only determine the claim concerned if:

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- (c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or
- (d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that the person has no tax file number.

*Statement that an application for a tax file number is pending*

(2) If:

- (a) a TFN claim person makes a statement of the kind set out in subsection 8(5); or
- (b) a TFN substitution person makes a statement of the kind set out in subsection 8A(5);

the Secretary can only determine the claim concerned if:

- (c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or
- (d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that:
  - (i) the person has not applied for a tax file number; or
  - (ii) an application by the person for a tax file number has been refused; or
  - (iii) the person has withdrawn an application for a tax file number.

(3) If, after the 28 days mentioned in subsection (1) or (2) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

### **15A Restriction on determining claim where bank account details not provided**

- (1) If a person makes a statement of the kind set out in paragraph 7A(2)(b), the Secretary can only determine the claim concerned if, within 28 days after the claim is made, the person nominates, and provides details of, a bank account of a kind referred to in paragraph 7A(2)(a) into which instalments of family tax benefit are to be paid.

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- (2) If, after the 28 days mentioned in subsection (1) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

**15B Deferral of determination of early claims**

If:

- (a) an individual makes a claim for payment of family tax benefit by instalment in respect of a child before the child is an FTB child of the claimant; and
- (b) the Secretary is satisfied that, at the time the determination would otherwise be made, the claimant would be likely to be eligible for family tax benefit in respect of the child if the child were to become an FTB child of the claimant;

the Secretary must not determine the claim for family tax benefit until the earlier of the following:

- (c) the time when the child becomes an FTB child of the claimant, or is stillborn;
- (d) 28 days after the day that, on the day the claim is made, is the expected day on which the child to whom the claim relates will become an FTB child of the claimant.

**16 Determination of instalment entitlement claim**

- (1) This section applies if the claim is one for payment of family tax benefit by instalment.
- (2) If the Secretary is satisfied that the claimant is, at the time the Secretary makes the determination on the claim, eligible for family tax benefit in accordance with Subdivision A or C of Division 1 of Part 3 of the Family Assistance Act, the Secretary must determine that the claimant is entitled to be paid family tax benefit for each day on which the determination is in force at the daily rate at which the Secretary considers the claimant to be eligible.

*Additional entitlement in subsection (2) cases*

- (4) If:

- (a) the Secretary is satisfied as mentioned in subsection (2); and
  - (b) the Secretary is also satisfied that the claimant was eligible for family tax benefit in accordance with Subdivision A or C of Division 1 of Part 3 of the Family Assistance Act during the whole or part of the period since the claim was made;
- the Secretary must determine that the claimant is entitled to be paid that amount of family tax benefit.

*Instalments where bereavement eligibility—remaining FTB or regular care children*

- (5) If the Secretary is satisfied that, at the time of making the determination on the claim:
- (a) the claimant is eligible for family tax benefit in accordance with section 31 of the Family Assistance Act; and
  - (b) assuming subsection (4) of that section were disregarded, the claimant would be eligible for family tax benefit under Subdivision A of Division 1 of Part 3 of that Act;
- the Secretary must determine that:
- (c) the claimant is entitled to be paid family tax benefit, at the rate at which the Secretary considers the claimant to be eligible:
    - (i) for each day on which the determination is in force that occurs during the period to which subsection 31(2) of that Act applies; and
    - (ii) for each day, before the determination came into force, that occurred during that period; and
  - (d) the claimant is entitled to be paid family tax benefit, at the rate at which the Secretary considers the claimant would be eligible, on the assumption in paragraph (b) of this subsection, for each day while the determination is in force that occurs after the last day on which the claimant is entitled to be paid family tax benefit in accordance with paragraph (c) of this subsection.

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*Instalments where bereavement eligibility—no remaining FTB or regular care children*

- (6) If the Secretary is satisfied that, at the time of making the determination on the claim:
- (a) the claimant is eligible for family tax benefit in accordance with section 31 of the Family Assistance Act; and
  - (b) assuming subsection (4) of that section were disregarded, the claimant would not be eligible for family tax benefit under Subdivision A of Division 1 of Part 3 of that Act;
- the Secretary must determine that the claimant is entitled to be paid family tax benefit, at the rate at which the Secretary considers the claimant to be eligible:
- (c) for each day on which the determination is in force that occurs during the period to which subsection 31(2) of that Act applies; and
  - (d) for each day, before the determination came into force, that occurred during that period.

**17 Determination of past period entitlement claim**

If:

- (a) the claim is one for payment of family tax benefit for a past period; and
- (b) the Secretary is satisfied that the claimant was eligible for family tax benefit:
  - (i) for the whole of the period in accordance with Subdivision A or C of Division 1 of Part 3 of the Family Assistance Act; or
  - (ii) for part of the period in accordance with Subdivision A of that Division and for the remainder of the period in accordance with section 31 of that Act;

the Secretary must determine that the claimant is entitled to be paid family tax benefit for the past period.



**18 Determination of bereavement entitlement claim**

If:

- (a) the claim is one for payment of family tax benefit by single payment/in substitution because of the death of another individual; and
- (b) the Secretary is satisfied that the claimant is eligible for family tax benefit under section 32 or 33 of the Family Assistance Act;

the Secretary must determine that the claimant is entitled to be paid the family tax benefit.

**19 Determination that no entitlement**

If the Secretary is not satisfied as mentioned in section 16, 17 or 18, the Secretary must determine:

- (a) if the determination is on a claim for payment of family tax benefit by instalment—that the claimant is not entitled to be paid family tax benefit for each day on which the determination is in force; or
- (b) in any other case—that the claimant is not entitled to be paid family tax benefit for the past period or because of the death of the other individual, as the case requires.

**20 Determination of rate may be based on estimate, indexed estimate or indexed actual income**

(1) If:

- (a) an individual's eligibility for, or rate of, family tax benefit is required to be determined for the purposes of this Division or Division 3; and
- (b) information about the amount of adjusted taxable income needed for the determination of the eligibility or rate is not available (for example, because the taxable income of the individual or another individual cannot be known until after the end of the relevant income year); and

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- (c) the individual or, if the individual has died, another individual making a claim under this Division or Division 3 gives the Secretary an estimate of the amount needed; and
- (d) the Secretary considers the estimate to be reasonable; and
- (e) since the estimate was given, the Secretary has not given the individual a notice under subsection 20A(2) or 20B(2) with a start day that has arrived or passed;

the Secretary may determine the individual's eligibility for, or rate of, family tax benefit on the basis of the estimate.

(2) If:

- (a) an estimate is given to the Secretary for the purposes of subsection (1); and
- (b) the Secretary does not consider the estimate reasonable;

the following paragraphs apply:

- (c) the eligibility or rate cannot be determined; and
- (d) if the determination of the eligibility or rate is required for the purposes of this Division, section 19 applies.

(2A) If:

- (a) an individual's eligibility for, or rate of, family tax benefit is required to be determined for the purposes of this Division or Division 3; and
- (b) information about the amount of adjusted taxable income needed for the determination of the eligibility or rate is not available (for example, because the taxable income of the individual or another individual cannot be known until after the end of the relevant income year); and
- (c) the Secretary has given the individual a notice under subsection 20A(2) or 20B(2) with a start day that has arrived or passed; and
- (d) since the notice was given, the individual has not given the Secretary an estimate of the individual's adjusted taxable income that the Secretary considers to be reasonable;

the Secretary may determine the individual's eligibility for, or rate of, family tax benefit on the basis of the indexed estimate or indexed actual income stated in the notice (or, if the Secretary has

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given the individual more than one such notice—the notice with the most recent start day).

Note: Section 20C affects the meaning of this provision for members of couples.

(3) If:

- (a) an individual's rate of family tax benefit is required to be calculated for the purpose of making a determination under this Division; and
- (b) information about the amount of maintenance income needed for the calculation of the rate is not available;

the Secretary may determine the individual's rate of family tax benefit on the basis of an estimate by the Secretary of the amount needed.

Note: If family tax benefit is worked out on the basis referred to in subsection (1), (2A) or (3), it is referred to in this Act as being worked out on an *estimated income basis* (see the definition of this term in subsection 3(1)).

## 20A Indexed estimates

- (1) The Secretary may calculate an indexed estimate for an individual under subsection (5), with a start day chosen by the Secretary, if:
  - (a) the individual is a claimant, or the partner of a claimant, for family tax benefit; and
  - (b) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; and
  - (c) the determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of a reasonable estimate of the claimant's adjusted taxable income, an indexed estimate for the claimant or an indexed actual income for the claimant.

Note: Section 20C affects the meaning of paragraph (c) for members of couples.

- (2) If the Secretary calculates an indexed estimate for the individual, the Secretary may give the claimant a notice:
  - (a) stating the indexed estimate for the individual; and

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- (b) specifying the start day used in the Secretary's calculation (which must be at least 14 days after the day on which the notice is given).
- (3) The Secretary must not give a notice under subsection (2) stating an indexed estimate for the individual with a start day in an income year if the Secretary has already given a notice under subsection (2) stating an indexed estimate for that individual with a start day in the same income year.
- (4) A notice given to a claimant under subsection (2) stating an indexed estimate for an individual has no effect if, before the start day specified in the notice for the indexed estimate, the Secretary gives the claimant a notice under subsection 20B(2) stating an indexed actual income for the same individual. Any such notice under subsection 20B(2) must specify a start day that is no earlier than the start day specified in the superseded notice.
- (5) Calculate an indexed estimate (which may be nil) for the individual by multiplying the individual's current ATI number (see subsection (6)) by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

**AWE** means the amount published by the Australian Statistician in a document titled "Average Weekly Earnings" under the headings "Average Weekly Earnings, Australia—Original—Persons—All employees total earnings" (or, if any of those change, in a replacement document or under replacement headings).

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**highest previous November** means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

**most recent November** means the November of the income year before the income year in which the start day occurs.

**reference period**, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

- (6) For the purposes of subsection (5), the individual's **current ATI number** is:
- (a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 20B(2) stating an indexed actual income for the individual with a start day that has not arrived—the indexed actual income stated in the notice; or
  - (b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 20 (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or
  - (c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 20 if the individual were the claimant (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act).
- (7) A notice under subsection (2) is not a legislative instrument.

**20B Indexed actual incomes**

- (1) The Secretary may calculate an indexed actual income for an individual under subsection (4), with a start day chosen by the Secretary, if:
- (a) the individual is a claimant for, or the partner of a claimant for, family tax benefit; and

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- (b) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; and
- (c) the determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of an indexed estimate for the claimant or an indexed actual income for the claimant; and
- (d) since the claimant was last given a notice under subsection 20A(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for an individual, the claimant has not given the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
- (e) the adjusted taxable income for an income year (*actual income*) of the individual (disregarding the effect for couples of clause 3 of Schedule 3 to the Family Assistance Act) becomes known to the Secretary and it is the most recent income year for which the individual's actual income is known to the Secretary.

Note: Section 20C affects the meaning of paragraph (1)(c) for members of couples.

(2) If:

- (a) the Secretary calculates an indexed actual income for the individual; and
- (b) the indexed actual income is greater than the individual's current ATI number (see subsection (5));

the Secretary may give the claimant a notice:

- (c) stating the indexed actual income for the individual; and
- (d) specifying the start day used in the Secretary's calculation (which must be at least 14 days after the day on which the notice is given).

- (3) A notice given to a claimant under subsection (2) stating an indexed actual income for an individual has no effect if, before the start day specified in the notice, the Secretary gives the claimant another notice under that subsection or a notice under subsection 20A(2) stating an indexed estimate or indexed actual

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income for the same individual. Any other such notice must specify a start day that is no earlier than the start day specified in the superseded notice.

- (4) Calculate an indexed actual income (which may be nil) for the individual by multiplying the actual income of the individual which became known to the Secretary by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

**AWE** means the amount published by the Australian Statistician in a document titled “Average Weekly Earnings” under the headings “Average Weekly Earnings, Australia—Original—Persons—All employees total earnings” (or, if any of those change, in a replacement document or under replacement headings).

**highest previous November** means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

**most recent November** means the November of the income year before the income year in which the start day occurs.

**reference period**, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

- (5) For the purposes of paragraph (2)(b), the individual’s **current ATI number** is:

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- (a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 20A(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for the individual with a start day that has not arrived—the indexed estimate or indexed actual income stated in the notice; or
  - (b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 20 (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or
  - (c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 20 if the individual were the claimant (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act).
- (6) A notice under subsection (2) is not a legislative instrument.

**20C Indexed estimates and indexed actual incomes of members of couples**

*Section applies to couples*

- (1) This section applies in relation to any individual who is a member of a couple.

*Family tax benefit Part A*

- (2) For the purposes of the Family Assistance Act other than Part 4 of Schedule 1, any reference in this Act to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of an indexed estimate, or an indexed actual income, for an individual or stated in a notice, is affected by subsection (3).
- (3) The reference is taken to be a reference to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of



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the indexed estimate, or the indexed actual income, for that individual or stated in that notice, combined with:

- (a) the most recent indexed estimate or indexed actual income for the individual's partner (see subsection (6)); or
- (b) if there is no such indexed estimate or indexed actual income—a reasonable estimate of the adjusted taxable income of the individual's partner (disregarding the effect of clause 3 of Schedule 3 to the Family Assistance Act) that has been given to the Secretary by the individual.

*Family tax benefit Part B*

- (4) For the purposes of Part 4 of Schedule 1 to the Family Assistance Act, any reference in this Act to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of an indexed estimate, or an indexed actual income, for an individual or stated in a notice, is affected by subsection (5).
- (5) The reference is taken to be a reference to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of the lower of these:
  - (a) the indexed estimate or indexed actual income for that individual or stated in that notice;
  - (b) the most recent indexed estimate or indexed actual income for the individual's partner (see subsection (6)) or, if there is no such indexed estimate or indexed actual income, a reasonable estimate of the adjusted taxable income of the individual's partner (disregarding the effect of clause 3 of Schedule 3 to the Family Assistance Act) that has been given to the Secretary by the individual.

If the amounts in paragraphs (a) and (b) are equal, the reference is taken to be a reference to:

- (c) if the individual is the claimant for family tax benefit—the amount in paragraph (a); or
- (d) if the individual is the partner of the claimant for family tax benefit—the amount in paragraph (b).

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*Most recent indexed estimate or indexed actual income for individual's partner*

- (6) In subsections (3) and (5), the ***most recent indexed estimate or indexed actual income for the individual's partner*** is the indexed estimate or indexed actual income for the individual's partner stated in a notice given to:
- (a) if the individual is the claimant for family tax benefit—the individual; or
  - (b) if the individual is the partner of the claimant for family tax benefit—the individual's partner;
- under subsection 20A(2) or 20B(2) with a start day that has arrived or passed (or, if the Secretary has given more than one such notice—the notice with the most recent start day).

**21 When determination is in force**

- (1) Subject to this section, a determination under this Division comes into force when it is made and remains in force at all times afterwards.
- (1A) A determination under paragraph 19(a) may be expressed to come into force on a day before it is made (but not earlier than the day the claim concerned is made).

*Effect of later determination on certain instalment determinations*

- (2) If, on a particular day, a determination is in force:
- (a) under section 16, where under the determination the claimant is not entitled to be paid family tax benefit on the particular day or any later day; or
  - (b) under paragraph 19(a);
- the determination ceases to be in force on the particular day if either:
- (c) another determination is made on the particular day on a claim by the claimant for payment of family tax benefit by instalment; or

- (d) another determination is made after the particular day on a claim by the claimant for payment of family tax benefit for a past period, where the particular day occurs within the past period.

*Request for cessation of instalment determination*

- (3) A determination in force under section 16 on a particular day ceases to be in force if:
  - (a) under the determination, the claimant is entitled to be paid family tax benefit on the particular day or any later day; and
  - (b) on the particular day, the claimant is not receiving a social security pension, social security benefit, service pension or income support supplement; and
  - (c) on the particular day, the claimant advises the Secretary, in the form and manner required by the Secretary, that the claimant wishes the determination:
    - (i) to cease to be in force from the particular day or from a specified later day; or
    - (ii) to have ceased to be in force at the end of the most recent instalment period before the particular day.

The determination ceases to be in force in accordance with the advice.

## **22 Notice of determination**

- (1) The Secretary must give notice of a determination under this Subdivision (except subsection 23(3B)) to the claimant, stating:
  - (a) whether the claimant is entitled to be paid family tax benefit under the determination; and
  - (b) if the claimant is so entitled:
    - (i) if the claimant is entitled to be paid family tax benefit by instalment—the daily rate of the benefit, the days on which the entitlement arises and how it is to be paid; or
    - (ii) in any other case—the amount of the benefit and how it is to be paid; and

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- (c) that the claimant may apply for review of the determination in the manner set out in Part 5.
- (2) The determination is not ineffective by reason only that the requirements of subsection (1) are not complied with.

**23 Payment of family tax benefit by instalment**

- (1) Subject to this section, if the claimant is entitled to be paid family tax benefit by instalment, the Secretary must, after each instalment period ending after the determination is made, pay the instalment amount to the claimant, at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant.

*Instalment amount and instalment period*

- (2) In subsection (1):

***instalment amount*** means the amount accruing for the days in the instalment period for which an entitlement to be paid family tax benefit arose under the determination.

***instalment period*** means, subject to subsection (3):

- (a) the period of 14 days beginning on the day the Secretary considers appropriate in relation to the claimant, or class of claimants in which the claimant is included, and each successive period of 14 days; or
- (b) if the claimant:
  - (i) is included in a class of persons specified under subsection (3A); and
  - (ii) is the subject of a determination in force under subsection (3B);

the period of 7 days beginning on the day the Secretary considers appropriate, and each successive period of 7 days.

*Changing the day on which later instalment periods begin*

- (3) The Secretary may change the day on which successive instalment periods are to begin in relation to a claimant or class of claimants. If the Secretary does so, the last instalment period before the first day on which the new instalment periods are to begin is shortened so that it ends immediately before that day.

*Persons who may have 7-day instalment periods*

- (3A) The Minister may by legislative instrument specify a class of persons any of whom the Secretary may determine to have 7-day instalment periods.
- (3B) The Secretary may determine that a claimant who is a member of a class of persons specified under subsection (3A) has instalment periods of 7 days.
- (3C) The Secretary must revoke a determination made under subsection (3B) if he or she is satisfied that the claimant is no longer a member of a class of persons specified under subsection (3A).
- (3D) Subsection (3C) does not limit the operation of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to subsection (3B) of this section.

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

- (5) The Secretary may direct that the whole or a part of an amount which is to be paid for the purposes of this section is to be paid in a different way from that provided for by subsection (1). If the Secretary gives the direction, the amount is to be paid in accordance with the direction.

*Early payment of FTB instalment in particular cases*

- (5A) If the Secretary is satisfied that an instalment amount that would, apart from this subsection, be paid under this section on a

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particular day cannot reasonably be paid on that day, the Secretary may direct that the instalment amount be paid on an earlier day.

- (6) This section is subject to Subdivision CA of this Division, Part 4, Division 3 of Part 8B and sections 225 and 226.

**24 Payments of family tax benefit for a past period or by single payment/in substitution because of the death of another individual**

- (1) If the claimant is entitled to be paid family tax benefit under a determination on a claim for payment of family tax benefit:
- (a) for a past period; or
  - (b) by single payment/in substitution because of the death of another individual;

the Secretary must pay the amount to the claimant, at such time and in such manner as the Secretary considers appropriate.

- (4) This section is subject to Subdivision CA of this Division, Part 4, Division 3 of Part 8B and sections 225 and 226.

**24A Other payments of family tax benefit**

- (1) If an individual is entitled to be paid an amount of family tax benefit under section 58AA of the Family Assistance Act, the Secretary must pay the amount to the individual in a single lump sum, at such time and in such manner as the Secretary considers appropriate.
- (2) This section is subject to Subdivision CA of this Division, Part 4, Division 3 of Part 8B and sections 225 and 226.

**25 Obligation to notify change of circumstances**

- (1) If, after a claimant becomes entitled to be paid family tax benefit by instalment:
- (a) anything happens that causes the claimant to cease to be eligible for family tax benefit on the days for which the

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claimant will become entitled to be paid the benefit under the determination concerned, or to become eligible for a daily rate of family tax benefit that is less than that specified in the determination; or

- (b) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the claimant under section 25A, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: Imprisonment for 6 months.

- (2) Strict liability applies to the element of an offence against subsection (1) that a notice is a notice given under section 25A.
- (3) If, after the Secretary determines under subsection 23(3B) that a claimant has instalment periods of 7 days:
- (a) anything happens that causes the claimant to cease to be a member of a class of persons specified under subsection 23(3A); or
- (b) the claimant becomes aware that anything is likely to happen that will have that effect;
- the claimant must, in the manner set out in a written notice given to the claimant under section 25A, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.
- (4) If a thing that is described in both subsections (1) and (3) happens or is likely to happen, subsection (1) applies in relation to the thing but subsection (3) does not.

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**25A Secretary's power to approve a manner of notification**

- (1) The Secretary must approve a manner of notification that a claimant is to use when notifying the Secretary of a thing under section 25.
- (2) The Secretary must, by written notice, notify the claimant of the approved manner of notification.

**26 Secretary's power to request tax file numbers**

- (1) If:
  - (a) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; or
  - (b) a determination is in force under which the claimant is entitled to be paid family tax benefit for a past period;the Secretary may request the claimant to give the Secretary, within 28 days of the request being made, a written statement, in relation to a specified TFN determination person, of whichever of the kinds set out in subsection (2), (3) or (4) the claimant chooses.

*Statement of tax file number*

- (2) The first kind of statement that can be made is a statement of the TFN determination person's tax file number. Regardless of who the TFN determination person is, this kind of statement can be made by the claimant only.

*Statement that TFN person does not know what his or her tax file number is etc.*

- (3) The second kind of statement that can be made is a statement by the TFN determination person that the person:
  - (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  - (c) authorises the Commissioner of Taxation to tell the Secretary:



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- (i) whether the person has a tax file number; and
- (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (4) The third kind of statement that can be made is a statement by the TFN determination person that the person:
  - (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn.

## **26A Secretary's power to require bank account details**

If:

- (a) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; and
- (b) the claimant has not nominated a bank account into which instalments of family tax benefit are to be paid;

the Secretary may require the claimant to give the Secretary, within 28 days of the requirement being made, details of a bank account maintained by the claimant alone, or jointly or in common with someone else, into which instalments of family tax benefit are to be paid.

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**Subdivision C—Variation of determinations**

**27 Variation of instalment and past period determinations where failure to provide tax file number**

*Non-compliance with request*

- (1) If:
- (a) the Secretary makes a request under subsection 26(1); and
  - (b) the claimant does not comply with the request within 28 days of the request being made;
- then, subject to subsection (2), the consequence in subsection (5) applies.

*Exemption from request under subsection 26(1)*

- (2) The Secretary may determine that the consequence in subsection (5) does not apply if:
- (a) the TFN determination person concerned is or was the claimant's partner; and
  - (b) the claimant cannot obtain from the person:
    - (i) the person's tax file number; or
    - (ii) a statement by the person under subsection 26(3) or (4).

*Statement made by TFN determination person under subsection 26(3)*

- (3) If:
- (a) the Secretary makes a request under subsection 26(1); and
  - (b) by the end of 28 days after the request is made, the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 26(3); and
  - (c) the Commissioner of Taxation subsequently tells the Secretary that the TFN determination person has no tax file number;
- the consequence in subsection (5) applies.

*Statement made by TFN determination person under subsection 26(4)*

- (4) If:
- (a) the Secretary makes a request under subsection 26(1); and
  - (b) by the end of 28 days after the request is made, the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 26(4); and
  - (c) the Commissioner of Taxation subsequently tells the Secretary that the TFN determination person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;
- the consequence in subsection (5) applies.

*Statement made by TFN claim person under subsection 8(4)*

- (4A) If:
- (a) a TFN claim person has made a statement of the kind set out in subsection 8(4); and
  - (b) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment or for a past period; and
  - (c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has no tax file number;
- the consequence in subsection (5) applies.

*Statement made by TFN claim person under subsection 8(5)*

- (4B) If:
- (a) a TFN claim person has made a statement of the kind set out in subsection 8(5); and
  - (b) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment or for a past period; and
  - (c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has not applied for a tax

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file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;  
the consequence in subsection (5) applies.

*Variation of determination*

- (5) For the purposes of subsection (1), (3), (4), (4A) or (4B), the consequence is that the Secretary may:
- (a) if the determination is one under which the claimant is entitled to be paid family tax benefit by instalment—vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place; or
  - (b) if the determination is one under which the claimant is entitled to be paid family tax benefit for a past period—vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day in the past period.

*Consequence of Secretary later becoming aware of tax file number*

- (6) If:
- (a) under subsection (5), the Secretary varies the determination; and
  - (b) the Secretary finds out the tax file number of the TFN determination person or TFN claim person, as the case requires:
    - (i) if paragraph (5)(a) applies—before the end of the income year following the one in which the variation took effect; or
    - (ii) if paragraph (5)(b) applies—at any time after the variation took place;
- the Secretary must vary the determination to undo the effect mentioned in subsection (5).

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**27A Variation of instalment entitlement determination where failure to provide bank account details***Non-compliance with requirement*

- (1) If:
- (a) the claimant is subject to a requirement under section 26A; and
  - (b) the claimant does not comply with the requirement within 28 days of the requirement being made;
- then, subject to subsection (2), the consequence in subsection (3) applies.

*Exemption from requirement under section 26A*

- (2) The Secretary may determine that the consequence in subsection (3) does not apply if the Secretary considers that it is appropriate to exempt the claimant from the consequence.

*Variation of determination*

- (3) For the purposes of subsection (1), the consequence is that the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place.

*Consequence of Secretary later becoming aware of bank account details*

- (4) If:
- (a) under subsection (3), the Secretary varies the determination; and
  - (b) the Secretary finds out the bank account details of the claimant concerned before the end of the income year following the one in which the variation took effect;
- the Secretary must vary the determination to undo the effect mentioned in subsection (3).

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**28 Variation of instalment and past period entitlement  
determinations where income tax return not lodged**

- (1) This section applies if:
- (a) a determination under section 16 or 17 is in force at, or was in force before, a particular time; and
  - (b) there are one or more days (the ***cancellation days***) before the particular time in respect of which the following conditions are satisfied:
    - (i) the cancellation days occur in the income year (the ***cancellation income year***) that began 2 years before the beginning of the income year in which the particular time occurs;
    - (ii) the claimant is entitled to be paid family tax benefit under the determination for the cancellation days;
    - (iii) the claimant, or the claimant's partner at the particular time (if he or she was also the claimant's partner at some time in the cancellation income year), or both, are required to lodge an income tax return for the cancellation income year but have not done so by the particular time;
    - (iv) by the particular time, an assessment has not been made under the *Income Tax Assessment Act 1936* of the taxable income for the cancellation income year of everyone to whom subparagraph (iii) applies.

*Consequence of section applying*

- (2) If this section applies, the Secretary must vary the determination so that it has the effect that the claimant is not, and never was, entitled to family tax benefit for the cancellation days.

*Consequence where income tax returns are later lodged*

- (3) If:
- (a) after the Secretary varies the determination under subsection (2) or (6), an assessment is made under the

*Income Tax Assessment Act 1936* for the cancellation income year for everyone (the **taxpayers involved**):

- (i) who was required to lodge an income tax return as mentioned in subparagraph (1)(b)(iii); and
  - (ii) in respect of whom an assessment had not been made before the determination was varied; and
- (b) the Secretary is satisfied that the claimant was eligible for an amount (the **recalculated amount**) of family tax benefit for the cancellation days; and
- (ba) subsection (4) (which is about when the claimant and the claimant's partner separate after the determination is varied) does not apply;

the Secretary must again vary the determination so that it has the effect that, for the cancellation days, the claimant is entitled to be paid:

- (c) if each of the taxpayers involved lodged an income tax return with the Commissioner of Taxation:
  - (i) before the end of the income year after the cancellation income year; or
  - (ii) within such further period as the taxpayer is allowed under Subdivision D of Division 1 of this Part;the recalculated amount; or
- (d) in any other case—the lesser of:
  - (i) the recalculated amount; and
  - (ii) the amount that the claimant was entitled to be paid before the variation under subsection (2) was made.

*Consequence where claimant and partner separate after determination varied*

- (4) After the Secretary varies the determination under subsection (2) or (6), the Secretary must again vary the determination if the following conditions are met:
- (a) the claimant and the partner mentioned in subparagraph (1)(b)(iii) (the **ex-partner**) ceased to be members of the same couple during the further period that

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- the Secretary has allowed, under Subdivision D of Division 1 of this Part, within which the ex-partner may lodge an income tax return;
- (b) at the time when the Secretary would vary the determination under this subsection, the claimant and the ex-partner are not members of the same couple;
  - (c) if the claimant was required to lodge an income tax return for the cancellation income year:
    - (i) the claimant has lodged an income tax return for the cancellation income year before the end of the first income year after the cancellation income year, or of the further period that the Secretary has allowed, under Subdivision D of Division 1 of this Part, within which the claimant may lodge an income tax return; and
    - (ii) an assessment is or has been made under the *Income Tax Assessment Act 1936* of the claimant's taxable income for the cancellation income year;
  - (d) in any case—the ex-partner was required to lodge an income tax return for the cancellation income year but still had not done so by:
    - (i) if paragraph (c) applies—the later of the time when the claimant and the ex-partner last ceased to be members of the same couple and the time when the assessment of the claimant's taxable income is made; or
    - (ii) otherwise—the time when the claimant and the ex-partner last ceased to be members of the same couple;
  - (e) the Secretary is satisfied that the claimant was eligible for an amount (the ***recalculated amount***) of family tax benefit for the cancellation days.
- (5) The Secretary must vary the determination under subsection (4) so that it has the effect that, for the cancellation days, the claimant is entitled to be paid the recalculated amount.



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*Consequence where claimant and ex-partner reconcile after separation*

- (6) If:
- (a) after the Secretary varies the determination under subsection (4), the claimant and the ex-partner become members of the same couple again; and
  - (b) the ex-partner has still not lodged an income tax return for the cancellation income year by the time when the claimant and the ex-partner become members of the same couple;
- the Secretary must vary the determination so that it has the effect that the claimant is not, and never was, entitled to family tax benefit for the cancellation days.

**28AA Effect of section 28 on newborn upfront payment of family tax benefit**

- (1) If:
- (a) an individual is entitled to be paid an amount (the ***upfront amount***) of family tax benefit under section 58AA of the Family Assistance Act because an amount of newborn supplement is added in relation to the individual under Division 1A of Part 5 of Schedule 1 to that Act for one or more days; and
  - (b) a variation under subsection 28(2) or (6) of this Act has the effect that the individual never was entitled to family tax benefit for those days;
- then the individual is taken not to have been entitled to the upfront amount.
- (2) If a variation under subsection 28(3) or (4) of this Act has the effect that the individual is entitled to be paid family tax benefit for those days, then subsection (1) of this section ceases to apply to the individual.
- (3) Subsection (2) does not prevent subsection (1) again applying to the individual.

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**28A Variation of instalment entitlement determination where estimate of an amount is not reasonable**

- (1) This section applies if:
- (a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and
  - (b) the claimant gives the Secretary an estimate of the amount of adjusted taxable income needed by the Secretary to determine the claimant's eligibility for, or rate of, family tax benefit; and
  - (c) the Secretary does not consider the estimate to be reasonable.

*Consequence of section applying*

- (2) If this section applies, the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place.

*Consequence of later provision of reasonable estimate or Secretary finding out the actual amount*

- (3) If:
- (a) under subsection (2), the Secretary varies the determination; and
  - (b) either:
    - (i) the claimant provides an estimate of the amount that the Secretary considers reasonable by the end of the income year following the one in which the variation took effect; or
    - (ii) the Secretary finds out the actual amount needed to determine the claimant's eligibility for, or rate of, family tax benefit (whether from the claimant or someone else) by the end of the income year following the one in which the variation took effect;

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the Secretary must vary the determination to undo the effect mentioned in subsection (2).

**28B Variation of instalment entitlement determination where claim made for another payment type**

- (1) This section applies if:
- (a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment in respect of an individual; and
  - (b) the individual is any of the following:
    - (i) an FTB child of the claimant;
    - (ii) a regular care child who is also a rent assistance child of the claimant;
    - (iii) an individual in respect of whom an approved care organisation is the claimant; and
  - (c) the individual makes a claim for one of the following:
    - (i) a social security pension;
    - (ii) a social security benefit;
    - (iii) payments under a program included in the programs known as Labour Market Programs;
    - (iv) if the individual is aged 16 or more—payments under a prescribed educational scheme.

*Consequence of section applying if the individual is the claimant's only FTB or regular care child or the claimant is an approved care organisation*

- (2) If:
- (a) this section applies because the individual is an individual in respect of whom the claimant is an approved care organisation; or
  - (b) this section applies because the individual is the only individual who is either an FTB child, or a regular care child who is a rent assistance child, of the claimant;

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the Secretary must vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day on which the determination was or will be in force, after the end of the last instalment period before the variation takes place or from a later day determined by the Secretary.

*Consequence of section applying if the individual is not the claimant's only FTB or regular care child*

(3) If:

- (a) this section applies because the individual is an FTB child, or a regular care child who is also a rent assistance child, of the claimant; and
- (b) the individual is not the claimant's only FTB child, or regular care child who is also a rent assistance child;

the Secretary must vary the determination so that it has the effect that the daily rate of family tax benefit for which the claimant is entitled under the determination does not take into account the child who has made a claim for a payment listed in paragraph (1)(c). The determination takes effect from the day after the end of the claimant's last instalment period before the variation takes place or from a later day determined by the Secretary.

*Consequence of later rejection etc. of individual's claim*

(4) If:

- (a) under subsection (2) or (3), the Secretary varies the determination; and
- (b) the individual's claim for the payment is rejected, withdrawn or taken not to have been made;

the Secretary must vary the determination to undo the effect mentioned in subsection (2) or (3), as the case may be.

**29 Variation of instalment entitlement determination where failure to provide information**

(1) This section applies if:

- (a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and
- (b) the Secretary, in order to make a decision about the eligibility, or daily rate of eligibility, of the claimant for family tax benefit on either or both of the following:
  - (i) the particular day or any later day;
  - (ii) any day or days in the past when the determination was in force;requires the claimant or the claimant's partner under Division 1 of Part 6 to give information or produce documents; and
- (c) the claimant or the claimant's partner refuses or fails to comply with the requirements.

*Consequences of section applying*

- (2) If this section applies, the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place.
- (2A) Without limiting subsection (2), if the information or documents required relate to:
  - (a) the claimant's eligibility for rent assistance; or
  - (b) the amount of rent assistance to be added in calculating the claimant's rate of family tax benefit;the Secretary may vary the determination so as to establish a different rate of family tax benefit that does not have the amount of rent assistance added for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place or from a later day determined by the Secretary.
- (2B) Without limiting subsection (2), if the Secretary considers that the information or document is relevant to whether an individual is a senior secondary school child, the Secretary may vary the

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determination so as to disregard the individual for the purposes of working out whether the claimant is entitled to be paid family tax benefit, and if so the rate at which it is to be paid:

- (a) for any day on which the determination was or will be in force after the end of the last instalment period before the variation takes place; or
- (b) for any later day on which the determination was or will be in force specified by the Secretary in the variation.

*Consequence of later provision of information or documents*

(3) If:

- (a) under subsection (2), (2A) or (2B), the Secretary varies the determination; and
- (b) the claimant gives the information or produces the documents mentioned in paragraph (1)(b) by the end of the income year following the one in which the variation took effect;

the Secretary must vary the determination to undo the effect mentioned in subsection (2), (2A) or (2B).

**30 Variation of instalment entitlement determination where failure to notify change of address**

(1) This section applies if:

- (a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and
- (b) the Secretary has reason to believe that the claimant's address has changed since it was last known to the Secretary but the Secretary does not know the claimant's new address; and
- (c) the Secretary, after taking reasonable steps, is not able to find out whether the claimant's address has changed or, if it has, what the claimant's new address is.

*Consequence of section applying*

- (2) If this section applies, the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day, on which the determination was or will be in force, after the end of the last instalment period before the variation takes place.

*Consequence of Secretary later becoming aware of address etc.*

- (3) If:
- (a) under subsection (2), the Secretary varies the determination; and
  - (b) before the end of the income year following the one in which the variation took effect, the Secretary finds out:
    - (i) that the claimant's address has not changed; or
    - (ii) what the claimant's new address is;
- the Secretary must vary the determination to undo the effect mentioned in subsection (2).

**30A Variation of instalment entitlement determination where failure to notify claimant's departure from Australia**

- (1) This section applies if:
- (a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and
  - (b) the claimant leaves Australia without having notified the Secretary that the claimant proposed to leave or is leaving; and
  - (c) less than 56 weeks have passed since the claimant left Australia.
- (2) The Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day on which the determination was or will be in force after the end of the last instalment period before the variation takes place.

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- (3) If the Secretary varies the determination under subsection (2), and later obtains information relating to the question whether the claimant is entitled to be paid family tax benefit for a day described in that subsection, the Secretary must vary the determination to undo the effect mentioned in that subsection.

**30B Variation of instalment entitlement determination where failure to notify FTB or regular care child's departure from Australia**

- (1) This section applies if:
- (a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and
  - (b) an FTB child, or a regular care child who is also a rent assistance child, of the claimant leaves Australia without the claimant having notified the Secretary that the child will leave or is leaving; and
  - (c) less than 56 weeks have passed since the child left Australia.
- (2) The Secretary may vary the determination so that, for any day on which the determination was or will be in force after the end of the last instalment period before the variation takes place, the determination:
- (a) has the effect that the claimant is not entitled to be paid family tax benefit, if the conditions in paragraphs (1)(b) and (c) are met in relation to:
    - (i) each FTB child of the claimant; and
    - (ii) each regular care child who is also a rent assistance child of the claimant; or
  - (b) has the effect that the daily rate of family tax benefit for which the claimant is entitled under the determination does not take into account the FTB child or regular care child, if the conditions in paragraphs (1)(b) and (c) are not met in relation to:
    - (i) each FTB child of the claimant; and



- (ii) each regular care child who is also a rent assistance child of the claimant.

(3) If the Secretary:

- (a) varies the determination under subsection (2); and
- (b) later obtains information relating to the question whether the claimant is entitled to be paid family tax benefit for the FTB child or regular care child for a day described in that subsection or the question what is the claimant's daily rate of family tax benefit for the day;

the Secretary must vary the determination to undo the effect mentioned in that subsection relating to the day.

### **31 Variation of instalment entitlement determination to reflect changes in eligibility**

(1) If:

- (a) a determination is made under section 16 that a claimant is entitled to be paid family tax benefit by instalment; and
- (b) after the determination is made an event occurs; and
- (c) when the Secretary becomes aware of the occurrence, the Secretary considers that, if he or she were making the determination immediately after the occurrence, he or she would conclude:
  - (i) that the claimant was no longer eligible for family tax benefit; or
  - (ii) that the claimant was still so eligible but that the rate of family tax benefit should be a different rate to the rate previously determined;

the Secretary must, subject to subsection (2):

- (d) if subparagraph (c)(i) applies—vary the determination so that the claimant is not entitled to be paid family tax benefit with effect from the date of occurrence; and
- (e) if subparagraph (c)(ii) applies—vary the determination so as to establish the different rate with effect from the date of occurrence.

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- (1A) For the purpose of subsection (1), the occurrence of an event includes the expiration of a period of time if the expiration of that period is relevant to the operation of this Act.
- (1B) The reference in subsection (1) to the occurrence does not include the occurrence of any event:
- (a) that causes the claimant to provide a revised estimate of the claimant's adjusted taxable income to the Secretary; or
  - (b) that causes the Secretary to revise an estimate of the claimant's maintenance income;
- unless:
- (c) the event also affects the claimant's eligibility for family tax benefit, or the rate of family tax benefit payable to the claimant, for a reason other than the amount of the claimant's adjusted taxable income or maintenance income; or
  - (d) the event is the claimant's becoming, or ceasing to be, a member of a couple.

*Beneficial variations only to have limited effect*

- (2) If:
- (a) the Secretary does not become aware of the occurrence of the event until after the end of the income year (the ***second income year***) following the one in which the event occurred; and
  - (b) the claimant did not notify the Secretary of the occurrence of the event before the end of the second income year; and
  - (c) apart from this subsection, the Secretary would be required by subsection (1) to vary the determination so as to increase the claimant's entitlement to family tax benefit under the determination;

the Secretary must vary the determination so that it has that effect only from the beginning of the income year that precedes the one in which the Secretary becomes aware of the event.

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*Sections 27, 27A, 28, 28A, 28B, 30, 30A and 30B and subsection 29(2) variations prevail*

(3) If:

- (a) when the variation under this section takes place, a variation of the determination is in force under section 27, 27A, 28, 28A, 28B, 30, 30A or 30B or subsection 29(2); and
- (b) the variation under that section or subsection has effect for any period when the variation under this section would have the effect that the claimant is entitled to be paid family tax benefit;

the variation under that section or subsection prevails over the variation under this section.

### **31A Variation of instalment entitlement determination to reflect revised adjusted taxable income estimates**

(1) If:

- (a) a determination is in force on a particular day under which a claimant is entitled to be paid family tax benefit by instalment; and
- (b) the determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of a reasonable estimate of the claimant's adjusted taxable income, an indexed estimate for the claimant or an indexed actual income for the claimant; and
- (c) the claimant provides the Secretary with a revised estimate of the claimant's adjusted taxable income for the current income year or the next income year that is not attributable to an event mentioned in paragraph 31(1B)(c) or (d); and
- (d) the Secretary considers the revised estimate to be reasonable; and
- (e) if the claimant's rate of family tax benefit were calculated using the revised estimate—a new rate of family tax benefit would be required;

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the Secretary must vary the determination so that the claimant's rate of family tax benefit is determined on the basis of that revised estimate.

Note: Section 20C affects the meaning of paragraph (1)(b) for couples.

- (2) A variation of a determination under subsection (1) has effect:
- (a) if it results in an increase in the claimant's rate of family tax benefit:
    - (i) unless subparagraph (ii) applies—from the day on which the revised estimate was provided to the Secretary; or
    - (ii) if the first day of the income year to which the revised estimate relates occurs after the day identified in subparagraph (i)—from that first day; and
  - (b) if it results in a decrease (including a decrease to nil) in the claimant's rate of family tax benefit:
    - (i) unless subparagraph (ii) or (iii) applies—from the day on which the revised estimate was provided to the Secretary; or
    - (ii) if the first day of the income year to which the revised estimate relates occurs after the day identified in subparagraph (i) and subparagraph (iii) does not apply—from that first day; or
    - (iii) if the day after the end of the last instalment period before the variation takes place occurs after the days identified in subparagraphs (i) and (ii)—from the day first-mentioned in this subparagraph.
- (3) If:
- (a) when the variation under this section takes place, a variation of the determination is in force under section 27, 27A, 28, 28A, 28B, 30, 30A or 30B or subsection 29(2); and
  - (b) the variation under that section or subsection has effect for any period when the variation under this section would have the effect that the claimant is entitled to be paid family tax benefit;

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the variation under that section or subsection prevails over the variation under this section.

**31B Variation of instalment entitlement determination to reflect revised maintenance income estimates**

(1) If:

- (a) a determination is in force on a particular day under which a claimant is entitled to be paid family tax benefit by instalment; and
- (b) that determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of an estimate of the claimant's maintenance income in a particular income year; and
- (c) the Secretary, at any time before or during that income year, makes a revised estimate of that amount that is attributable to the occurrence of an event other than an event to which paragraph 31(1B)(c) or (d) applies; and
- (d) if the claimant's rate of family tax benefit were calculated using the revised estimate—a new rate of family tax benefit would be required;

the Secretary must vary the determination so that the claimant's rate of family tax benefit is determined on the basis of that revised estimate.

(2) A variation of a determination under subsection (1) has effect from a day determined by the Secretary, which must not be earlier than either of the following:

- (a) the day after the end of the last instalment period before the variation takes place;
- (b) the first day of the income year to which the revised estimate relates.

(3) If:

- (a) when the variation under this section takes place, a variation of the determination is in force under section 27, 27A, 28, 28A, 28B, 30, 30A or 30B or subsection 29(2); and

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- (b) the variation under that section or subsection has effect for any period when the variation under this section would have the effect that the claimant is entitled to be paid family tax benefit;

the variation under that section or subsection prevails over the variation under this section.

**31C Variation of instalment entitlement determination to reflect indexation of estimate of adjusted taxable income**

(1) If:

- (a) a determination is in force under which a claimant is entitled to be paid family tax benefit by instalment; and
- (b) the Secretary gives the claimant a notice under subsection 20A(2); and
- (c) the claimant does not, before the start day specified in the notice, give the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
- (d) if the claimant's rate of family tax benefit were calculated using the indexed estimate stated in the notice—a new rate of family tax benefit would be required;

the Secretary may vary the determination so that the claimant's rate of family tax benefit is determined on the basis of the indexed estimate stated in the notice.

Note: Section 20C affects the meaning of this provision for members of couples.

(2) The variation has effect:

- (a) from the start day specified in the notice for the indexed estimate; or
- (b) if the variation is made after that start day—from the later of the start day and the first day of the instalment period in which the variation is made.

**31D Variation of instalment entitlement determination to reflect indexation of adjusted taxable income**

(1) If:

- (a) a determination is in force under which a claimant is entitled to be paid family tax benefit by instalment; and
- (b) the Secretary gives the claimant a notice under subsection 20B(2); and
- (c) the claimant does not, before the start day specified in the notice, give the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
- (d) if the claimant's rate of family tax benefit were calculated using the indexed actual income stated in the notice—a new rate of family tax benefit would be required;

the Secretary may vary the determination so that the claimant's rate of family tax benefit is determined on the basis of the indexed actual income stated in the notice.

Note: Section 20C affects the meaning of this provision for members of couples.

(2) The variation has effect:

- (a) from the start day specified in the notice for the indexed actual income; or
- (b) if the variation is made after that start day—from the later of the start day and the first day of the instalment period in which the variation is made.

**31E Continuous adjustment of daily rate of family tax benefit**

(1) This section applies if:

- (a) a determination is in force in an income year under which a claimant is entitled to be paid family tax benefit by instalment; and
- (b) one of the following applies:

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- (i) a variation of the determination under subsection 31A(1) has effect on a day in the income year that is after 1 July;
  - (ii) a variation of the determination under subsection 31B(1) has effect on a day in the income year that is after 1 July;
  - (iii) a variation of the determination under subsection 31C(1) has effect on a day in the income year that is after 1 July;
  - (iv) a variation of the determination under subsection 31D(1) has effect on a day in the income year that is after 1 July;
  - (v) on a day in the income year, the claimant provides the Secretary with a revised estimate of the claimant's adjusted taxable income for the income year that does not result in a variation of the determination under subsection 31A(1);
  - (vi) on a day in the income year that is after 1 July, the Secretary makes a revised estimate of the claimant's maintenance income that does not result in a variation of the determination under subsection 31B(1);
  - (vii) the determination ceases to be in force in the income year and another determination comes into force in that income year under which the claimant is entitled to be paid family tax benefit by instalment or family tax benefit for a past period that falls wholly within that income year.
- (2) The Secretary must apply the following method statement to work out if there is a daily overpayment rate:

*Method statement*

Step 1. Work out the total amount of family tax benefit the claimant is or was entitled to be paid during the period beginning at the start of the income year and ending at the end of the day before the applicable day.



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- Step 2. Work out the total amount of family tax benefit the claimant would have been entitled to be paid during that period if the claimant's rate of family tax benefit were calculated using:
- (a) if subparagraph (1)(b)(i) applies—the revised estimate concerned; or
  - (b) if subparagraph (1)(b)(ii) applies—the revised estimate concerned; or
  - (c) if subparagraph (1)(b)(iii) applies—the indexed estimate concerned; or
  - (d) if subparagraph (1)(b)(iv) applies—the indexed actual income concerned; or
  - (e) if subparagraph (1)(b)(v) applies—the revised estimate concerned; or
  - (f) if subparagraph (1)(b)(vi) applies—the revised estimate concerned; or
  - (g) if subparagraph (1)(b)(vii) applies—the estimate of the claimant's adjusted taxable income for the income year, and the estimate of the claimant's maintenance income in that income year, that were used in determining the claimant's rate of family tax benefit under the other determination referred to in that subparagraph.
- Step 3. Take the amount worked out at step 2 away from the amount worked out at step 1.
- Step 4. If the amount worked out at step 3 is greater than zero, work out the number of days during the period beginning on the applicable day and ending at the end of the last day in the income year.

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Step 5. Work out the ***daily overpayment rate*** by dividing the amount worked out at step 3 by the number of days worked out at step 4, and rounding the result of the division to the nearest cent (rounding 0.5 cents upwards).

- (3) If there is a daily overpayment rate, the Secretary must vary the applicable determination so that the claimant's daily rate of family tax benefit for the period beginning on the applicable day and ending at the end of the last day in the income year is reduced (but not below nil) by that daily overpayment rate.
- (3A) For the purposes of subsection (3), the ***applicable determination*** is:
- (a) if subparagraph (1)(b)(i), (ii), (iii), (iv), (v) or (vi) applies—the determination referred to in paragraph (1)(a); or
  - (b) if subparagraph (1)(b)(vii) applies—the other determination referred to in that subparagraph.
- (4) This section may have more than one application in relation to the claimant during the income year.
- (5) In this section:
- applicable day*** means:
- (a) if subparagraph (1)(b)(i), (ii), (iii) or (iv) applies—the day on which the variation concerned has effect; and
  - (b) if subparagraph (1)(b)(v) or (vi) applies—the first day of the instalment period in which the Secretary applies the method statement because of that subparagraph applying; and
  - (c) if subparagraph (1)(b)(vii) applies—the first day in the income year for which the claimant's entitlement to be paid family tax benefit arose under the other determination referred to in that subparagraph.

**32 Notice of variation of determination**

- (1) The Secretary must give notice of any variation of a determination under this Subdivision to the claimant, stating the effect of the

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variation and that the claimant may apply for review of the decision involved in the manner set out in Part 5.

- (2) The variation is not ineffective by reason only that the requirements of subsection (1) are not complied with.

**Subdivision CA—Non-payment of family tax benefit for non-lodgment of tax returns**

**32AA Non-payment of family tax benefit for non-lodgment of tax returns**

- (1) If the Secretary varies a determination under subsection 28(2) in relation to a claimant, the Secretary must not make a payment of family tax benefit (worked out on an estimated income basis) to:
- (a) the claimant during a prohibited period for the claimant (see section 32AB); and
  - (b) the claimant's partner (if any) (the *relevant partner*) mentioned in subparagraph 28(1)(b)(iii) during a prohibited period for that partner (see section 32AC).
- (2) This section is subject to section 32AE.

**32AB Prohibited periods for claimant**

*First kind of prohibited period*

- (1) There is a prohibited period for the claimant if:
- (a) the claimant was required to lodge an income tax return for the cancellation income year concerned but the claimant has not done so by the end of the grace period; or
  - (b) the claimant and the relevant partner are members of the same couple at the end of the grace period, and that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the end of the grace period.

Note: For *relevant partner* see section 32AA. For *grace period* see subsection (8).

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- (1A) However, there is not a prohibited period for the claimant under subsection (1) because of a variation mentioned in section 32AA if:
- (a) no debt arose under section 71 as a result of that variation; or
  - (b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding at the end of the grace period.
- (2) The prohibited period referred to in subsection (1):
- (a) begins on the day after the end of the grace period; and
  - (b) ends when subsection (3), (4), (4A) or (7) applies (whichever occurs first).
- (3) This subsection applies if:
- (a) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return; and
  - (b) if the relevant partner was required to lodge an income tax return for the cancellation income year concerned—that partner lodges or has lodged the return.
- (4) This subsection applies if:
- (a) the claimant and the relevant partner cease to be members of the same couple at any time after the end of the grace period; and
  - (b) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return.
- (4A) This subsection applies if:
- (a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and
  - (b) an amount of that debt was outstanding at the end of the grace period; and
  - (c) at a time after the end of the grace period, no amount of that debt is outstanding.

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*Second kind of prohibited period*

- (5) There is a prohibited period for the claimant if:
- (a) the claimant and the relevant partner cease to be members of the same couple on or after the day the variation mentioned in section 32AA is made; and
  - (b) the claimant and that partner become members of the same couple again on a day (the ***applicable day***) that is after the end of the period applicable under paragraph (a) of the definition of ***grace period*** in subsection (8); and
  - (c) that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the applicable day.
- (5A) However, there is not a prohibited period for the claimant under subsection (5) because of a variation mentioned in section 32AA if:
- (a) no debt arose under section 71 as a result of that variation; or
  - (b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding immediately before the day that would, apart from this subsection, be determined under paragraph (6)(a).
- (6) The prohibited period referred to in subsection (5):
- (a) begins on the day determined by the Secretary (which must not be earlier than the applicable day); and
  - (b) ends when:
    - (i) the relevant partner lodges an income tax return for the cancellation income year concerned; or
    - (ii) the claimant and the relevant partner cease to be members of the same couple again; or
    - (iii) subsection (6A) or (7) applies;whichever occurs first.
- (6A) This subsection applies if:
- (a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and

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- (b) an amount of that debt was outstanding immediately before the day determined under paragraph (6)(a); and
- (c) at a time on or after that day, no amount of that debt is outstanding.

*Prohibited period may end in special circumstances*

- (7) This subsection applies if the Secretary, by writing, determines that the prohibited period concerned ends. The Secretary may make the determination only if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

*Grace period*

- (8) In this section:

***grace period*** means:

- (a) the period of 75 days, or such longer period as the Secretary determines under subsection (9), beginning on the day the variation mentioned in section 32AA is made; or
- (b) if subsection (7) has applied in relation to a previous prohibited period—the period of 14 days, or such longer period as the Secretary determines under subsection (9), beginning on the day the determination mentioned in subsection (7) is made.

Note: The effect of paragraph (b) of the definition is that there may be another prohibited period for the claimant under subsection (1).

- (9) The Secretary may, by writing, determine a period for the purposes of paragraph (a) or (b) of the definition of ***grace period*** in subsection (8) if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

*Determinations are not legislative instruments*

- (10) A determination made under paragraph (6)(a) or subsection (7) or (9) is not a legislative instrument.

**32AC Prohibited periods for relevant partner***First kind of prohibited period*

- (1) There is a prohibited period for the relevant partner if:
- (a) the claimant and that partner are members of the same couple at the end of the grace period; and
  - (b) either or both of the following apply:
    - (i) the claimant was required to lodge an income tax return for the cancellation income year concerned but has not done so by the end of the grace period;
    - (ii) that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the end of the grace period.

Note: For **relevant partner** see section 32AA. For **grace period** see subsection (10).

- (1A) However, there is not a prohibited period for the relevant partner under subsection (1) because of a variation mentioned in section 32AA if:
- (a) no debt arose under section 71 as a result of that variation; or
  - (b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding at the end of the grace period.
- (2) The prohibited period referred to in subsection (1):
- (a) begins on the day after the end of the grace period; and
  - (b) ends when subsection (3), (4), (4A) or (9) applies (whichever occurs first).
- (3) This subsection applies if:
- (a) if that partner was required to lodge an income tax return for the cancellation income year concerned—that partner lodges or has lodged the return; and
  - (b) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return.

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(4) This subsection applies if the claimant and that partner cease to be members of the same couple at any time after the end of the grace period.

(4A) This subsection applies if:

- (a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and
- (b) an amount of that debt was outstanding at the end of the grace period; and
- (c) at a time after the end of the grace period, no amount of that debt is outstanding.

*Second kind of prohibited period*

(5) There is a prohibited period for the relevant partner if:

- (a) the claimant and that partner cease to be members of the same couple on or after the day the variation mentioned in section 32AA is made; and
- (b) the claimant and that partner become members of the same couple again on a day (the ***applicable day***) that is after the end of the period applicable under paragraph (a) of the definition of ***grace period*** in subsection (10); and
- (c) either or both of the following apply:
  - (i) the claimant was required to lodge an income tax return for the cancellation income year concerned but has not done so by the applicable day;
  - (ii) that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the applicable day.

(5A) However, there is not a prohibited period for the relevant partner under subsection (5) because of a variation mentioned in section 32AA if:

- (a) no debt arose under section 71 as a result of that variation; or
- (b) a debt arose under section 71 as a result of that variation, but no amount of that debt is outstanding immediately before the



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day that would, apart from this subsection, be determined under paragraph (6)(a).

- (6) The prohibited period referred to in subsection (5):
- (a) begins on the day determined by the Secretary (which must not be earlier than the applicable day); and
  - (b) ends when subsection (7), (8), (8A) or (9) applies (whichever occurs first).
- (7) This subsection applies if:
- (a) if that partner was required to lodge an income tax return for the cancellation income year concerned—that partner lodges or has lodged the return; and
  - (b) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return.
- (8) This subsection applies if the claimant and that partner cease to be members of the same couple again.
- (8A) This subsection applies if:
- (a) a debt arose under section 71 as a result of the variation mentioned in section 32AA; and
  - (b) an amount of that debt was outstanding immediately before the day determined under paragraph (6)(a); and
  - (c) at a time on or after that day, no amount of that debt is outstanding.

*Prohibited period may end in special circumstances*

- (9) This subsection applies if the Secretary, by writing, determines that the prohibited period concerned ends. The Secretary may make the determination only if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

*Grace period*

- (10) In this section:

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***grace period*** means:

- (a) the period of 75 days, or such longer period as the Secretary determines under subsection (11), beginning on the day the variation mentioned in section 32AA is made; or
- (b) if subsection (9) has applied in relation to a previous prohibited period—the period of 14 days, or such longer period as the Secretary determines under subsection (11), beginning on the day the determination mentioned in subsection (9) is made.

Note: The effect of paragraph (b) of the definition is that there may be another prohibited period for the relevant partner under subsection (1).

- (11) The Secretary may, by writing, determine a period for the purposes of paragraph (a) or (b) of the definition of ***grace period*** in subsection (10) if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

*Determinations are not legislative instruments*

- (12) A determination made under paragraph (6)(a) or subsection (9) or (11) is not a legislative instrument.

**32AD Prohibited periods for new partner**

If:

- (a) on or after the day the variation mentioned in section 32AA is made, the claimant becomes a member of a couple and the claimant's partner (the ***new partner***) is not the relevant partner; and
- (b) the claimant was required to lodge an income tax return for the cancellation income year concerned but has not done so when the claimant becomes a member of that couple;

then, during a prohibited period for the claimant and while the claimant and the new partner are members of the same couple, the Secretary must not make a payment of family tax benefit (worked out on an estimated income basis) to the new partner.

Note: For ***relevant partner*** see section 32AA.

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**32AE Non-entitlement to payment of family tax benefit after 3 or more variations under subsection 28(2)**

- (1) This section applies if 3 or more variations under subsection 28(2) have been made in relation to a claimant.

*Claimant*

- (2) The claimant is not entitled to be paid family tax benefit (worked out on an estimated income basis) for a period if, throughout that period, both subsections (3) and (4) of this section apply in relation to one or more of the cancellation income years concerned.

Note 1: For **cancellation income year** see subsection 28(1).

Note 2: Subsection (8) creates an exception to subsection (2).

- (3) This subsection applies in relation to a cancellation income year if either or both of the following apply:
- (a) if the claimant was required to lodge an income tax return for that year—the claimant has not lodged that return;
  - (b) if the claimant is a member of a couple and the claimant's partner is a relevant partner in relation to that year and that partner was required to lodge an income tax return for that year—that partner has not lodged that return.

Note: For **relevant partner** see section 32AA.

- (4) This subsection applies in relation to a cancellation income year if a debt arose under section 71 as a result of the variation concerned and an amount of that debt is outstanding.

*Partner*

- (5) If the claimant is a member of a couple, the claimant's partner is not entitled to be paid family tax benefit (worked out on an estimated income basis) for a period if, throughout that period, both subsections (6) and (7) of this section apply in relation to one or more of the cancellation income years concerned.

Note 1: For **cancellation income year** see subsection 28(1).

Note 2: Subsection (9) creates an exception to subsection (5).

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- (6) This subsection applies in relation to a cancellation income year if either or both of the following apply:
- (a) if the claimant was required to lodge an income tax return for that year—the claimant has not lodged that return;
  - (b) if the claimant's partner is a relevant partner in relation to that year and that partner was required to lodge an income tax return for that year—that partner has not lodged that return.

Note: For *relevant partner* see section 32AA.

- (7) This subsection applies in relation to a cancellation income year if a debt arose under section 71 as a result of the variation concerned and an amount of that debt is outstanding.

*Exceptions*

- (8) The Secretary may, by writing, determine that subsection (2) does not apply in relation to a specified person and to a specified period if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.
- (9) The Secretary may, by writing, determine that subsection (5) does not apply in relation to a specified person and to a specified period if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.
- (10) A period specified in a determination under subsection (8) or (9) may be a period beginning before, on or after the day the determination is made.
- (11) A determination made under subsection (8) or (9) is not a legislative instrument.

**32AEA Effect of this Subdivision on newborn upfront payment of family tax benefit**

If this Subdivision has the effect that:

- (a) the Secretary must not make a payment of family tax benefit (worked out on an estimated income basis) to an individual during a period; or

(b) an individual is not entitled to be paid family tax benefit (worked out on an estimated income basis) for a period; then the individual is not entitled to be paid an amount of family tax benefit under section 58AA of the Family Assistance Act during that period.

### **Subdivision CB—Non-entitlement to FTB on estimated income basis**

#### **32AF Non-entitlement to FTB on estimated income basis—review of income during 2 consecutive income years**

##### *Scope of Subdivision*

- (1) This Subdivision applies in relation to an individual if:
- (a) there are 2 consecutive income years (each of which is a **consecutive year**) in which there are one or more days for which the individual was entitled to be paid family tax benefit worked out on an estimated income basis; and
  - (b) in respect of each consecutive year, the Secretary, under section 105, reviews the rate of family benefit the individual was entitled to be paid for those days on the basis of the individual's adjusted taxable income as finally determined in respect of the consecutive year by the Secretary; and
  - (c) as a result of the review and in respect of each consecutive year, the Secretary determines either or both of the following:
    - (i) the individual's Part A rate of family tax benefit is nil for those days because of the individual's adjusted taxable income, and there are no other days in either consecutive year for which the individual was entitled to be paid the Part A rate;
    - (ii) the individual's Part B rate of family tax benefit is nil for those days because of subclause 28B(1) of Schedule 1 to the Family Assistance Act.

Note: Family tax benefit may be worked out on an estimated income basis under subsection 20(1), (2A) or (3) (see definition of **estimated income basis** in subsection 3(1)).

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*Basic non-entitlement rule*

- (2) Subject to this Subdivision:
  - (a) if subparagraph (1)(c)(i) applies—the individual is not entitled, on and after the exclusion day, to be paid the Part A rate of family tax benefit worked out on an estimated income basis; and
  - (b) if subparagraph (1)(c)(ii) applies—the individual is not entitled, on and after the exclusion day, to be paid the Part B rate of family tax benefit worked out on an estimated income basis.
- (3) For the purposes of this Subdivision, the ***exclusion day***, in relation to an individual, is:
  - (a) either:
    - (i) if the later of the consecutive years is 2010-11—1 July 2012; or
    - (ii) in any other case—1 July of the first income year after the later of the consecutive years; or
  - (b) if the Secretary determines a later day in relation to the individual—the later day.
- (4) A determination under paragraph (3)(b) is not a legislative instrument.

*Position of individual's partner*

- (5) While paragraph (2)(a) applies in relation to the individual, the individual's partner (if any) is not entitled to be paid the Part A rate of family tax benefit worked out on an estimated income basis.
- (6) While paragraph (2)(b) applies in relation to the individual, the individual's partner (if any) is not entitled to be paid the Part B rate of family tax benefit worked out on an estimated income basis.

*Multiple applications of section*

- (7) Sections 32AG to 32AM do not prevent this section applying again in relation to the individual in respect of 2 consecutive income

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years, either or both of which are different from the 2 consecutive income years the subject of the previous application of this section.

**32AG Exception—greater than nil rate of FTB for later income year***Scope*

- (1) This section applies if, in respect of an income year (the *payment year*) after the later of the consecutive years, the Secretary, taking into account the individual's adjusted taxable income as finally determined in respect of the payment year by the Secretary, determines either or both of the following on a day (the *payment day*):
- (a) the individual's Part A rate of family tax benefit is greater than nil on one or more days in the payment year;
  - (b) the individual's Part B rate of family tax benefit is greater than nil on one or more days in the payment year.

*Payment day is in same income year as exclusion day*

- (2) If the payment day is in the income year in which the exclusion day occurs, then:
- (a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) is taken not to have applied in relation to the individual; and
  - (b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) is taken not to have applied in relation to the individual.

**Example:** Assume that under section 32AF the consecutive years are 2009-10 and 2010-11. Assume that the individual is not entitled, on and after 1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that on 1 November 2012 the Secretary determines, under subsection (1), that the individual's Part A rate and Part B rate of family tax benefit are greater than nil on one or more days in 2011-12. The payment day is 1 November 2012.

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**Division 1** Family tax benefit

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Under subsection (2), subsection 32AF(2) is taken not to have prevented the individual from being entitled, on and after 1 July 2012, to be paid family tax benefit worked out on an estimated income basis.

*Payment day is in income year later than that of exclusion day*

- (3) If the payment day is in an income year that is later than the income year in which the exclusion day occurs, then:
- (a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) ceases to apply in relation to the individual on 1 July of the later income year; and
  - (b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) ceases to apply in relation to the individual on 1 July of the later income year.

**Example:** Assume that under section 32AF the consecutive years are 2009-10 and 2010-11. Assume that the individual is not entitled, on and after 1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that on 1 November 2013 the Secretary determines, under subsection (1), that the individual's Part A rate and Part B rate of family tax benefit are greater than nil on one or more days in 2011-12. The payment day is 1 November 2013.

Under subsection (3), subsection 32AF(2) ceases to prevent the individual from being entitled, on and after 1 July 2013, to be paid family tax benefit worked out on an estimated income basis.

**Note:** For the meaning of *consecutive year*, see subsection 32AF(1). For the meaning of *exclusion day*, see subsection 32AF(3).

**32AH Exception—resumption of eligibility for FTB**

*Scope*

- (1) This section applies if:
- (a) the individual is not eligible for family tax benefit for the whole of an income year (the *applicable year*) that is after the later of the consecutive years (other than because of the individual's income or the individual's partner's income); and



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- (b) after the applicable year, the individual makes a claim for family tax benefit in relation to the income year (the *current year*) in which the claim is made; and
- (c) the Secretary has finally determined the individual's adjusted taxable income in respect of the applicable year; and
- (d) the Secretary is satisfied that, if the Secretary were to take into account that adjusted taxable income, either or both of the following would apply in respect of one or more days in the current year:
  - (i) the individual's Part A rate of family tax benefit would be greater than nil;
  - (ii) the individual's Part B rate of family tax benefit would be greater than nil, or would be nil (other than because of subclause 28B(1) of Schedule 1 to the Family Assistance Act).

*Exclusion day is in current year*

- (2) If the exclusion day is in the current year, then:
  - (a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) is taken not to have applied in relation to the individual; and
  - (b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) is taken not to have applied in relation to the individual.

**Example:** Assume that under section 32AF the consecutive years are 2009-10 and 2010-11. Assume that the individual is not entitled, on and after 1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that the individual is not eligible for family tax benefit for the whole of 2011-12 (the applicable year). Assume that in 2012-13 (the current year) the individual makes a claim for family tax benefit for 2012-13.

Assume that the Secretary is satisfied that, if the Secretary were to take into account the individual's final adjusted taxable income for 2011-12, the individual's Part A rate and Part B rate of family tax benefit would be greater than nil on one or more days in 2012-13.

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Under subsection (2), subsection 32AF(2) is taken not to have prevented the individual from being entitled, on and after 1 July 2012, to be paid family tax benefit worked out on an estimated income basis.

*Current year is later than that of exclusion day*

- (3) If the current year is later than the income year in which the exclusion day occurs, then:
- (a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) ceases to apply in relation to the individual on 1 July of the current year; and
  - (b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) ceases to apply in relation to the individual on 1 July of the current year.

**Example:** Assume that under section 32AF the consecutive years are 2010-11 and 2011-12. Assume that the individual is not entitled, on and after 1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that the individual is not eligible for family tax benefit for the whole of 2012-13 (the applicable year). Assume that in 2013-14 (the current year) the individual makes a claim for family tax benefit for 2013-14.

Assume that the Secretary is satisfied that, if the Secretary were to take into account the individual's final adjusted taxable income for 2012-13, the individual's Part A rate and Part B rate of family tax benefit would be greater than nil on one or more days in 2013-14.

Under subsection (3), subsection 32AF(2) ceases to prevent the individual from being entitled, on and after 1 July 2013, to be paid family tax benefit worked out on an estimated income basis.

**Note:** For the meaning of *consecutive year*, see subsection 32AF(1). For the meaning of *exclusion day*, see subsection 32AF(3).

**32AI Exception—income support payments**

*Scope*

- (1) This section applies if, on a day (the *income support day*) after the later of the consecutive years, the individual, or the individual's partner (if any), is receiving support (*income support*), in the form

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of a social security pension, a social security benefit, a service pension or income support supplement.

*Trigger day is on or before exclusion day*

- (2) If the trigger day is on or before the exclusion day, subsection 32AF(2) is taken not to apply to the individual.

*Trigger day is after exclusion day*

- (3) If the trigger day is after the exclusion day, subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

*Trigger day for income support payments*

- (4) In this section:

**trigger day** means the later of:

- (a) the earliest income support day; and
- (b) 1 July of the income year the Secretary becomes aware that the individual, or the individual's partner, is receiving the income support.

Note: For the meaning of **consecutive year**, see subsection 32AF(1). For the meaning of **exclusion day**, see subsection 32AF(3).

### **32AJ Exception—new FTB child**

*Scope*

- (1) This section applies if, on a day (the **FTB child day**) after the later of the consecutive years:
- (a) the individual has an FTB child; and
  - (b) the child was not an FTB child of the individual at any time during the consecutive years.

*Trigger day is on or before exclusion day*

- (2) If the trigger day is on or before the exclusion day, subsection 32AF(2) is taken not to apply to the individual.

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*Trigger day is after exclusion day*

- (3) If the trigger day is after the exclusion day, subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

*Trigger day for new FTB child*

- (4) In this section:

**trigger day** means the later of:

- (a) the earliest FTB child day; and
- (b) 1 July of the income year the Secretary becomes aware of the existence of the FTB child.

Note: For the meaning of **consecutive year**, see subsection 32AF(1). For the meaning of **exclusion day**, see subsection 32AF(3).

**32AK Exception—couple separates**

*Scope*

- (1) This section applies if:
- (a) at the end of the later of the consecutive years, the individual is a member of a couple; and
  - (b) on any later day (a **separation day**) the individual ceases to be a member of that couple.

Note: Paragraph (b) may apply more than once, for example if the couple separates, then reconciles, then again separates.

*Trigger day is on or before exclusion day*

- (2) If the trigger day is on or before the exclusion day, subsection 32AF(2) is taken not to apply to the individual.

*Trigger day is after exclusion day*

- (3) If the trigger day is after the exclusion day, subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

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*Reconciliation of separated couple*

- (4) However, if on any day (the **reconciliation day**) after a separation day, the individual again becomes a member of that couple, then subsection 32AF(2) applies in relation to the individual as if the reconciliation day were the exclusion day.

Note: This subsection may apply more than once, for example if the couple separates, then reconciles, then again separates and reconciles.

*Trigger day for separation*

- (5) In this section:

**trigger day**, in relation to a particular separation day, means the later of:

- (a) the separation day; and
- (b) 1 July of the income year the Secretary becomes aware that the individual has (on that separation day) ceased to be a member of that couple.

Note: For the meaning of **consecutive year**, see subsection 32AF(1). For the meaning of **exclusion day**, see subsection 32AF(3).

**32AL Exception—special circumstances***Scope*

- (1) This section applies if the Secretary is satisfied that:
- (a) on a day (the **special circumstances day**) after the later of the consecutive years, special circumstances exist in relation to the individual, the individual's partner (if any) or both; and
  - (b) those circumstances did not exist at the end of the later of the consecutive years; and
  - (c) those circumstances make it inappropriate to prevent the individual from being entitled to be paid the Part A rate and the Part B rate of family tax benefit worked out on an estimated income basis.

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*Trigger day is on or before exclusion day*

- (2) If the trigger day is on or before the exclusion day, the Secretary must determine that subsection 32AF(2) is taken not to apply to the individual.

*Trigger day is after exclusion day*

- (3) If the trigger day is after the exclusion day, the Secretary must determine that subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

*Secretary's determinations—general*

- (4) A determination under subsection (2) or (3):
- (a) has effect in accordance with its terms; and
  - (b) is not a legislative instrument.

*Trigger day for special circumstances*

- (5) In this section:

**trigger day** means the later of:

- (a) the special circumstances day; and
- (b) 1 July of the income year the Secretary becomes aware of the existence of the special circumstances.

Note: For the meaning of **consecutive year**, see subsection 32AF(1). For the meaning of **exclusion day**, see subsection 32AF(3).

**32AM Exception—determined circumstances**

*Scope*

- (1) This section applies if the Secretary is satisfied that:
- (a) on a day (the **determined circumstances day**) after the later of the consecutive years, circumstances determined in an instrument under subsection (2) exist in relation to the individual, the individual's partner (if any) or both; and

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- (b) the determined circumstances make it inappropriate to prevent the individual from being entitled to be paid the Part A rate and the Part B rate of family tax benefit worked out on an estimated income basis.
- (2) The Minister may, by legislative instrument, determine circumstances for the purposes of paragraph (1)(a).

*Trigger day is on or before exclusion day*

- (3) If the trigger day is on or before the exclusion day, the Secretary must determine that subsection 32AF(2) is taken not to apply to the individual.

*Trigger day is after exclusion day*

- (4) If the trigger day is after the exclusion day, the Secretary must determine that subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

*Secretary's determinations—general*

- (5) A determination under subsection (3) or (4):
  - (a) has effect in accordance with its terms; and
  - (b) is not a legislative instrument.

*Trigger day for determined circumstances*

- (6) In this section:

**trigger day** means the later of:

- (a) the determined circumstances day; and
- (b) 1 July of the income year the Secretary becomes aware of the existence of the determined circumstances.

Note: For the meaning of **consecutive year**, see subsection 32AF(1). For the meaning of **exclusion day**, see subsection 32AF(3).

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**Subdivision D—FTB reconciliation conditions**

**32A FTB Part A supplement and FTB Part B supplement to be disregarded unless and until individual has satisfied the FTB reconciliation conditions**

- (1) This section applies to a decision of the Secretary to make or vary a section 16 or 17 determination if, as a result of the decision, an individual (the *first individual*) is entitled to be paid family tax benefit at a particular rate in respect of a period (the *same-rate benefit period*) that consists of, or is included in, a particular income year (the *relevant income year*).
- (2) In making or varying the determination, the Secretary must disregard the following provisions:
  - (a) paragraph (ca) of step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act;
  - (b) paragraph (d) of step 1 of the method statement in clause 25 of Schedule 1 to the Family Assistance Act;
  - (ba) paragraph 29(1)(b) of Schedule 1 to the Family Assistance Act;
  - (bb) paragraph (b) of step 1 of the method statement in subclause 29(2) of Schedule 1 to the Family Assistance Act;
  - (bba) paragraph 29A(2)(b) of Schedule 1 to the Family Assistance Act;
  - (bc) subclause 31A(1) of Schedule 1 to the Family Assistance Act;
  - (c) subclause 38A(1) of Schedule 1 to the Family Assistance Act;unless and until:
  - (d) if the same-rate benefit period to which the decision relates is the only same-rate benefit period for the first individual for the relevant income year—the first individual has satisfied the FTB reconciliation conditions for the same-rate benefit period; or



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- (e) if the same-rate benefit period to which the decision relates is one of 2 or more same-rate benefit periods for the first individual for the relevant income year—the first individual has satisfied the FTB reconciliation conditions for each of those same-rate benefit periods.

Note 1: If those provisions are disregarded, they will be taken into account when the determination or variation is reviewed under section 105—see section 105A.

Note 2: To work out when the first individual has satisfied the FTB reconciliation conditions, see section 32B.

- (3) Subsection (2) does not apply for the purposes of working out the amount of a clean energy advance.

**32B When FTB reconciliation conditions are satisfied**

For the purposes of this Act, the first individual satisfies the FTB reconciliation conditions for a same-rate benefit period:

- (a) if only one of sections 32C to 32Q applies to the first individual for the same-rate benefit period—at the relevant reconciliation time; or
- (b) if 2 or more of sections 32C to 32Q apply to the first individual for the same-rate benefit period—at whichever of the relevant reconciliation times is the latest.

**32C Relevant reconciliation time—first individual must lodge tax return**

- (1) This section applies to the first individual for a same-rate benefit period if:
  - (a) the first individual is or was required to lodge an income tax return for the relevant income year; and
  - (b) clause 38L of Schedule 1 to the Family Assistance Act did not apply to the first individual at any time during the same-rate benefit period.
- (2) Disregard paragraph (1)(b) if the first individual was a member of a couple at any time during the same-rate benefit period.

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- (3) The relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year, so long as the first individual's income tax return for the relevant income year was lodged before the end of:
  - (a) the first income year after the relevant income year; or
  - (b) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the first individual from lodging the return before the end of that first income year.
- (4) The further period under paragraph (3)(b) must end no later than the end of the second income year after the relevant income year.

**32D Relevant reconciliation time—no separation of couple and partner must lodge tax return**

- (1) This section applies to the first individual for a same-rate benefit period if:
  - (a) the first individual was a member of a couple throughout that period; and
  - (b) the other member of the couple (the *partner*) is or was required to lodge an income tax return for the relevant income year; and
  - (c) the first individual continues to be a member of the couple until the end of:
    - (i) the first income year after the relevant income year; or
    - (ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the partner from lodging the return before the end of that first income year.
- (2) The relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the partner's taxable income for the relevant income year, so long as the partner's income tax return for the relevant income year was lodged before the end of:

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- (a) the first income year after the relevant income year; or
  - (b) such further period (if any) as the Secretary allows under subparagraph (1)(c)(ii).
- (3) The further period under subparagraph (1)(c)(ii) must end no later than the end of the second income year after the relevant income year.

**32E Relevant reconciliation time—couple separates during next income year and partner must lodge tax return**

- (1) This section applies to the first individual for a same-rate benefit period if:
- (a) the first individual was a member of a couple throughout that period; and
  - (b) the other member of the couple (the *partner*) is or was required to lodge an income tax return for the relevant income year; and
  - (c) the first individual ceased to be a member of the couple during the first income year after the relevant income year.
- (2) The relevant reconciliation time is:
- (a) if the partner lodged the return before the end of the first income year after the relevant income year—when an assessment is made under the *Income Tax Assessment Act 1936* of the partner's taxable income for the relevant income year; or
  - (b) otherwise—the end of the first income year after the relevant income year.

**32F Relevant reconciliation time—couple separates after end of next income year and partner must lodge tax return**

- (1) This section applies to the first individual for a same-rate benefit period if:
- (a) the first individual was a member of a couple throughout that period; and

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- (b) the other member of the couple (the *partner*) is or was required to lodge an income tax return for the relevant income year; and
  - (c) the partner did not lodge the return before the end of the first income year after the relevant income year; and
  - (d) the Secretary allowed a further period for the partner to lodge the return because the Secretary was satisfied that there were special circumstances that prevented the partner from lodging the return before the end of that first income year; and
  - (e) the first individual ceased to be a member of the couple during the period beginning at the start of the second income year after the relevant income year and ending at the end of that further period allowed by the Secretary.
- (2) The relevant reconciliation time is:
- (a) if the partner lodged the return while the first individual and the partner were members of the same couple—when an assessment is made under the *Income Tax Assessment Act 1936* of the partner's taxable income for the relevant income year; or
  - (b) otherwise—when the first individual ceased to be a member of the couple.
- (3) The further period under paragraph (1)(d) must end no later than the end of the second income year after the relevant income year.

**32J Relevant reconciliation time—individual not required to lodge an income tax return**

- (1) This section applies to the first individual for a same-rate benefit period if:
- (a) the first individual; or
  - (b) any other individual whose adjusted taxable income is relevant in working out the first individual's entitlement to, or rate of, family tax benefit for the same-rate benefit period;
- is not required to lodge an income tax return for the relevant income year.

- (2) The relevant reconciliation time is whichever is the earlier of the following times:
- (a) the time after the end of the relevant income year when the first individual notifies the Secretary of the amount of the first individual's adjusted taxable income for the relevant income year;
  - (b) the time after the end of the relevant income year when the Secretary becomes satisfied that the first individual's adjusted taxable income for the relevant income year can be worked out without receiving a notification from the first individual.

**32M Relevant reconciliation time—target foreign income, tax free pension/benefit or child maintenance expenditure**

- (1) This section applies to the first individual for a same-rate benefit period if any of the following were taken into account in working out the first individual's adjusted taxable income for the relevant income year:
- (a) the first individual's target foreign income for the relevant income year (as defined by clause 5 of Schedule 3 to the Family Assistance Act);
  - (b) the first individual's tax free pension or benefit for the relevant income year (as defined by clause 7 of Schedule 3 to the Family Assistance Act);
  - (c) the first individual's child maintenance expenditure for the relevant income year (as defined by clause 8 of Schedule 3 to the Family Assistance Act);
  - (d) another individual's target foreign income for the relevant income year (as defined by clause 5 of Schedule 3 to the Family Assistance Act);
  - (e) another individual's tax free pension or benefit for the relevant income year (as defined by clause 7 of Schedule 3 to the Family Assistance Act);
  - (f) another individual's child maintenance expenditure for the relevant income year (as defined by clause 8 of Schedule 3 to the Family Assistance Act).

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- (2) The relevant reconciliation time is whichever is the earlier of the following times:
- (a) the time after the end of the relevant income year when the first individual notifies the Secretary of the amount of the first individual's adjusted taxable income for the relevant income year;
  - (b) the time after the end of the relevant income year when the Secretary becomes satisfied that the first individual's adjusted taxable income for the relevant income year can be worked out without receiving a notification from the first individual.

**32N Relevant reconciliation time—individual has maintenance income**

- (1) This section applies to the first individual for a same-rate benefit period if:
- (a) the first individual has an annualised amount of maintenance income (as defined by Division 5 of Part 2 of Schedule 1 to the Family Assistance Act) for the relevant income year; and
  - (b) clause 19B of Schedule 1 to the Family Assistance Act did not apply to the first individual at any time during the same-rate benefit period.
- (2) The relevant reconciliation time is whichever is the earlier of the following times:
- (a) the time after the end of the relevant income year when the first individual notifies the Secretary of information that is sufficient to work out the first individual's annualised amount of maintenance income for the relevant income year;
  - (b) the time after the end of the relevant income year when the Secretary becomes satisfied that the first individual's annualised amount of maintenance income for the relevant income year can be worked out without receiving a notification from the first individual.

**32P Relevant reconciliation time—individual not member of a couple, no maintenance income etc.**

- (1) This section applies to the first individual for a same-rate benefit period if:
  - (a) the first individual was not a member of a couple at any time during the same-rate benefit period; and
  - (b) clause 38L of Schedule 1 to the Family Assistance Act applied to the first individual throughout the same-rate benefit period; and
  - (c) either:
    - (i) the first individual did not have an annualised amount of maintenance income (as defined by Division 5 of Part 2 of Schedule 1 to the Family Assistance Act) for the relevant income year; or
    - (ii) clause 19B of Schedule 1 to the Family Assistance Act applied to the first individual throughout the same-rate benefit period.
- (2) The relevant reconciliation time is the end of the relevant income year.

**32Q Relevant reconciliation time—individual covered by determination made by the Secretary**

The Secretary may, by legislative instrument, determine that:

- (a) this section applies to a specified class of individuals for a same-rate benefit period in specified circumstances; and
- (b) the relevant reconciliation time applicable to that class for the same-rate benefit period is the time ascertained in accordance with the determination.

## **Division 2—Payment of family tax benefit advances**

### **Subdivision A—Request for family tax benefit advance**

#### **33 Request**

- (1) An individual may request a family tax benefit advance.
- (2) If an individual makes a request for a family tax benefit advance (the ***first advance***) accompanied by a request under section 35B (regular family tax benefit advances), the individual may also request that entitlement to the first advance be determined on a specified future day.

#### **34 Form of request**

- (1) To be effective a request:
  - (a) must be made in a form and manner, contain any information, and be accompanied by any documents required by the Secretary; and
  - (b) must specify the amount of family tax benefit advance sought; and
  - (c) the amount of family tax benefit advance sought must be at least the minimum amount.
- (2) If an effective request is made, the Secretary must determine the request in accordance with this Division. If a request is not effective, it is taken never to have been made.

#### **35 Request may be withdrawn or varied**

- (1) An individual may withdraw or vary a request before the request is determined.
- (2) The individual may only do so in a manner determined by the Secretary.
- (3) If a request is withdrawn, it is taken never to have been made.



## **Subdivision B—Entitlement to family tax benefit advance**

### **35A Entitlement to family tax benefit advance**

- (1) The Secretary must determine that an individual is entitled to be paid a family tax benefit advance if:
  - (a) on the advance assessment day, the individual is entitled to be paid family tax benefit by instalment; and
  - (b) the individual has made an effective request under section 34 for a family tax benefit advance; and
  - (c) on the advance assessment day, the individual's Part A rate (disregarding clauses 5 and 25A of Schedule 1 to the Family Assistance Act) is equal to or exceeds the amount that would, under clause 26 of that Schedule, be the FTB child rate if:
    - (i) the individual's Part A rate were required to be worked out using Part 3 of that Schedule; and
    - (ii) clause 27 of that Schedule did not apply; and
  - (d) on the advance assessment day, the individual has at least one FTB child; and
  - (e) on the advance assessment day, the amount of advance that the individual would be entitled to is at least the minimum amount; and
  - (f) the Secretary considers, on the basis of information available to the Secretary on the advance assessment day, that the individual will not suffer financial hardship from the individual's Part A rate being reduced as a result of being paid the advance; and
  - (g) on the advance assessment day, the individual is not excluded from being paid a family tax benefit advance under subsection (2).
- (2) An individual is excluded from being paid a family tax benefit advance if:
  - (a) an amount of family tax benefit advance paid to the individual more than 12 months before the advance assessment day has not been fully repaid; or

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- (b) an amount of family tax benefit advance paid to the individual more than 12 months before the advance assessment day is being repaid as a new advance due to a determination under clause 51 of Schedule 1 to the Family Assistance Act; or
  - (c) the individual owes a debt to the Commonwealth (whether arising under this Act or not) that is:
    - (i) recoverable under Part 4 by means of deductions from the individual's instalments of family tax benefit under section 84 (unless that debt has been written off because of subsection 95(4A) or (4B)); or
    - (ii) being recovered by deductions from the individual's instalments of family tax benefit under section 227; or
  - (d) on the advance assessment day, the Secretary is prohibited from making a payment of family tax benefit to the individual under section 32AA or 32AD (non-payment for non-lodgment of tax returns).
- (3) An individual's **advance assessment day** is the day the Secretary determines the individual's entitlement to be paid a family tax benefit advance.
- (4) If the individual is not entitled to be paid a family tax benefit advance under subsection (1), the Secretary must determine that the individual is not entitled to the family tax benefit advance.

**Subdivision C—Regular family tax benefit advances**

**35B Regular family tax benefit advances**

- (1) An individual who makes a request in accordance with section 34 for a family tax benefit advance of the minimum amount (the **first advance**) may, when making the request, also request that a family tax benefit advance of the minimum amount be paid to the individual at regular intervals of 182 days.
- (2) For the request for payment of a family tax benefit advance at regular intervals to be effective, the request must be made in a

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form and manner, contain any information, and be accompanied by any documents, required by the Secretary.

- (3) If an individual makes an effective request under this section:
- (a) the Secretary must make a determination under section 35A, in relation to the individual's eligibility for a family tax benefit advance of the minimum amount, at intervals that would best facilitate payment in accordance with the request; and
  - (b) the **advance assessment day** for a determination referred to in paragraph (a) is:
    - (i) if the individual has not previously been paid a family tax benefit advance requested under this section—the day that falls immediately after the end of an interval of 182 days that began on the day the first advance was paid; or
    - (ii) if the individual has previously been paid a family tax benefit advance requested under this section—the day that falls immediately after the end of the last of the intervals of 182 days, the first of which began on the day the first advance was paid.
- (4) The Secretary must, in making a determination referred to in subsection (3), treat paragraph 35A(1)(b) (requirement to make an effective request) as having been satisfied if:
- (a) the individual has made an effective request under this section; and
  - (b) the request has not been withdrawn under subsection (6) before the determination is made; and
  - (c) the individual has not failed to repay the last family tax benefit advance paid in response to the request under section 34 mentioned in subsection (1), or the request under this section, within 182 days.
- (5) A request under subsection (1) ceases to be effective if:
- (a) the Secretary, in making a determination referred to in subsection (3), determines that the individual is not entitled to a family tax benefit advance; or

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- (b) the individual withdraws the request under subsection (6).
- (6) An individual may, in a manner determined by the Secretary, withdraw the request at any time.

**Subdivision D—Amount of family tax benefit advance**

**35C Amount of family tax benefit advance**

- (1) The amount of the family tax benefit advance is the smaller of the following amounts:
  - (a) the amount of advance sought;
  - (b) the maximum amount of advance payable to the individual on the advance assessment day worked out under section 35D less the original amount of each family tax benefit advance paid to the individual that is unrepaid on that day.
- (2) When working out the original amount of each family tax benefit advance paid to the individual that is unrepaid for the purposes of paragraph (1)(b), disregard clause 51 of Schedule 1 to the Family Assistance Act.
- (3) The Secretary may determine that the amount of the family tax benefit advance is a lower amount than the amount that applies under subsection (1) if the Secretary is satisfied that the individual would suffer financial hardship if the individual's Part A rate were reduced as a result of being paid that amount.

**35D Maximum amount of family tax benefit advance payable**

- (1) Subject to subsection (2), the *maximum amount* of family tax benefit advance payable to the individual is set out in the following table:

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<b>Maximum amount of family tax benefit advance</b>		
<b>Item</b>	<b>If 7.5% of the individual's adjusted Part A rate is:</b>	<b>The individual's maximum amount of family tax benefit advance is:</b>
1	greater than or equal to 23.3% of the standard rate for a child under 13	23.3% of the standard rate for a child under 13
2	less than 23.3% and greater than 7.5% of the standard rate for a child under 13	7.5% of the individual's adjusted Part A rate
3	less than or equal to 7.5% of the standard rate for a child under 13	7.5% of the standard rate for a child under 13

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*Member of a couple in a blended family*

- (2) If a determination under section 28 of the Family Assistance Act that the individual is eligible for a percentage (the **section 28 percentage**) of the family tax benefit for FTB children of the individual is in force, the **maximum amount** of family tax benefit advance payable to the individual is the section 28 percentage of the amount worked out for the individual under subsection (1).

*Rounding*

- (3) Amounts worked out under this section must be rounded to the nearest cent (rounding 0.5 cents upwards).

*Definitions*

- (4) In this section:

**adjusted Part A rate**, in relation to an individual, means the individual's Part A rate disregarding:

- (a) clause 38A of Schedule 1 to the Family Assistance Act; and
- (b) any reduction under clause 5 or 25A of that Schedule.

**standard rate for a child under 13** means the FTB child rate for one FTB child who is under 13 years of age worked out under clause 7 of Schedule 1 to the Family Assistance Act (disregarding clauses 8 to 11 of that Schedule).

**Part 3** Payment of family assistance

**Division 2** Payment of family tax benefit advances

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**Subdivision E—Payment of family tax benefit advance**

**35E Payment of advance**

- (1) If an individual is entitled to be paid a family tax benefit advance, the Secretary must, at such time and in such manner as the Secretary considers appropriate, pay the individual the advance.
- (2) This section is subject to Part 4, Division 3 of Part 8B and sections 225 and 226.

**Division 2A—Schoolkids bonus****35F Entitlement to schoolkids bonus**

If an individual is eligible under Division 1A of Part 3 of the Family Assistance Act for schoolkids bonus on a bonus test day, the individual is entitled to schoolkids bonus on the bonus test day.

**35G Payment of schoolkids bonus**

- (1) If an individual is entitled to schoolkids bonus on a bonus test day, the Secretary must pay the payment to the individual in a single lump sum:
  - (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
  - (b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.

- (2) If, on the bonus test day, section 32AA or 32AD prevents the Secretary from making a payment of family tax benefit to the individual, or the individual's partner, worked out on an estimated income basis, the Secretary must not pay the schoolkids bonus to the individual at a time that is earlier than the time family tax benefit is paid to the individual, or the individual's partner, in relation to that bonus test day.

**35H Obligation to notify change of circumstances**

- (1) If:
  - (a) an individual is eligible for schoolkids bonus on a bonus test day; and
  - (b) there is a change in circumstances that may affect the individual's eligibility for schoolkids bonus on a later bonus test day or the amount of schoolkids bonus for the individual for a later bonus test day;

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the individual must, in the manner set out in a written notice given to the individual under subsection (3) and as soon as practicable after the change in circumstances, notify the Secretary of that change.

- (2) The Secretary must approve a manner of notification that an individual is to use when notifying the Secretary of a thing under subsection (1).
- (3) The Secretary must, by written notice, notify the individual of the approved manner of notification.

**35J Determination of eligibility may be based on estimate**

If:

- (a) an individual's eligibility under Division 1A of Part 3 of the Family Assistance Act for schoolkids bonus on a bonus test day is required to be determined; and
  - (b) information about the amount of adjusted taxable income needed for the determination of the eligibility is not available (for example, because the taxable income of the individual or another individual cannot be known until after the end of the relevant income year); and
  - (c) the individual gives the Secretary an estimate of the amount needed; and
  - (d) the Secretary considers the estimate to be reasonable;
- the Secretary may determine the individual's eligibility on the basis of the estimate.



## **Division 3—Stillborn baby payment**

### **36 Need for a claim**

The only way that a person can become entitled to be paid a stillborn baby payment is to make a claim in accordance with this Division.

### **37 Who can claim**

The only persons who can make a claim in accordance with this Division are individuals.

### **38 How to claim**

- (1) An individual (the ***claimant***) may make a claim for payment of:
  - (a) a stillborn baby payment in normal circumstances; or
  - (b) a stillborn baby payment because of the death of another individual.
- (2) A claim is not effective unless:
  - (a) the claim:
    - (i) is made in a form and manner; and
    - (ii) contains any information; and
    - (iii) is accompanied by any documents; required by the Secretary; and
  - (b) in the case of a claim for a stillborn baby payment in normal circumstances—the claim contains an estimate of the sum of:
    - (i) the individual's adjusted taxable income; and
    - (ii) if the individual is a member of a couple on the day the claim is made—the adjusted taxable income of the individual's partner;for the 6-month period mentioned in paragraph 36(1)(d) of the Family Assistance Act; and

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- (c) in the case of a claim for a stillborn baby payment in normal circumstances—the tax file number requirement in section 38A has been satisfied in relation to the claim; and
- (d) in the case of a claim for a stillborn baby payment because of the death of another individual—the tax file number requirement in section 38B has been satisfied in relation to the claim.

*Estimate of adjusted taxable income*

- (3) For the purposes of paragraph (2)(b):
  - (a) a reference in Schedule 3 to the Family Assistance Act to an income year is taken to be a reference to the 6-month period referred to in that paragraph; and
  - (b) disregard subclause 2(2) and clauses 3 and 3A of that Schedule.

**38A Tax file number requirement to be satisfied for claims for stillborn baby payment in normal circumstances to be effective**

- (1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 38(2)(b) (which states what is required for certain claims to be effective).
- (2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN claim person. However, the requirement does not apply in relation to a TFN claim person if a determination is in force under subsection (7) in relation to the person.

*Statement of tax file number*

- (3) The first kind of statement that can be made is a statement of the TFN claim person's tax file number. Regardless of who the TFN claim person is, this kind of statement can be made by the claimant only.

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*Statement that TFN claim person does not know what his or her tax file number is etc.*

- (4) The second kind of statement that can be made is a statement by the TFN claim person that the person:
- (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  - (c) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) whether the person has a tax file number; and
    - (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (5) The third kind of statement that can be made is a statement by the TFN claim person that the person:
- (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn.

*How statement to be given*

- (6) A statement made by the claimant must be in the claim. A statement made by any other TFN claim person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

*Exemption from tax file number requirement*

- (7) The Secretary may determine that the requirement in subsection (2) does not apply to a TFN claim person if:

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- (a) the person is, or was, the claimant's partner; and
- (b) the claimant cannot obtain from the person:
  - (i) the person's tax file number; or
  - (ii) a statement by the person under subsection (4) or (5).

**38B Tax file number requirement to be satisfied for claims for stillborn baby payment because of the death of another individual to be effective**

- (1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 38(2)(c) (which states what is required for claims in substitution because of the death of another individual to be effective).
- (2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN substitution person. However, the requirement does not apply in relation to a TFN substitution person if a determination is in force under subsection (7) or (8) in relation to the person.

*Statement of tax file number*

- (3) The first kind of statement that can be made is a statement of a TFN substitution person's tax file number. Regardless of who the TFN substitution person is, this kind of statement can be made by the claimant only.

*Statement that TFN substitution person does not know what his or her tax file number is*

- (4) The second kind of statement that can be made is a statement by a TFN substitution person who was the deceased individual's partner during the period in respect of which the payment is claimed to the effect that the TFN substitution person:
  - (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and

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- (c) authorises the Commissioner of Taxation to tell the Secretary:
  - (i) whether the person has a tax file number; and
  - (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (5) The third kind of statement that can be made is a statement by the TFN substitution person who was the deceased individual's partner during the period in respect of which the payment is claimed to the effect that the TFN substitution person:
  - (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn.

*How statement to be given*

- (6) A statement made by the claimant must be made in the claim. A statement made by a TFN substitution person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

*Exemption from tax file number requirement*

- (7) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant does not know the person's tax file number.
- (8) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant cannot obtain a statement by the person under subsection (4) or (5).

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**39 Restrictions on claiming**

*“Normal circumstances” entitlement must not already have been determined, or be awaiting determination, on a previous claim*

- (1) A claim for payment of a stillborn baby payment in normal circumstances is not effective if the claimant has previously made such a claim based on the same circumstances (whether or not the claim has yet been determined).

*Timing of “normal circumstances” stillborn baby payment claim*

- (2) Subject to subsections (3), (3A) and (4), a claim for payment of a stillborn baby payment in normal circumstances is not effective unless it is made before the end of the period of 52 weeks beginning on the day of the birth of the stillborn child.
- (3) If the Secretary is satisfied that the claimant was unable to make a claim for payment of a stillborn baby payment in normal circumstances because of severe illness associated with the birth of the stillborn child, the Secretary may extend the period of 52 weeks mentioned in subsection (2) to such longer period as the Secretary considers appropriate.
- (3A) If:
- (a) in relation to any day during the period of 52 weeks mentioned in subsection (2), paragraphs 36(2)(a) and (b) of the Family Assistance Act apply in relation to the claimant or the claimant’s partner; and
  - (b) after the end of, or during the last 13 weeks of, that 52-week period, the Secretary gives the claimant, or the claimant’s partner, a notice specifying that the claimant’s or the claimant’s partner’s rate of family tax benefit consists of or includes a Part A rate greater than nil;
- subsection (2) of this section does not apply if the claim for payment of a stillborn baby payment is made within the period of 13 weeks after the day on which the notice is given.

- (4) If:
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- (a) the claimant, or the claimant's partner, made a claim in accordance with Part 2-4 of the *Paid Parental Leave Act 2010* for parental leave pay for the child to whom the claim for payment of a stillborn baby payment relates; and
  - (b) the Secretary notifies the claimant, or the claimant's partner, under section 24 of that Act that parental leave pay is not payable for the child; and
  - (c) the notice is given:
    - (i) after the end of the period of 52 weeks mentioned in subsection (2) of this section; or
    - (ii) during the last 13 weeks of that period of 52 weeks;
- subsection (2) of this section does not apply if the claim for payment of a stillborn baby payment is made within the period of 13 weeks after the day on which the notice is given.

*“Bereavement” entitlement must not already have been determined, or be awaiting determination, on a previous claim*

- (5) A claim for payment of a stillborn baby payment because of the death of another individual is not effective if the claimant has previously made such a claim because of the death of that individual (whether or not the claim has yet been determined).

#### **40 Claim may be withdrawn**

- (1) A claimant may withdraw or vary a claim before the claim is determined.
- (2) The claimant may only do so in a manner determined by the Secretary.
- (3) If a claim is withdrawn, it is taken never to have been made.

#### **41 Secretary must determine claim**

- (1) If a claim is effective, the Secretary must determine the claim in accordance with this section and sections 42 to 44. If the claim is not effective, it is taken not to have been made.

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*Information to be taken into account*

- (2) The Secretary is to make the determination:
- (a) having regard only to the information in the claim (and any accompanying documents or information required by the Secretary); or
  - (b) having regard to the things in paragraph (a) and also to any other information or documents (whether or not provided by the claimant).

*Deferral of “normal circumstances” stillborn baby payment determination pending resolution of parental leave pay*

- (3) If:
- (a) the claim is one for payment of a stillborn baby payment in normal circumstances; and
  - (b) the claimant, or the claimant’s partner, has made a claim in accordance with Part 2-4 of the *Paid Parental Leave Act 2010* for parental leave pay for the child to whom the claim for a stillborn baby payment relates;
- the Secretary must not determine the claim for a stillborn baby payment until one of the following occurs:
- (c) if the Secretary determines under that Act that parental leave pay for the child is payable:
    - (i) the PPL period applying to the individual who made the claim for parental leave pay starts; or
    - (ii) the Secretary revokes the determination under section 25 of that Act;
  - (d) the Secretary determines under that Act that parental leave pay for the child is not payable;
  - (e) the claim for parental leave pay is withdrawn under section 61 of that Act.



**41A Restriction on determining claim where tax file number not provided etc.**

*Statement that TFN claim person or TFN substitution person does not know what his or her tax file number is etc.*

(1) If:

- (a) a TFN claim person makes a statement of the kind set out in subsection 38A(4); or
- (b) a TFN substitution person makes a statement of the kind set out in subsection 38B(4);

the Secretary can only determine the claim concerned if:

- (c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or
- (d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that the person has no tax file number.

*Statement that an application for a tax file number is pending*

(2) If:

- (a) a TFN claim person makes a statement of the kind set out in subsection 38A(5); or
- (b) a TFN substitution person makes a statement of the kind set out in subsection 38B(5);

the Secretary can only determine the claim concerned if:

- (c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or
- (d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that:
  - (i) the person has not applied for a tax file number; or
  - (ii) an application by the person for a tax file number has been refused; or
  - (iii) the person has withdrawn an application for a tax file number.

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- (3) If, after the 28 days mentioned in subsection (1) or (2) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

**42 Determination of “normal circumstances” entitlement claim**

If:

- (a) the claim is one for payment of a stillborn baby payment in normal circumstances; and
- (b) the Secretary is satisfied that the claimant is eligible for a stillborn baby payment in accordance with Subdivision A of Division 2 of Part 3 of the Family Assistance Act in respect of the child to whom the claim relates;

the Secretary must determine that the claimant is entitled to be paid the stillborn baby payment and must determine the amount of the payment that the claimant is entitled to be paid.

**43 Determination of “bereavement” entitlement claim**

If:

- (a) the claim is one for payment of a stillborn baby payment because of the death of another individual; and
- (b) the Secretary is satisfied that the claimant is, in the circumstances covered by the claim, eligible for a stillborn baby payment in accordance with Subdivision B of Division 2 of Part 3 of the Family Assistance Act;

the Secretary must determine that the claimant is entitled to be paid the stillborn baby payment and must determine the amount of the payment that the claimant is entitled to be paid.

**44 Determination that no entitlement**

If the Secretary is not satisfied as mentioned in section 42 or 43, the Secretary must determine that the claimant is not entitled to be paid a stillborn baby payment in respect of the child to whom the claim relates, or in the circumstances covered by the claim, as the case requires.

#### **45 When determination is in force**

A determination comes into force when it is made and remains in force at all times afterwards.

#### **46 Notice of determination**

- (1) The Secretary must give notice of the determination to the claimant, stating:
  - (a) whether the claimant is entitled to be paid a stillborn baby payment under the determination; and
  - (b) if the claimant is entitled—the amount of the stillborn baby payment and how it is to be paid; and
  - (c) that the claimant may apply for review of the determination in the manner set out in Part 5.
- (2) The determination is not ineffective by reason only that the requirements of subsection (1) are not complied with.

#### **47 Payment of stillborn baby payment**

- (1) If the claimant is entitled to be paid a stillborn baby payment, the Secretary must pay the amount of the payment to the claimant in a single lump sum:
  - (a) on the day that the Secretary considers to be the earliest day on which it is reasonably practicable for the amount to be paid; and
  - (b) to the credit of a bank account nominated and maintained by the claimant.

##### *Payment not to bank account*

- (2) However, the Secretary may direct that an amount that is to be paid under subsection (1) is to be paid in a way other than by payment to the credit of a bank account nominated and maintained by the claimant. A direction has effect accordingly.

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*Interaction with other provisions*

- (3) This section is subject to Part 4, Division 3 of Part 8B and sections 225 and 226.

**47A Variation of determination where certain statements under section 38A made**

- (1) If:
- (a) a TFN claim person has made a statement of the kind set out in subsection 38A(4); and
  - (b) a determination is in force under which the claimant is entitled to be paid a stillborn baby payment in normal circumstances; and
  - (c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has no tax file number; the consequence in subsection (3) applies.
- (2) If:
- (a) a TFN claim person has made a statement of the kind set out in subsection 38A(5); and
  - (b) a determination is in force under which the claimant is entitled to be paid a stillborn baby payment in normal circumstances; and
  - (c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number; the consequence in subsection (3) applies.
- (3) For the purposes of subsection (1) or (2), the consequence is that the Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid a stillborn baby payment.
- (4) If:
- (a) under subsection (3), the Secretary varies the determination; and

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(b) the Secretary finds out the tax file number of the TFN claim person at any time after the variation took place;  
the Secretary must vary the determination to undo the effect mentioned in subsection (3).

## **Division 4—Child care benefit**

### **Subdivision A—Overview of process of fee reductions**

#### **48 Overview of process if individual is conditionally eligible for child care benefit by fee reduction**

- (1) An approved child care service is obliged to notify the Secretary if an individual enrolls a child for care by the service.
- (2) Once that enrolment is confirmed by the Secretary, the service is obliged to give weekly reports to the Secretary about the care provided to the child.
- (3) If a report is given, and a determination of conditional eligibility under section 50F is in force in respect of an individual and a child with the effect that the individual is conditionally eligible for child care benefit by fee reduction for care provided by the approved child care service to the child in a week, the Secretary will calculate the amount by which the fees charged by the service for the care are to be reduced.
- (4) The amount by which the fees are to be reduced is referable to the amount of child care benefit that would be paid in respect of the sessions if entitlement to an amount of child care benefit was determined under section 51B in respect of the income year in which the week falls. The amount of fee reduction is calculated by the Secretary using the provisions of the Family Assistance Act.
- (5) The service must pass on to the individual the amount of the fee reduction calculated by the Secretary. If the service has already reduced the amount of fees charged to the individual for care provided to the child in anticipation of the calculation by the Secretary, the service is taken to have passed on a fee reduction equal to the amount by which the fees have already been reduced.
- (6) When the determination of entitlement is made, if the amount of the entitlement is greater than the amount of the fee reductions

already received by the individual in respect of the sessions in the income year, the amount of the entitlement consists of the amount of the difference together with the amount of fee reductions received by the individual.

- (7) When the determination of entitlement is made, if the amount of the entitlement is less than the amount of the fee reductions already received by the individual in respect of the sessions in the income year, the amount of the entitlement is the amount of the fee reductions less the amount of the difference.
- (8) Payments in respect of fee reduction are made to the service by the Secretary to enable the service to pass on to the individual the amount of fee reductions as calculated (see Division 2 of Part 8A).

### **Subdivision B—Making claims**

#### **49 Need for a claim**

- (1) Except in the case set out in subsection (2), the only way that a person can become entitled to be paid child care benefit is to make a claim in accordance with this Subdivision.
- (2) If an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for care provided by the service to a child at risk, the service (a ***claimant***) is taken to have made a claim for payment of child care benefit by fee reduction for the care provided by the service to the child. The claim is taken to be made on the first day that the service reports to the Secretary in respect of that eligibility.

#### **49A Who can make a claim**

- (1) The only persons who can make a claim in accordance with this Subdivision are individuals.
- (2) An approved child care service that is eligible under section 47 of the Family Assistance Act is, under subsection 49(2), taken to have made a claim.

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**49B What may be claimed by an individual**

An individual (a *claimant*) may make a claim:

- (a) for payment of child care benefit by fee reduction for care provided by an approved child care service; or
- (b) for payment of child care benefit for a past period for care provided by an approved child care service; or
- (c) for payment of child care benefit for a past period for care provided by a registered carer; or
- (d) for payment of child care benefit by single payment/in substitution because of the death of another individual.

**49C Form etc. of effective claim by individual**

*Requirements for claim by individual to be effective*

- (1) To be effective:
  - (a) a claim (other than a claim that is taken to be made under subsection 49(2)) must:
    - (i) be made in a form and manner; and
    - (ii) subject to subsections (2), (3), (4) and (6), contain any information; and
    - (iii) be accompanied by any documents; required by the Secretary; and
  - (b) the bank account requirement set out in section 49G must be satisfied in relation to the claim; and
  - (c) in the case of a claim by an individual for payment of child care benefit for a past period for care provided by an approved child care service—the tax file number requirement in section 49E must be satisfied in relation to the claim; and
  - (d) in the case of a claim by an individual for payment of child care benefit by single payment/in substitution because of the death of another individual for care provided by an approved child care service—the tax file number requirement in section 49F must be satisfied in relation to the claim.



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*Exemption from part of information requirement when claimant making a claim for payment of child care benefit by fee reduction*

- (2) Subject to section 49H, 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 though the claimant does not provide all, or some, of the following information:
- (a) information about any amount needed by the Secretary to calculate the CCB % applicable to the claimant in respect of the child;
  - (b) information needed to work out the number of children the claimant has in care of a particular kind;
  - (c) information as to whether the child is a school child;
  - (ca) information needed by the Secretary to determine the claimant's eligibility for the special grandparent rate in respect of the child;
  - (d) information required for checking compliance with paragraph 42(1)(c) of the Family Assistance Act (dealing with immunisation);
  - (e) the following information:
    - (i) information relating to the claimant's, and the claimant's partner's (if any), tax file number requested under section 57B;
    - (ii) information relating to whether the claimant is opting to have a CCB % of zero % applicable to him or her.

*Exemption from part of information requirement when claimant making a claim for payment of child care benefit for a past period for care provided by an approved child care service*

- (3) Subject to section 49J, a claim for payment of child care benefit for a past period for care provided by an approved child care service to a child will be effective even though the claimant does not provide all, or some, of the following information:
- (a) information about the amount needed by the Secretary to calculate the CCB % applicable to the claimant in respect of the child;

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- (b) information needed to work out the number of children the claimant had in care of a particular kind;
- (c) information as to whether the child was a school child.

*Exemption from part of information requirement when claimant making a claim for payment of child care benefit by single payment/in substitution for care provided by an approved child care service*

- (4) Subject to section 49L, a claim for payment of child care benefit by single payment/in substitution for care provided by an approved child care service to a child because of the death of another individual will be effective even though the claimant does not provide all, or some, of the following information:
  - (a) information about any amount needed by the Secretary to calculate the CCB % applicable to the other individual in respect of the child;
  - (b) information needed to work out the number of children the other individual had in care of a particular kind;
  - (c) information as to whether the child was a school child.
- (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).

**49D Deemed claim under subsection 49(2) effective in certain circumstances**

- (1) Subject to section 49M, if a claim by an approved child care service is taken to have been made under subsection 49(2), the claim is taken to be effective if the service's eligibility under section 47 of the Family Assistance Act is reported by the service to the Secretary.

*Form of report required*

- (2) The report must:
- (a) be made in a form and manner; and
  - (b) contain any information; and
  - (c) be accompanied by any documents;
- required by the Secretary.

**49E Tax file number requirement to be satisfied for claim by individual for payment of child care benefit for a past period for care provided by an approved child care service to be effective**

- (1) This section sets out the tax file number requirement that must be satisfied in relation to a claim by an individual for payment of child care benefit for a past period for care provided by an approved child care service. The requirement is for the purposes of paragraph 49C(1)(c) (which states what is required for these kinds of claims to be effective).
- (2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN claim person. However, the requirement does not apply in relation to a TFN claim person if a determination is in force under subsection (7) in relation to the person, or the person has opted as set out in subsection (8).

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*Statement of tax file number*

- (3) The first kind of statement that can be made is a statement of the TFN claim person's tax file number. Regardless of who the TFN claim person is, this kind of statement can be made by the claimant only.

*Statement that TFN claim person does not know what his or her tax file number is etc.*

- (4) The second kind of statement that can be made is a statement by the TFN claim person that the person:
- (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  - (c) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) whether the person has a tax file number; and
    - (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (5) The third kind of statement that can be made is a statement by the TFN claim person that the person:
- (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn.

*How statement to be given*

- (6) A statement made by the claimant must be in the claim. A statement made by any other TFN claim person must be in a

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document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

*Exemption from tax file number requirement if Secretary determines*

- (7) The Secretary may determine that the requirement in subsection (2) does not apply to a TFN claim person if:
- (a) the person is, or was, the claimant's partner; and
  - (b) the claimant cannot obtain from the person:
    - (i) the person's tax file number; or
    - (ii) a statement by the person under subsection (4) or (5).

*Exemption from tax file number requirement if claimant opts for certain things in the claim form*

- (8) The requirement in subsection (2) does not apply to a TFN claim person if, in the claim, the person opted to have a CCB % of zero % applicable to him or her.

**49F Tax file number requirement to be satisfied for claim by individual for payment of child care benefit by single payment/in substitution because of the death of another individual to be effective**

- (1) This section sets out the tax file number requirement that must be satisfied in relation to a claim by an individual for payment of child care benefit by single payment/in substitution because of the death of another individual. The requirement is for the purposes of paragraph 49C(1)(d) (which states what is required for these kinds of claims to be effective).
- (2) The requirement is that a statement of one of the kinds set out in subsection (3), (4) or (5) must be made in relation to each TFN substitution person. However, the requirement does not apply in relation to a TFN substitution person if a determination is in force under subsection (7) or (8), or the claimant has opted as set out in subsection (9).

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*Statement of tax file number*

- (3) The first kind of statement that can be made is a statement of a TFN substitution person's tax file number. Regardless of who the TFN substitution person is, this kind of statement can be made by the claimant only.

*Statement that TFN substitution person does not know what his or her tax file number is*

- (4) The second kind of statement that can be made is a statement by a TFN substitution person who was the deceased individual's partner (as referred to in paragraph (b) of the definition of **TFN substitution person** in subsection 3(1)) that the TFN substitution person:
- (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  - (c) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) whether the person has a tax file number; and
    - (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (5) The third kind of statement that can be made is a statement by the TFN substitution person who was the deceased individual's partner (as referred to in paragraph (b) of the definition of **TFN substitution person** in subsection 3(1)) that the TFN substitution person:
- (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or

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- (iii) if the application is withdrawn—that the application has been withdrawn.

*How statement to be given*

- (6) A statement made by the claimant must be made in the claim. A statement made by a TFN substitution person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

*Exemption from tax file number requirement*

- (7) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant does not know the person's tax file number.
- (8) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant cannot obtain a statement referred to in subsection (4) or (5) in respect of the person.
- (9) The requirement in subsection (2) does not apply in relation to a TFN substitution person if, in the claim, the claimant opted to have a CCB % of zero % applicable to the person.

**49G Bank account details or statement to be provided for claims by individuals for child care benefit to be effective**

- (1) This section sets out the bank account requirement that must be satisfied in relation to a claim by an individual for payment of child care benefit for the purposes of paragraph 49C(1)(b) (which states what is required for claims by individuals for child care benefit to be effective).

*Requirement concerning bank account details*

- (2) The requirement is that the claimant provide:

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- (a) details of a bank account maintained by the claimant alone or jointly or in common with someone else into which are to be paid:
  - (i) amounts of child care benefit; or
  - (ii) in the case of child care benefit by fee reduction—the amount of the difference referred to in subsection 56(1); or
- (b) a statement that the claimant will nominate, and provide details of, such a bank account, within 28 days after the claim is made.

*How details or statement to be given*

- (3) The bank account details or statement must be provided in the claim.

*Exemption from bank account requirement*

- (4) The Secretary may determine that the requirement in subsection (2) does not apply to a claimant if the Secretary considers that it is appropriate to exempt the claimant from the requirement.

**49H Restrictions on claims by an individual for payment of child care benefit by fee reduction**

*Claims to which section applies*

- (1) This section applies to a claim by an individual for payment of child care benefit by fee reduction for care provided by an approved child care service to a child (a **fee reduction claim**).

*Previous claim by individual for child care benefit by fee reduction and a conditional eligibility determination has not been made or claimant already conditionally eligible*

- (2) A fee reduction claim is ineffective if at the time (the **determination time**) when the conditional eligibility of the claimant would be determined:



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- (a) the claimant has previously made a claim for child care benefit by fee reduction in respect of the child; and
- (b) either:
  - (i) a determination of conditional eligibility under section 50F, or of no entitlement under section 50G, has not as yet been made in respect of the previous claim; or
  - (ii) as a result of the previous claim, a determination is in force that the claimant is conditionally eligible for child care benefit by fee reduction in respect of the child.

*Previous claim by individual for child care benefit by fee reduction, a conditional eligibility determination is in force but varied with effect that the claimant is not conditionally eligible and the variation can be undone*

- (3) A fee reduction claim is ineffective if:
  - (a) at the determination time:
    - (i) the claimant has previously made a claim for child care benefit by fee reduction in respect of the child; and
    - (ii) a determination that the claimant is conditionally eligible for child care benefit by fee reduction is in force in respect of the previous claim; and
    - (iii) that determination has been varied under section 58A, 61A or 62 with the effect that the claimant is not conditionally eligible for any session of care provided to the child after the determination time; and
  - (b) the determination time is before the end of the income year following the one in which the variation took effect.

*Approved child care service is already eligible for child care benefit by fee reduction for care provided to a child at risk*

- (4) A fee reduction claim is ineffective if, at the determination time, an approved child care service is eligible for child care benefit by fee reduction for care provided by the service to that child.

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*Restriction in subsection (4) not to apply in certain circumstances*

- (5) Subsection (4) does not apply to a claim if, in the special circumstances of the claim, the Secretary considers that subsection (4) should not apply.

**49J Restrictions on claim by individual for payment of child care benefit for past period for care provided by an approved child care service**

*Claims to which section applies*

- (1) This section applies to a claim by an individual for payment of child care benefit for a past period for care provided by an approved child care service to a child (a ***past period claim***).

*Claim period must fall within one income year etc.*

- (2) A past period claim is ineffective if:
- (a) the period does not fall wholly within one income year; or
  - (b) the period does fall wholly within one income year (the ***relevant income year***) but the claim is made before the end of the relevant income year or after the end of:
    - (i) the first income year after the relevant income year; or
    - (ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the claimant from lodging the claim before the end of that first income year.
- (2A) The further period referred to in subparagraph (2)(b)(ii) must end no later than the end of the second income year after the relevant income year.

*Previous claim by claimant for care provided by an approved child care service for any part of the past period*

- (3) A past period claim is ineffective if the claimant has previously made a claim for payment of child care benefit for care provided

by an approved child care service to the child for any part of the past period (whether or not the claim has been determined).

*Subsection (3) does not apply if previous claim by claimant and claimant not entitled for failing to meet a condition in paragraph 44(1)(a), (d) or (e) of the Family Assistance Act*

- (4) Subsection (3) does not apply if:
- (a) the claimant has previously made a claim for payment of child care benefit for care provided to the child in the past period by an approved child care service; and
  - (b) the Secretary has determined that the claimant was not entitled to be paid that child care benefit as the claimant was not eligible under section 44 of the Family Assistance Act; and
  - (c) the reason the claimant was not eligible was because the claimant failed to meet the condition in paragraph 44(1)(a), (d) or (e) of that Act.

*Individual already conditionally eligible for child care benefit by fee reduction*

- (5) A past period claim is ineffective if, at any time during the past period, a determination that the claimant was conditionally eligible for child care benefit by fee reduction was in force in respect of the claimant and the child.

*Previous claim by claimant for child care benefit by fee reduction, a determination of conditional eligibility is in force but varied with effect that the individual is not conditionally eligible and the variation can be undone*

- (6) A past period claim is ineffective if:
- (a) at the time the claim would be determined (the **determination time**):
    - (i) the claimant had previously made a claim for payment of child care benefit by fee reduction in respect of the child; and

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- (ii) a determination that the claimant is conditionally eligible for child care benefit by fee reduction is in force in respect of the previous claim; and
  - (iii) that determination has been varied under section 58A, 61A or 62 with the effect that the claimant is not conditionally eligible for any session of care provided to the child after the determination time; and
- (b) the claim is made before the end of the income year following the one in which the variation mentioned in subparagraph (a)(iii) took effect.

*Approved child care service is already eligible for child care benefit by fee reduction for care provided by the service to a child at risk*

- (7) A past period claim is ineffective in respect of any part of a past period during which an approved child care service was eligible for child care benefit by fee reduction for care provided to the child.

*Restriction in subsection (7) not to apply in certain circumstances*

- (8) Subsection (7) does not apply to a claim if, in the special circumstances of the claim, the Secretary considers that subsection (7) should not apply.

**49K Restrictions on claim by individual for payment of child care benefit for past period for care provided by a registered carer**

*Claims to which section applies*

- (1) This section applies to a claim by an individual for payment of child care benefit for a past period for care provided by a registered carer to a child (a ***past period claim***).

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*Claim ineffective if relates to periods of care which occurred before the start of the period of 12 months before claim*

- (2) A past period claim is ineffective if the claim relates to a period of care which occurred before the start of the period of 12 months before the date of claim.

*Previous claim by claimant for care provided in a past period by a registered carer*

- (3) A past period claim is ineffective if the claimant has previously made a claim for payment of child care benefit for care provided by a registered carer to the child for any part of the past period (whether or not the claim has been determined).

*Subsection (3) does not apply if previous claim by claimant and claimant not entitled for failing to meet a condition in paragraph 45(1)(a), (f) or (g) of the Family Assistance Act*

- (4) Subsection (3) does not apply if:
- (a) the claimant has previously made a claim for child care benefit for care provided in the past period by a registered carer to the child; and
  - (b) the Secretary has determined that the claimant was not entitled to be paid that child care benefit as the claimant was not eligible under section 45 of the Family Assistance Act; and
  - (c) the reason the claimant was not eligible was because the claimant failed to meet the condition in paragraph 45(1)(a), (f) or (g) of that Act.

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**49L Restrictions on claim by individual for payment of child care benefit by single payment/in substitution because of the death of another individual**

*Claim to which this section applies*

- (1) This section applies to a claim (a ***substitution claim***) by an individual for payment of child care benefit by single payment/in substitution because of the death of another individual.

*Claim must be made before the end of the income year following the one in which the death occurred*

- (2) A substitution claim is ineffective if it is made after the end of the income year following the one in which the death of the other individual occurred.

*Claim for care provided by an approved child care service where a determination of conditional eligibility was in force cannot be made before the end of the income year in which the death occurred*

- (3) In the case of a substitution claim for care provided by an approved child care service if a determination of conditional eligibility was in force in respect of the other individual, the claim is ineffective in respect of a period of care provided in a particular income year if it is made before the end of that income year.

*Claim for care provided by a registered carer is ineffective in respect of a period earlier than 12 months before death of other individual*

- (4) In the case of a substitution claim for care provided by a registered carer, the claim is ineffective in respect of a period of care other than the period of 12 months before the death of the other individual.

*Previous claim by claimant*

- (5) A substitution claim in respect of a child and a period is ineffective if the claimant has previously made a substitution claim in respect of the child and the same period because of the death of the same other individual (whether or not that claim has been determined).

*Subsection (5) does not apply if previous claim by claimant and other individual not entitled for failure to meet a condition in paragraph 44(1)(a) or (e) of the Family Assistance Act*

- (6) Subsection (5) does not apply if:
- (a) the claimant has previously made a substitution claim for care provided by an approved child care service to the child because of the death of the other individual; and
  - (b) the Secretary has determined that the claimant was not entitled to be paid that child care benefit as the other individual was not eligible under section 44 of the Family Assistance Act; and
  - (c) the reason the other individual was not eligible was because of a failure to meet the condition in paragraph 44(1)(a) or (e) of that Act.

*Subsection (5) does not apply if previous claim by claimant and other individual not entitled for failure to meet a condition in paragraph 45(1)(a) or (g) of the Family Assistance Act*

- (7) Subsection (5) does not apply if:
- (a) the claimant has previously made a substitution claim for care provided by a registered carer to the child; and
  - (b) the Secretary has determined that the claimant was not entitled to be paid that child care benefit as the other individual was not eligible under section 45 of the Family Assistance Act; and
  - (c) the reason the other individual was not eligible was because of a failure to meet the condition in paragraph 45(1)(a) or (g) of that Act.

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**49M Restriction on claim by an approved child care service for payment of child care benefit by fee reduction for care provided by the service to a child at risk**

*Individual already conditionally eligible*

A claim by an approved child care service for payment of child care benefit by fee reduction for care provided by the service to a child at risk is ineffective if, at the time the care is provided, a determination is in force that an individual is conditionally eligible for child care benefit by fee reduction in respect of the child.

**49N Claims may be withdrawn or varied**

- (1) A claimant who is an individual claiming for payment of child care benefit by fee reduction may withdraw or vary the claim before a determination of conditional eligibility under section 50F, or a determination of no entitlement under section 50G, has been made in respect of the claim.
- (2) A claimant who is an individual claiming for:
  - (a) payment of child care benefit for a past period for care provided by an approved child care service; or
  - (b) payment of child care benefit for a past period for care provided by a registered carer; or
  - (c) payment of child care benefit by single payment/in substitution because of the death of another individual;may withdraw or vary the claim before the claim is determined.
- (3) The claimant may only withdraw or vary the claim in a manner determined by the Secretary.
- (4) If a claim is withdrawn it is taken never to have been made.



**Subdivision C—Determinations to be made on claim if  
individual claims payment of child care benefit by fee  
reduction**

**50 Determinations on effective claim**

- (1) This Subdivision deals with the determinations the Secretary must make on claim, if an individual (the ***claimant***) has made an effective claim for payment of child care benefit by fee reduction for care provided by an approved child care service to a child (the ***child***).
- (2) If a claim is not effective, it is taken not to have been made.
- (3) The Secretary makes these determinations in respect of each child for whom the claimant has made a claim.
- (4) The Secretary takes these determinations into account when calculating the rate at which, and the amount in which, fee reduction is applicable in respect of the care provided to the child in an income year in respect of which a determination of conditional eligibility is in force. After the end of the income year, a determination of entitlement, or no entitlement (as the case may be), is made under Subdivision D in respect of the individual's claim.

**50A Secretary must make determinations**

Subject to sections 50D and 50E, on claim, the Secretary must make the determinations referred to in sections 50B and 50C, if required. The determinations must be made in accordance with this Subdivision.

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**50B Determination of conditional eligibility or no entitlement to be made**

*Determinations to be made as soon as practicable if tax file number given, claimant exempted or option indicated on claim*

- (1) If:
- (a) the claimant gives the Secretary, as requested under section 57B, a statement of the tax file number of each of the TFN claim persons; or
  - (b) the claimant gives the Secretary a statement of the claimant's tax file number and the Secretary exempts the claimant's partner, under subsection 57B(6), from giving a statement in relation to the partner's tax file number; or
  - (c) the claimant opts in the claim form to have a CCB % of zero % applicable to him or her;
- the Secretary must make the determination referred to in section 50F or 50G (as appropriate) as soon as practicable.

*When determinations must be made if subsection (1) does not apply*

- (2) If subsection (1) does not apply in respect of the claimant, the Secretary must make the determination referred to in section 50F or 50G (as appropriate) as provided for in section 50D.

**50C Other determinations to be made if determination of conditional eligibility is made**

If the Secretary makes a determination of conditional eligibility under section 50F, the Secretary must make the following determinations:

- (a) a determination of the weekly limit of hours applicable to the claimant and the child under section 50H;
- (b) a determination of CCB % applicable to the claimant and the child under section 50J;
- (c) a determination of the schooling % applicable to the claimant and the child under section 50K.

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Note: Section 50T also requires the Secretary to determine, in certain circumstances, whether or not the claimant is eligible for the special grandparent rate.

**50D Restriction on when determinations under section 50F or 50G can be made***Statement about tax file number made on claim*

(1) If:

- (a) each of the TFN claim persons makes a statement of the kind set out in subsection 57B(3) or (4); or
- (b) one of the TFN claim persons makes a statement of the kind set out in subsection 57B(3) or (4) and the other TFN claim person gives a statement of the person's tax file number; or
- (c) the TFN claim person who is the claimant makes a statement of the kind set out in subsection 57B(3) or (4) and the Secretary exempts the claimant's partner under subsection 57B(6) from giving a statement in relation to the partner's tax file number;

the Secretary must only make the determination referred to in section 50F or 50G (as appropriate):

- (d) after the Commissioner of Taxation tells the Secretary, within 28 days after the claim is made, in respect of each TFN claim person who has made a statement of the kind set out in subsection 57B(3) or (4):
  - (i) the TFN claim person's tax file number; or
  - (ii) that the person has not applied for a tax file number; or
  - (iii) that the person does not have a tax file number; or
  - (iv) that the application by the person for a tax file number has been refused; or
  - (v) that the person has withdrawn an application for tax file number; or
- (e) after 28 days after the claim is made have passed, if, within the 28 days, the Commissioner for Taxation does not tell the Secretary any of the things in respect of any TFN claim person referred to in paragraph (d).

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*No statement on claim about tax file number etc.*

- (2) Subject to subsections (3) and (4), if neither subsection 50B(1) nor subsection (1) of this section apply in respect of the claim, the Secretary must make the determination referred in section 50F or 50G (as appropriate) as soon as practicable.

*No statement on claim about tax file number etc. and Secretary's request for tax file number complied with*

- (3) If:
- (a) neither subsection 50B(1) nor subsection (1) of this section apply in respect of the claim; and
  - (b) the Secretary makes a request under section 57C; and
  - (c) within 28 days after the request is made, the claimant complies with the request;
- the Secretary must only make the determination referred to in section 50F or 50G (as appropriate) when the claimant complies with the request.

*No statement on claim about tax file number etc. and Secretary's request for tax file number not complied with*

- (4) If:
- (a) neither subsection 50B(1) nor subsection (1) of this section apply in respect of the claim; and
  - (b) the Secretary makes a request under section 57C; and
  - (c) 28 days pass after the request is made without the claimant complying with the request;
- the Secretary must only make the determination referred to in section 50F or 50G (as appropriate) when the 28 days have passed.

**50E Restriction on determination under section 50F or 50G if bank account details not provided**

- (1) If the claimant makes a statement of the kind set out in paragraph 49G(2)(b), the Secretary may only make a determination under section 50F or 50G if, within 28 days after the claim is

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made, the person nominates, and provides details of, a bank account of a kind referred to in paragraph 49G(2)(a) into which the amount of the difference referred to in subsection 56(1) is to be paid.

- (2) If, after the 28 days mentioned in subsection (1) have passed, the Secretary cannot, because of that subsection, make a determination under section 50F or 50G, in respect of the claim, the claim is taken never to have been made.

**50F Determination of conditional eligibility**

If the Secretary is satisfied that the claimant, at the time the Secretary makes the determination, is conditionally eligible under section 42 of the Family Assistance Act in respect of the child, the Secretary must determine that the claimant is conditionally eligible for child care benefit by fee reduction in respect of the child.

**50G Determination that no entitlement**

If the Secretary is not satisfied that the claimant is, at the time the Secretary makes the determination, conditionally eligible under section 42 of the Family Assistance Act in respect of the child, the Secretary must determine that the claimant is not entitled to be paid child care benefit by fee reduction in respect of the child.

**50H Determination of weekly limit of hours**

- (1) If the Secretary makes a determination under section 50F that the claimant is conditionally eligible, the Secretary must determine the weekly limit of hours applicable to the claimant and the child.
- (2) The limit is worked out using Subdivision G of Division 4 of Part 3 of the Family Assistance Act as if references in that Subdivision to an individual being eligible under section 43 of that Act were references to the individual being conditionally eligible under section 42 of that Act.
- (3) The limit must be either:

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- (a) 50 hours, if a circumstance listed in subsection 54(2), (4), (6), (13) or (14) of the Family Assistance Act applies to the claimant; or
- (b) 24 hours if paragraph (a) does not apply.

**50J Determination of CCB %**

- (1) If the Secretary makes a determination under section 50F that the claimant is conditionally eligible, the Secretary must determine the CCB % applicable to the claimant and the child.
- (2) In making a determination of CCB %, the Secretary must:
  - (a) determine a percentage of zero % if subsection 55(2) or 55B(1), or section 55C, applies; or
  - (b) otherwise—use the provisions in Schedule 2 to the Family Assistance Act as if references in those provisions to a person being eligible were references to a person being conditionally eligible under section 42 of that Act.

**50K Determination of schooling %**

- (1) If the Secretary makes a determination under section 50F that the claimant is conditionally eligible, the Secretary must determine the schooling % applicable to the claimant and the child.
- (2) In making a determination of schooling %, the Secretary must use the provisions in Schedule 2 to the Family Assistance Act as if references in those provisions to a person being eligible were references to a person being conditionally eligible under section 42 of that Act.

**50L When determinations are in force**

- (1) Subject to subsections (6) and (7), a determination of conditional eligibility under section 50F in respect of the claimant comes into force:
  - (a) if no day is specified in the notice of determination—on the day the determination is made; or

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- (b) on the day specified in the notice of determination;  
and remains in force at all times afterwards.
- (2) Except in the case mentioned in subsection (4), the Secretary may specify a day, not more than 4 weeks before the day the claim was made by the claimant, as the day the determination is to come into force.
- (3) The Secretary may only specify a day under subsection (2) if the Secretary is satisfied that, if the claimant had made the claim on the specified earlier day before the day of the claim, the claimant would have been conditionally eligible on and since that specified earlier day for child care benefit by fee reduction.
- (4) The Secretary must not specify a day under subsection (2) if:
- (a) a determination of conditional eligibility under section 50F was made in respect of the claim; and
  - (b) the claim was made while an earlier determination of conditional eligibility was in force with the effect that the claimant was not conditionally eligible as a result of a variation under section 58B (failure to comply with immunisation requirement).
- (5) A determination of a weekly limit of hours under section 50H, CCB % under section 50J and schooling % under section 50K in respect of the claimant and the child comes into force at the time the determination of conditional eligibility comes into force and remains in force while the determination of conditional eligibility is in force.
- (6) If:
- (a) the Secretary makes a determination of conditional eligibility under section 50F in respect of the claimant and the child; and
  - (b) the Secretary varies the determination of conditional eligibility with the effect that the claimant is not conditionally eligible for any session of care occurring on a day on which the determination was, or will be, in force after the day the variation begins to have effect; and
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- (c) the claimant makes a later claim for payment of child care benefit by fee reduction;

the determination of conditional eligibility ceases to be in force by force of this subsection on the day a determination comes into force in respect of the later claim.
- (7) If:
  - (a) a determination of conditional eligibility under section 50F is in force in respect of the claimant; and
  - (b) the claimant informs the Secretary, in the form and manner required by the Secretary, that the claimant wants the determination of conditional eligibility to cease to be in force;

the determination ceases to be in force from a day specified in the notice under subsection (8).
- (8) The Secretary must give the claimant notice of the cessation of the determination under subsection (7). The notice must specify the day on which the determination ceases to be in force.
- (9) The cessation is not ineffective by reason only that the notice under subsection (8) does not fully comply with the requirements of that subsection.
- (10) The Secretary may make notice of the cessation of the determination under subsection (7) available to the approved child care service providing care to the child who was the subject of the claim, including by making notice available to the service using an electronic interface.

**50M Notice of determinations if claimant conditionally eligible**

- (1) The Secretary must give notice of determinations made in respect of the claimant under sections 50F, 50H, 50J and 50K to the claimant.
- (2) The notice must state:
  - (a) that a determination of conditional eligibility under section 50F is in force in respect of the claimant; and



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- (b) the date from which the determination came into force; and
  - (c) the name of the child in respect of whom the claimant is conditionally eligible; and
  - (d) the weekly limit of hours, CCB % and schooling % applicable to the claimant and the child; and
  - (e) that the claimant may apply for review of any of the determinations in the manner set out in Part 5.
- (3) The determinations are not ineffective by reason only that any, or all, of the requirements of subsections (1) and (2) are not complied with.
- (4) The Secretary may make notice of the determinations made in respect of the claimant under sections 50F, 50H, 50J and 50K available to the approved child care service, or services, that are, or will be, providing care to the child, including by making the notice available to the service using an electronic interface.

**50N When determination of no entitlement is in force**

- (1) Subject to subsection (2), a determination of no entitlement under section 50G comes into force when it is made and remains in force at all times afterwards.
- (2) If:
- (a) a determination of no entitlement has been made under section 50G in respect of the claimant; and
  - (b) the claimant makes a later effective claim for payment of child care benefit by fee reduction, or for a past period, for care provided by an approved child care service;
- the determination of no entitlement ceases to be in force on the day a determination comes into force in respect of the second claim.

**50P Notice of determination of no entitlement**

- (1) The Secretary must give notice to the claimant of a determination of no entitlement made in respect of the claimant under section 50G stating:

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- (a) that the claimant is not entitled to be paid child care benefit by fee reduction in respect of the child; and
  - (b) that the claimant may apply for review of the determination in the manner set out in Part 5.
- (2) The determination is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.

**Subdivision CA—Determination of eligibility for special grandparent rate if individual determined to be conditionally eligible for child care benefit by fee reduction**

**50Q Determination of eligibility for special grandparent rate**

This Subdivision deals with the determination of eligibility for the special grandparent rate that the Secretary must make in certain circumstances if an individual (the *claimant*) is determined to be conditionally eligible for child care benefit by fee reduction in respect of a child.

Note: Section 50T tells you when the Secretary must determine the claimant's eligibility for the special rate. Section 50S tells you the criteria that must be satisfied for the claimant to be eligible for that rate. Section 50R explains who counts as a grandparent or great-grandparent for the purposes of this Subdivision.

**50R Grandparents and great-grandparents**

- (1) In determining, for the purposes of this Subdivision, whether an individual is a *grandparent* or *great-grandparent* of another person, treat the following relationships as if they were biological child-parent relationships:
- (a) the relationship between an adopted child and his or her adoptive parent;
  - (b) the relationship between a step-child and his or her step-parent;
  - (c) the relationship between a relationship child and his or her relationship parent.

- (2) In subsection (1):

***adoptive parent***, of a person (the ***child***), means the person who adopted the child under a law of any place (whether in Australia or not) relating to the adoption of children.

***step-parent***, of a person (the ***child***), means the person who:

- (a) is the current or former partner of the biological parent, adoptive parent or relationship parent of the child; and
- (b) is not the biological parent, adoptive parent or relationship parent of the child.

### **50S Eligibility for special grandparent rate**

- (1) An individual is eligible for the special grandparent rate for a child if:
- (a) the individual, or the individual's partner, is receiving:
    - (i) a social security pension; or
    - (ii) a social security benefit; or
    - (iii) a service pension; or
    - (iv) an income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*; and
  - (b) the individual, or the individual's partner, is the grandparent or great-grandparent of the child; and
  - (c) the individual, or the individual's partner, is the principal carer of the child.
- (2) For the purposes of subsection (1), a person is the ***principal carer*** of another person (the ***child***) if the person:
- (a) is the sole or major provider of ongoing daily care for the child; and
  - (b) has substantial autonomy for the day-to-day decisions about the child's care, welfare and development.
- (3) An individual is also eligible for the special grandparent rate for a child if the individual, or the individual's partner, is eligible under subsection (1) for the special grandparent rate for another child.

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**50T Secretary must determine claimant's eligibility for special grandparent rate in certain circumstances**

*When Secretary must determine whether claimant eligible for special grandparent rate*

- (1) If subsection (2), (3) or (4) is satisfied, the Secretary must determine whether or not the claimant is eligible for the special grandparent rate for a child.

*Request for special grandparent rate determination made in claim for determination of conditional eligibility*

- (2) This subsection is satisfied if:
- (a) the claimant:
    - (i) makes a claim (whether before or after 1 January 2005) for payment of child care benefit by fee reduction for care provided by an approved child care service to the child; and
    - (ii) informs the Secretary, in the form and manner (if any) required by the Secretary, in or in connection with the claim that the claimant wants the Secretary to make a determination under this section in relation to the claimant and the child; and
  - (b) in response to the claim, the Secretary makes, on or after 1 January 2005, a determination under section 50F with the effect that the claimant is conditionally eligible for child care benefit by fee reduction in respect of the child.

*Application for special grandparent rate determination after determination of conditional eligibility made*

- (3) This subsection is satisfied if:
- (a) a determination under section 50F (whether made before or after 1 January 2005) is in force with the effect that the claimant is conditionally eligible for child care benefit by fee reduction in respect of the child; and

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- (b) the claimant applies, in the form and manner (if any) required by the Secretary, for a determination under this section in relation to the child.

*Transitional situation*

- (4) This subsection is satisfied if, immediately before 1 January 2005:
  - (a) a determination is in force under section 50F that the claimant is conditionally eligible for child care benefit by fee reduction in respect of the child; and
  - (b) the determination in force under section 50H of the weekly limit of hours applicable to the claimant and the child is based on the claimant, or the claimant's partner, being taken to satisfy the work/training/study test because of the determination that was made under subsection 14(2) of the Family Assistance Act on 28 October 2004; and
  - (c) the claimant, or the claimant's partner, is receiving:
    - (i) a social security pension; or
    - (ii) a social security benefit; or
    - (iii) a service pension; or
    - (iv) an income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*.

*Determinations not legislative instruments*

- (5) A determination made under subsection (1), or a variation of such a determination, is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**50U Criteria for making determination**

The Secretary must determine under subsection 50T(1) that the claimant is eligible for the special grandparent rate for a child if:

- (a) a determination under section 50F with the effect that the claimant is conditionally eligible for child care benefit by fee reduction in respect of the child is in force; and

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(b) the Secretary is satisfied that the claimant is eligible for the special grandparent rate for the child (see section 50S).

Otherwise the Secretary must determine that the claimant is not eligible for the special grandparent rate for the child.

**50V Notice of determination that claimant eligible for special grandparent rate**

- (1) The Secretary must give notice of a determination under subsection 50T(1) that the claimant is eligible for the special grandparent rate for a child to the claimant.
- (2) The notice must state:
  - (a) the names of the claimant and the child; and
  - (b) that the claimant is eligible for the special grandparent rate for the child; and
  - (c) the date from which the determination comes into force; and
  - (d) that the claimant may apply for review of the determination in the manner set out in Part 5.
- (3) The determination is not ineffective by reason only that any, or all, of the requirements of subsections (1) and (2) are not complied with.
- (4) The Secretary may make notice of a determination under subsection 50T(1) available to the approved child care service, or services, that are, or will be, providing care to the child, including by making the notice available to the service using an electronic interface.

**50W Notice of determination that claimant not eligible for special grandparent rate**

- (1) The Secretary must give notice of a determination under subsection 50T(1) that the claimant is not eligible for the special grandparent rate for a child to the claimant.

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- (2) The notice must state:
  - (a) that the claimant is not eligible for the special grandparent rate for the child; and
  - (b) that the claimant may apply for review of the determination in the manner set out in Part 5.
- (3) The determination is not ineffective by reason only that any, or all, of the requirements of subsections (1) and (2) are not complied with.

**50X When determination that claimant is eligible for special grandparent rate is in force**

- (1) Subject to subsection (4), a determination under subsection 50T(1) that the claimant is eligible for the special grandparent rate for the child comes into force:
  - (a) if no day is specified in the notice of determination—on the day the determination is made; or
  - (b) on the day specified in the notice of determination.
- (2) The Secretary may specify a day, not more than 4 weeks before the day on which the claimant made the claim or application in response to which the determination was made by the Secretary, as the day the determination is to come into force.
- (3) The Secretary may only specify a day under subsection (2) if:
  - (a) the Secretary is satisfied that the claimant was eligible for the special grandparent rate for the child on and since that specified earlier day; and
  - (b) the day does not occur before 1 January 2005.
- (4) A determination under subsection 50T(1) that the claimant is eligible for the special grandparent rate for the child comes into force on 1 January 2005 if the Secretary makes the determination because of subsection 50T(4).
- (5) A determination under subsection 50T(1) that the claimant is eligible for the special grandparent rate for the child may be varied in accordance with this Division.

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- (6) A determination under subsection 50T(1) that the claimant is eligible for the special grandparent rate for a child remains in force, as varied from time to time, while the determination under section 50F of the claimant's conditional eligibility in respect of the child is in force.

**50Y When determination that claimant is not eligible for special grandparent rate is in force**

A determination under subsection 50T(1) that the claimant is not eligible for the special grandparent rate for the child:

- (a) comes into force when it is made; and
- (b) cannot be varied under this Division; and
- (c) subject to paragraph (d), remains in force while the determination under section 50F of the claimant's conditional eligibility in respect of the child is in force; and
- (d) ceases to have effect if a subsequent determination under subsection 50T(1) that the claimant is, or is not, eligible for the special grandparent rate for the child comes into force.

Note: Paragraph (d)—a determination under subsection 50T(1) that the claimant is eligible for the special grandparent rate can be made if the claimant makes a fresh application for a determination of the claimant's eligibility for that rate.

**Subdivision CB—Calculating the rate and amount of fee reductions**

**50Z Calculating the rate and amount of fee reductions—individual conditionally eligible**

- (1) If:
- (a) a determination of conditional eligibility for child care benefit by fee reduction under section 50F is in force in respect of an individual (the *claimant*) and a child for a session or sessions of care provided by the service in a week; and



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(b) the service gives a report under subsection 219N(1) in respect of the individual and the child in respect of the week; the Secretary must calculate the rate at which, and the amount in which, the Secretary considers fee reduction is applicable in respect of the session or sessions of care provided in the week.

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

- (2) In calculating the rate and amount, the Secretary must take into account all of the following decisions:
- (a) determinations made under this Act and under the Family Assistance Act by the Secretary in respect of the claimant and the child;
  - (b) certificates given by the service in respect of the claimant and the child that relate to a weekly limit of hours under subsection 54(10), 55(6) or 56(3) of the Family Assistance Act;
  - (c) certificates given by the service setting a rate of fee reductions under subsection 76(1) of the Family Assistance Act in respect of the claimant and the child.
- (3) The Secretary must notify the approved child care service of the rate and amount calculated.
- (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 rate and 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.

**50ZA Revising the rate and amount calculation**

- (1) The Secretary may recalculate the rate at which, and the amount in which, the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by the service to
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the child in the week, provided no determination has been made under section 51B of the rate at which and the amount in which the Secretary considers the claimant eligible for the income year in which the week falls.

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

- (2) The Secretary must notify the approved child care service of the recalculated rate and amount.
- (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 recalculated rate and 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.

**50ZB Calculating the amount of child care benefit by fee reduction—service eligible**

- (1) If:
  - (a) an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session or sessions of care provided by the service to a child at risk; and
  - (b) the service gives a report under subsection 219N(2) in respect of the child in respect of a week;the Secretary must calculate the amount in which the Secretary considers child care benefit by fee reduction is applicable in respect of the child in respect of the week.
- (2) In calculating the amount, the Secretary must take into account all of the following decisions:
  - (a) determinations made under this Act and under the Family Assistance Act by the Secretary in respect of the child;

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- (b) certificates given by the service in respect of the child that relate to a weekly limit of hours under subsection 54(10), 55(6) or 56(4) of the Family Assistance Act;
  - (c) certificates given by the service setting a rate of child care benefit by fee reduction under subsection 76(2) of the Family Assistance Act in respect of the child.
- (3) The Secretary must notify the approved child care service of the amount calculated.
  - (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.

**50ZC Revising the rate and amount calculation**

- (1) The Secretary may recalculate the amount in which the Secretary considers child care benefit by fee reduction is applicable in respect of a session or sessions of care provided to the child in the week, provided no determination has been made under section 54B of the amount in which the Secretary considers the service eligible in respect of the care provided to the child for the financial year in which the week falls.
- (2) The Secretary must notify the approved child care service of the recalculated amount.
- (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 recalculated 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

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

**Subdivision D—Determination of entitlement if individual determined to be conditionally eligible for child care benefit by fee reduction**

**51 Determination to be made if determination of conditional eligibility in force**

This Subdivision deals with determination of entitlement if a determination of conditional eligibility under section 50F is in force in respect of an individual (the *claimant*) and a child (the *child*) at any time during an income year.

**51A Secretary must determine entitlement**

- (1) If a determination of conditional eligibility in respect of the claimant and the child is in force during an income year, the Secretary must determine the claimant's entitlement to be paid child care benefit by fee reduction in respect of the income year.
- (2) The determination of entitlement is made after the end of each income year in respect of which the claimant is conditionally eligible in respect of the child.

**51B Determination of entitlement**

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

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

- (2) In making the determination of entitlement, the Secretary takes into account all of the following decisions:
- (a) determinations made under this Act and under section 81 of the Family Assistance Act by the Secretary in respect of the claimant and the child;
  - (b) certificates given by the service in respect of the claimant and the child that relate to a weekly limit of hours under subsection 54(10), 55(6) or 56(3) of the Family Assistance Act;
  - (c) certificates given by the service setting a rate of child care benefit under subsection 76(1) of the Family Assistance Act in respect of the claimant and the child.

**51C Determination that no entitlement**

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

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**51D When determination is in force**

A determination under this Subdivision comes into force when it is made and remains in force at all times afterwards.

**51E Notice of determination**

- (1) The Secretary must give notice of a determination under this Subdivision to the claimant, stating:
  - (a) the income year in respect of which the determination is made; and
  - (b) whether, under the determination, the claimant is entitled to be paid child care benefit by fee reduction for the child for the income year; and
  - (c) if the claimant is so entitled:
    - (i) the name of the child in respect of whom the claimant is entitled; and
    - (ii) the amount of the entitlement; and
    - (iii) the total amount of the fee reductions (if any) that an approved child care service providing care to the child is required, under section 219B, to pass on to the claimant in respect of sessions of care provided to the child during the income year; and
    - (iv) if the amount of the entitlement is greater than the amount of the fee reductions—the amount of the difference, how it will be paid and to whom it will be paid; and
    - (v) if the amount of the entitlement is less than the amount of the fee reductions—the amount of the difference, the fact that the amount is a debt, information relating to how, and from whom, the debt will be recovered; and
  - (d) that the claimant may apply for review of the determination in the manner set out in Part 5.
- (2) The determination is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.

**Subdivision E—Determination of entitlement if individual  
claims payment of child care benefit for a past period****52 Determination on effective claim**

- (1) This Subdivision deals with determination of entitlement if an individual (the *claimant*) has made an effective claim for payment of child care benefit for a past period for care provided by an approved child care service or a registered carer to a child (the *child*).
- (2) If a claim is not effective, it is taken not to have been made.
- (3) The Secretary makes a determination of entitlement in respect of each child for whom the claimant has made a claim.

**52A Secretary must determine claim**

Subject to sections 52B, 52C and 52D, after the effective claim is made by the claimant, the Secretary must determine the claim in accordance with this Subdivision.

**52B Restriction on determining claim where bank account details  
not provided**

- (1) If the claimant makes a statement of the kind set out in paragraph 49G(2)(b), the Secretary can only determine the claim if, within 28 days after the claim is made, the claimant nominates, and provides details of, a bank account of a kind referred to in paragraph 49G(2)(a) into which the amount of the entitlement to child care benefit is to be paid.
- (2) If, after the 28 days mentioned in subsection (1) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

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**52C Restriction on determining claim where tax file number not provided etc.**

- (1) If a TFN claim person makes a statement of the kind set out in subsection 49E(4) or (5), the Secretary can only determine the claim if the Commissioner of Taxation tells the Secretary the person's tax file number.
- (2) If the Secretary cannot determine the claim under subsection (1) because the Commissioner of Taxation tells the Secretary that:
  - (a) the person does not have a tax file number; or
  - (b) the person has not applied for a tax file number; or
  - (c) an application by the person for a tax file number has been refused; or
  - (d) the person has withdrawn an application for a tax file number;the claim is taken never to have been made.

**52D Restriction on determining claim for care provided by an approved child care service where tax assessment not made**

If:

- (a) the claim is one for payment of child care benefit for a past period for care provided by an approved child care service; and
- (b) in the claim, the claimant did not opt to have a CCB % of zero % applicable to him or her; and
- (c) one or more TFN claim persons are required to lodge an income tax return for the income year in which the past period falls; and
- (d) at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on each of those TFN claim persons' taxable income for that income year;

the Secretary can only determine the claim when the assessment has been made.



**52E Determination of entitlement—claim for care provided by an approved child care service**

If:

- (a) the claim is for payment of child care benefit for a past period for care provided by an approved child care service; and
- (b) the Secretary is satisfied that the claimant is eligible under section 44 of the Family Assistance Act in respect of the period; and
- (c) the Secretary is satisfied that, if the claimant were to be entitled to be paid child care benefit in respect of the period, the amount of the entitlement would be more than a nil amount;

the Secretary must determine that the claimant is entitled to be paid child care benefit for the past period in respect of the child and the amount of the entitlement.

**52F Determination of entitlement—claim for care provided by a registered carer**

If:

- (a) the claim is for payment of child care benefit for a past period for care provided by a registered carer; and
- (b) the Secretary is satisfied that the claimant is eligible under section 45 of the Family Assistance Act in respect of the period;

the Secretary must determine that the claimant is entitled to be paid child care benefit for the past period in respect of the child and the amount of the entitlement.

**52G Determination that no entitlement**

(1) If the Secretary:

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

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

**52H When a determination is in force**

- (1) Subject to subsections (2) and (3), a determination under this Subdivision comes into force when it is made and remains in force at all times afterwards.

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

- (2) If:
- (a) the claim is for payment of child care benefit for a past period for care provided by an approved child care service; and
  - (b) a determination of no entitlement is made under subsection 52G(2) in respect of the claimant and the child as the claimant is not eligible under section 44 of the Family Assistance Act because of a failure to meet a requirement in paragraph 44(1)(a), (d) or (e) of that Act; and
  - (c) the claimant makes a later effective claim for payment of child care benefit for a past period for care provided by an approved child care service to the child;
- the determination of no entitlement ceases to be in force on the day a determination is made in respect of the later claim.

(3) If:

- (a) the claim is for payment of child care benefit for a past period for care provided by a registered carer; and
- (b) a determination of no entitlement is made under subsection 52G(3) in respect of the claimant and the child as the claimant is not eligible under section 45 of the Family Assistance Act because of a failure to meet a requirement in paragraph 45(1)(a), (f) or (g) of that Act; and
- (c) the claimant makes a later effective claim for payment of child care benefit for a past period for care provided by a registered carer to the child;

the determination of no entitlement ceases to be in force on the day a determination is made in respect of the later claim.

### **52J Notice of determination**

(1) The Secretary must give notice of a determination under this Subdivision to the claimant, stating:

- (a) whether the claimant is entitled to be paid child care benefit for a past period in respect of the child under the determination; and
- (b) if the claimant is so entitled:
  - (i) the name of the child in respect of whom the claimant is entitled; and
  - (ii) the period in respect of which the determination is made; and
  - (iii) the amount of the entitlement, how it is to be paid and to whom it will be paid; and
  - (iv) that the claimant may apply for review of the determination in the manner set out in Part 5.

(2) The determination is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.

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**Subdivision F—Determination of entitlement if individual claims payment of child care benefit by single payment/in substitution**

**53 Determination on effective claim**

- (1) This Subdivision deals with determination of entitlement if an individual (the *claimant*) has made an effective claim for payment of child care benefit by single payment/in substitution because of the death of another individual in respect of a child (the *child*).
- (2) If a claim is not effective, it is taken not to have been made.

**53A Secretary must determine claim**

Subject to sections 53B and 53C, after the effective claim is made by the claimant, the Secretary must determine the claim in accordance with this Subdivision.

**53B Restriction on determining claim where bank account details not provided**

- (1) If the claimant makes a statement of the kind set out in paragraph 49G(2)(b), the Secretary can only determine the claim if, within 28 days after the claim is made, the claimant nominates, and provides details of, a bank account of a kind referred to in paragraph 49G(2)(a) into which the amount of the entitlement to child care benefit is to be paid.
- (2) If, after the 28 days mentioned in subsection (1) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

**53C Restriction on determining claim where tax file number not provided etc.**

- (1) If a TFN substitution person makes a statement of the kind set out in subsection 49F(4) or (5), the Secretary can only determine the

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claim concerned if the Commissioner of Taxation tells the Secretary the person's tax file number.

- (2) If the Secretary cannot determine the claim under subsection (1) because the Commissioner of Taxation tells the Secretary that:
- (a) the person does not have a tax file number; or
  - (b) the person has not applied for a tax file number; or
  - (c) an application by the person for a tax file number has been refused; or
  - (d) the person has withdrawn an application for a tax file number;
- the claim is taken never to have been made.

**53D Determination of entitlement**

If the Secretary is satisfied that:

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

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

**53E Determination that no entitlement**

- (1) If the Secretary:
- (a) is satisfied that the claimant is eligible as mentioned in paragraph 53D(a); but
  - (b) is not satisfied as mentioned in paragraph 53D(b) that, if the claimant were to be entitled to be paid child care benefit, the amount of the entitlement would be more than a nil amount;

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the Secretary must determine that the claimant is not entitled, in respect of the child, to be paid child care benefit by single payment/in substitution because of the death of another individual.

- (2) If the Secretary is not satisfied that the claimant is eligible as mentioned in paragraph 53D(a), the Secretary must determine that the claimant is not entitled, in respect of the child, to be paid child care benefit by single payment/in substitution because of the death of another individual.

**53F When a determination is in force**

- (1) Subject to subsections (2) and (3), a determination under this Subdivision comes into force when it is made and remains in force at all times afterwards.

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

- (2) If:

- (a) the claim is for payment of child care benefit by single payment/in substitution because of the death of another individual for care provided by an approved child care service to the child; and
- (b) a determination of no entitlement is made under subsection 53E(2) in respect of the claimant because the other individual was not eligible under section 44 of the Family Assistance Act because of a failure to meet a requirement in paragraph 44(1)(a) or (e) of that Act; and
- (c) the claimant makes a later effective claim for payment of child care benefit by single payment/in substitution because of the death of another individual for care provided by the service to the child;

the determination of no entitlement ceases to be in force on the day a determination is made in respect of the later claim.

- (3) If:

- (a) the claim is for payment of child care benefit by single payment/in substitution because of the death of another

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individual for care provided by a registered carer to the child;  
and

- (b) a determination of no entitlement is made under subsection 53E(2) in respect of the claimant because the other individual was not eligible under section 45 of the Family Assistance Act because of a failure to meet a requirement in paragraph 45(1)(a) or (g) of that Act; and
- (c) the claimant makes a later effective claim for payment of child care benefit by single payment/in substitution because of the death of another individual for care provided by a registered carer to the child;

the determination of no entitlement ceases to be in force on the day a determination is made in respect of the later claim.

**53G Notice of determination**

- (1) The Secretary must give notice of a determination under this Subdivision to the claimant, stating:
  - (a) whether the claimant is entitled to be paid child care benefit by single payment/in substitution because of the death of another individual in respect of the child under the determination; and
  - (b) if the claimant is so entitled, the amount of the entitlement, how it is to be paid and to whom it will be paid; and
  - (c) that the claimant may apply for review of the determination under Part 5.
- (2) The determination is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.

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**Subdivision G—Determination of entitlement if claim by approved child care service for payment of child care benefit by fee reduction for care provided by the service to a child at risk**

**54 Determination on effective claim**

- (1) This Subdivision deals with determination of entitlement if an approved child care service (the *claimant*) has made a claim for payment of child care benefit by fee reduction for care provided by the service to a child at risk (the *child*).
- (2) If a claim is not effective, it is taken not to have been made.
- (3) The claimant is taken to have made a claim under subsection 49(2).
- (4) A determination of a weekly limit of hours is taken to have been made in respect of the claimant (see section 54C).

**54A Secretary must determine claim**

If an effective claim is made by the claimant, the Secretary must determine the claim in accordance with this Subdivision.

**54B Determination of entitlement**

- (1) If the claimant is eligible under section 47 of the Family Assistance Act for one or more sessions of care provided by the claimant to the child (*child at risk*) during a financial year, the Secretary must determine:
  - (a) that the claimant is entitled to be paid child care benefit by fee reduction for the sessions at the rate;
    - (i) certified by the claimant under subsection 76(2) of the Family Assistance Act; or
    - (ii) determined by the Secretary under subsection 81(4) of that Act; and
  - (b) the amount for which the Secretary considers the claimant eligible.



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- (2) In making the determination of entitlement, the Secretary takes into account all of the following decisions:
  - (a) certificates given by the claimant that relate to a weekly limit of hours under subsection 54(10), 55(6) or 56(4) or a rate under subsection 76(2) of the Family Assistance Act;
  - (b) determinations made by the Secretary in respect of the claimant.
- (3) The Secretary does not determine an approved child care service's eligibility under section 47 of the Family Assistance Act (see section 47 of the Family Assistance Act).
- (4) A determination of entitlement is made after the end of the financial year in which the service was eligible under section 47 of the Family Assistance Act for care provided to the child.
- (5) A determination of entitlement comes into force when it is made and remains in force at all times afterwards.

**54C Determination of weekly limit of hours**

- (1) If the claimant is eligible under section 47 of the Family Assistance Act for one or more sessions of care provided by the claimant to the child at risk during a financial year, the Secretary is taken to have made a determination of a weekly limit of hours applicable to the service in respect of the child. The limit is 24 hours.
- (2) A determination of a weekly limit of hours comes into force immediately after the service becomes eligible under section 47 of the Family Assistance Act and remains in force at all times afterwards.

**54D Notice of determination**

- (1) The Secretary must give notice of a determination under section 54B to the claimant stating:
  - (a) the name of the child in respect of whom the service is entitled to be paid child care benefit by fee reduction; and
  - (b) the amount of the entitlement; and

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- (c) the total amount of the child care benefit by fee reduction (if any) that the claimant is required, under section 219BA, to pass on to itself in respect of sessions of care provided to the child during the financial year; and
  - (d) if the amount of the entitlement is greater than the total amount—the amount of the difference and how it will be paid; and
  - (e) if the amount of the entitlement is less than the total amount—the amount of the difference, the fact that the amount is a debt, information relating to how and from whom the debt will be recovered; and
  - (f) the period or periods in the financial year preceding the one in which the determination under section 54B is made during which the claimant provided the care for which the claimant is eligible; and
  - (g) that the claimant may apply for review of the determination in the manner set out in Part 5.
- (2) The determination is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.

**Subdivision H—Matters relating to determinations**

**55 Determination of CCB % under section 50J may be based on estimate, indexed estimate or indexed actual income**

- (1) If:
- (a) a CCB % applicable to a claimant who is an individual is required to be determined under section 50J; and
  - (b) subparagraph 7(a)(ii) of Part 4 of Schedule 2 to the Family Assistance Act does not apply to the claimant; and
  - (c) the information about an amount needed by the Secretary for the calculation of the CCB % is not available (for example, because the adjusted taxable income of the claimant or another individual cannot be known until after the end of the relevant income year); and

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- (d) the claimant gives the Secretary an estimate of the amount needed; and
  - (e) the Secretary considers the estimate to be reasonable; and
  - (f) since the estimate was given, the Secretary has not given the individual a notice under subsection 55AA(2) or 55AB(2) with a start day that has arrived or passed;
- the Secretary may determine the CCB % applicable to the claimant on the basis of the estimate.
- (2) This subsection applies if the claimant does not give the Secretary an estimate of the amount needed that the Secretary considers reasonable.

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

- (3) If:
- (a) a CCB % applicable to a claimant who is an individual is required to be calculated under Schedule 2 to the Family Assistance Act for the purpose of varying a determination of CCB % under Subdivision M, N, P, R, S or V of Division 4 of this Part; and
  - (b) the information about an amount needed by the Secretary to calculate the CCB % applicable to the claimant is not available; and
  - (c) the Secretary has given the claimant a notice under subsection 55AA(2) or 55AB(2) with a start day that has arrived or passed; and
  - (d) since the notice was given, the claimant has not given the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable;
- the Secretary may determine the CCB % applicable to the claimant on the basis of the indexed estimate or indexed actual income stated in the notice (or, if the Secretary has given the claimant more than one notice with a start day that has arrived or passed—the notice with the most recent start day).

Note: Section 55AC affects the meaning of this provision for members of couples.

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**55AA Indexed estimates**

- (1) The Secretary may calculate an indexed estimate for an individual under subsection (5), with a start day chosen by the Secretary, if:
- (a) the individual is a claimant, or the partner of a claimant, for child care benefit; and
  - (b) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of the claimant and the effect of the former determination is that the claimant is conditionally eligible for child care benefit by fee reduction; and
  - (c) the CCB % is worked out on the basis of an estimate of the claimant's adjusted taxable income, an indexed estimate for the claimant or an indexed actual income for the claimant.

Note: Section 55AC affects the meaning of paragraph (1)(c) for members of couples.

- (2) If the Secretary calculates an indexed estimate for the individual, the Secretary may give the claimant a notice:
- (a) stating the indexed estimate for the individual; and
  - (b) specifying the start day used in the Secretary's calculation (which must be a Monday at least 14 days after the day on which the notice is given).
- (3) The Secretary must not give a notice under subsection (2) stating an indexed estimate for the individual with a start day in an income year if the Secretary has already given a notice under subsection (2) stating an indexed estimate for that individual with a start day in the same income year.
- (4) A notice given to a claimant under subsection (2) stating an indexed estimate for an individual has no effect if, before the start day specified in the notice for the indexed estimate, the Secretary gives the claimant a notice under subsection 55AB(2) stating an indexed actual income for the same individual. Any such notice under subsection 55AB(2) must specify a start day that is no earlier than the start day specified in the superseded notice.

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- (5) Calculate an indexed estimate (which may be nil) for the individual by multiplying the individual's current ATI number (see subsection (6)) by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

**AWE** means the amount published by the Australian Statistician in a document titled "Average Weekly Earnings" under the headings "Average Weekly Earnings, Australia—Original—Persons—All employees total earnings" (or, if any of those change, in a replacement document or under replacement headings).

**highest previous November** means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

**most recent November** means the November of the income year before the income year in which the start day occurs.

**reference period**, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

- (6) For the purposes of subsection (5), the individual's **current ATI number** is:
- (a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 55AB(2) stating an indexed actual income for the individual with a start day that has not arrived—the indexed actual income stated in the notice; or

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- (b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 55 (disregarding the effect for couples of section 55AC of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or
  - (c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 55 if the individual were the claimant (disregarding the effect for couples of section 55AC of this Act and clause 3 of Schedule 3 to the Family Assistance Act).
- (7) A notice under subsection (2) is not a legislative instrument.

**55AB Indexed actual incomes**

- (1) The Secretary may calculate an indexed actual income for an individual under subsection (4), with a start day chosen by the Secretary, if:
- (a) the individual is a claimant for, or the partner of a claimant for, child care benefit; and
  - (b) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of the claimant and the effect of the former determination is that the claimant is conditionally eligible for child care benefit by fee reduction; and
  - (c) the CCB % is worked out on the basis of an indexed estimate for the claimant or an indexed actual income for the claimant; and
  - (d) since the claimant was last given a notice under subsection 55AA(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for an individual, the claimant has not given the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
  - (e) the adjusted taxable income for an income year (***actual income***) of the individual (disregarding the effect for couples

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of clause 3 of Schedule 3 to the Family Assistance Act) becomes known to the Secretary and it is the most recent income year for which the individual's actual income is known to the Secretary.

Note: Section 55AC affects the meaning of paragraph (1)(c) for members of couples.

(2) If:

- (a) the Secretary calculates an indexed actual income for the individual; and
- (b) the indexed actual income is greater than the individual's current ATI number (see subsection (5));

the Secretary may give the claimant a notice:

- (c) stating the indexed actual income for the individual; and
- (d) specifying the start day used in the Secretary's calculation (which must be a Monday at least 14 days after the day on which the notice is given).

(3) A notice given to a claimant under subsection (2) stating an indexed actual income for an individual has no effect if, before the start day specified in the notice, the Secretary gives the claimant another notice under that subsection or a notice under subsection 55AA(2) stating an indexed estimate or indexed actual income for the same individual. Any other such notice must specify a start day that is no earlier than the start day specified in the superseded notice.

(4) Calculate an indexed actual income (which may be nil) for the individual by multiplying the actual income of the individual which became known to the Secretary by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

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AWE for the reference period in the most recent November  
AWE for the reference period in the highest previous November

where:

**AWE** means the amount published by the Australian Statistician in a document titled “Average Weekly Earnings” under the headings “Average Weekly Earnings, Australia—Original—Persons—All employees total earnings” (or, if any of those change, in a replacement document or under replacement headings).

**highest previous November** means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

**most recent November** means the November of the income year before the income year in which the start day occurs.

**reference period**, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

- (5) For the purposes of paragraph (2)(b), the individual’s **current ATI number** is:
- (a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 55AA(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for the individual with a start day that has not arrived—the indexed estimate or indexed actual income stated in the notice; or
  - (b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 55 (disregarding the effect for couples of section 55AC of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or
  - (c) if paragraph (a) does not apply and the individual is the claimant’s partner—the amount the Secretary would be



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permitted to use for the individual under section 55 if the individual were the claimant (disregarding the effect for couples of section 55AC of this Act and clause 3 of Schedule 3 to the Family Assistance Act).

- (6) A notice under subsection (2) is not a legislative instrument.

**55AC Indexed estimates and indexed actual incomes for members of couples**

- (1) This section applies in relation to any individual who is a member of a couple.
- (2) For the purposes of the Family Assistance Act, any reference in this Act to CCB % being determined or worked out on the basis of an indexed estimate, or an indexed actual income, for an individual or stated in a notice, is affected by subsection (3).
- (3) The reference is taken to be a reference to CCB % being determined or worked out on the basis of the indexed estimate, or the indexed actual income, for that individual or stated in that notice, combined with:
  - (a) the indexed estimate or indexed actual income for the individual's partner stated in a notice given to:
    - (i) if the individual is the claimant for child care benefit—the individual; or
    - (ii) if the individual is the partner of the claimant for child care benefit—the individual's partner;under subsection 55AA(2) or 55AB(2) with a start day that has arrived or passed (or, if the Secretary has given more than one such notice—the notice with the most recent start day); or
  - (b) if there is no such indexed estimate or indexed actual income—a reasonable estimate of the adjusted taxable income of the individual's partner (disregarding the effect of clause 3 of Schedule 3 to the Family Assistance Act) that has been given to the Secretary by the individual.

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**55A Determination of rate under Subdivision F may be based on estimate**

- (1) If:
- (a) an individual's rate of child care benefit for care provided by an approved child care service is required to be calculated for the purpose of making a determination under Subdivision F; and
  - (b) the information about an amount needed by the Secretary to calculate the CCB % (CCB % is needed to calculate rate) applicable to the individual is not available; and
  - (c) the claimant gives the Secretary an estimate of the amount needed; and
  - (d) the Secretary considers the estimate to be reasonable;
- the Secretary may determine the rate of child care benefit on the basis of the estimate.
- (2) If the claimant does not give the Secretary an estimate of the amount needed that the Secretary considers reasonable, the CCB % is zero %.

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

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

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

(2) If:

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

the CCB % applicable to the claimant is zero %.

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

This section applies if:

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

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

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**55D Schooling % applicable to individual when certain information not provided**

If:

(a) either:

- (i) an individual's schooling % is required to be determined under section 50K; or
- (ii) an individual's rate is required to be calculated for the purpose of making a determination of entitlement under Subdivision E or F for care provided by an approved child care service; and

(b) the individual, or if the individual has died, another individual making a claim for child care benefit by single payment/in substitution because of the death of that individual, does not give the Secretary information about whether the child is a school child;

the Secretary must determine 85% as the schooling %.

**Subdivision J—Payment**

**56 Payment in respect of claim for child care benefit by fee reduction if claim by individual**

(1) If:

- (a) a claimant who is an individual is entitled to be paid child care benefit by fee reduction for sessions of care provided by an approved child care service during an income year; and
- (b) the service is required, under section 219B, to pass on to the claimant a fee reduction for those sessions of care; and
- (c) the amount of the entitlement is greater than the total amount which the service is obliged to pass on to the claimant under that section for those sessions of care;

the Secretary must pay the amount of the difference to the claimant at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant.

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

- (3) The Secretary may direct that the whole or a part of an amount which is to be paid under this section is to be paid in a different way from that provided for by subsection (1). If the Secretary gives the direction, the amount is to be paid in accordance with the direction.
- (4) This section is subject to Part 4 and to Division 3 of Part 8B.

**56A Payment of child care benefit for a past period and by single payment/in substitution**

- (1) If a claimant who is an individual:
  - (a) is entitled to be paid child care benefit for a past period for care provided by:
    - (i) an approved child care service; or
    - (ii) a registered carer; or
  - (b) is entitled to be paid child care benefit by single payment/in substitution;

the Secretary must pay the amount of the entitlement to the claimant at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant.

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

- (3) The Secretary may direct that the whole or a part of an amount that is to be paid under this section is to be paid in a different way from that provided for by subsection (1). If the Secretary gives the direction, the amount is to be paid in accordance with the direction.
- (4) This section is subject to Part 4 and to Division 3 of Part 8B.

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**56B Payment of child care benefit by fee reduction where claim by an approved child care service**

(1) If:

- (a) a claimant that is an approved child care service is entitled to be paid child care benefit by fee reduction for sessions of care provided by the claimant to a child at risk during a financial year; and
- (b) the service is required, under section 219BA, to pass on to itself child care benefit by fee reduction for those sessions of care; and
- (c) the amount of the entitlement is greater than the total amount which the service is obliged to pass on to itself under that section for those sessions of care;

the Secretary must pay the amount of the difference to the claimant at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant.

(2) The Secretary may direct that the whole or a part of an amount which is to be paid under this section is to be paid in a different way from that provided for by subsection (1). If the Secretary gives the direction, the amount is to be paid in accordance with the direction.

(3) This section is subject to Part 4 (Overpayments and debt recovery).

**Subdivision K—Obligations to notify change of circumstances**

**56C Individual's obligation to notify change of circumstances**

*Individual conditionally eligible and something happens to cause a loss of conditional eligibility*

(1) If:

- (a) a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual; and
- (b) either:

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(i) anything happens that causes the claimant to cease to be conditionally eligible; or

(ii) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the individual under section 57, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: Imprisonment for 6 months.

(1A) Strict liability applies to the following elements of an offence against subsection (1):

(a) the element that a determination is a determination under section 50F;

(b) the element that a notice is a notice given under section 57.

*Individual conditionally eligible and something happens to cause a reduction in the CCB %*

(2) If:

(a) determinations of conditional eligibility under section 50F and CCB % under section 50J are in force in respect of a claimant who is an individual; and

(b) the CCB % is calculated using Schedule 2 to the Family Assistance Act; and

(c) either:

(i) anything happens that causes a reduction in the CCB %; or

(ii) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the claimant under section 57, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

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Penalty: Imprisonment for 6 months.

- (2A) Strict liability applies to the following elements of an offence against subsection (2):
- (a) the element that a determination is a determination under section 50F or 50J;
  - (b) the element that Schedule 2 to the Family Assistance Act is used to calculate a CCB %;
  - (c) the element that a notice is a notice given under section 57.

*Individual conditionally eligible, has a weekly limit of hours for a reason other than child at risk and something happens to cause a reduction in the weekly limit of hours*

- (3) If:
- (a) determinations of conditional eligibility under section 50F and a weekly limit of hours under section 50H are in force in respect of a claimant who is an individual; and
  - (b) the weekly limit of hours is more than 24 because a circumstance set out in subsection 54(2), (4), (6) or (8) of the Family Assistance Act or subsection 55(2) or (4) of that Act applies to the eligibility of the claimant; and
  - (c) either:
    - (i) anything happens that causes a reduction in the weekly limit of hours; or
    - (ii) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the claimant under section 57, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: Imprisonment for 6 months.

- (3A) Strict liability applies to the following elements of an offence against subsection (3):



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- (a) the element that a determination is a determination under section 50F or 50H;
- (b) the element that a circumstance is a circumstance set out in subsection 54(2), (4), (6) or (8) of the Family Assistance Act or subsection 55(2) or (4) of that Act;
- (c) the element that a notice is a notice given under section 57.

*Individual conditionally eligible, has a 24 hour care limit and the number of 24 hour care periods is reduced*

- (4) If:
- (a) determinations of conditional eligibility under section 50F and a weekly limit of hours under section 50H are in force in respect of a claimant who is an individual; and
  - (b) the weekly limit of hours is a 24 hour care limit with one or more 24 hour care periods; and
  - (c) either:
    - (i) anything happens that causes a reduction in the number of 24 hour care periods in the week; or
    - (ii) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the claimant under section 57, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: Imprisonment for 6 months.

- (4A) Strict liability applies to the following elements of an offence against subsection (4):
- (a) the element that a determination is a determination under section 50F or 50H;
  - (b) the element that a notice is a notice given under section 57.

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*Individual conditionally eligible and something happens to cause a reduction in schooling %*

(5) If:

- (a) determinations of conditional eligibility under section 50F and schooling % under section 50K are in force in respect of a claimant who is an individual; and
- (b) the schooling % is 100%; and
- (c) either:
  - (i) anything happens that causes a reduction in the schooling % to 85%; or
  - (ii) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the claimant under section 57, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: Imprisonment for 6 months.

(5A) Strict liability applies to the following elements of an offence against subsection (5):

- (a) the element that a determination is a determination under section 50F or 50K;
- (b) the element that a notice is a notice given under section 57.

*Individual conditionally eligible, has a rate determined because of hardship and something happens that affects the rate*

(6) If:

- (a) a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual and a child; and
- (b) the claimant's rate of child care benefit for a session of care provided to the child is the rate determined by the Secretary under subsection 81(2) of the Family Assistance Act (hardship); and

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(c) either:

- (i) anything happens that affects the rate determined; or
- (ii) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the claimant under section 57, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: Imprisonment for 6 months.

(6A) Strict liability applies to the following elements of an offence against subsection (6):

- (a) the element that a determination is a determination under section 50F;
- (b) the element that the determination of a rate is a determination under subsection 81(2) of the Family Assistance Act;
- (c) the element that a notice is a notice given under section 57.

*Individual eligible for special grandparent rate and something happens to cause a loss of eligibility for that rate*

(7) If:

- (a) a determination is in force under subsection 50T(1) with the effect that a claimant who is an individual is eligible for the special grandparent rate for a child; and
- (b) either:
  - (i) anything happens that causes the claimant to cease to be eligible for that rate for the child; or
  - (ii) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the claimant under section 57, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

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Penalty: Imprisonment for 6 months.

- (8) Strict liability applies to the following elements of an offence against subsection (7):
- (a) the element that a determination is a determination under subsection 50T(1);
  - (b) the element that a notice is a notice given under section 57.

**56D Approved child care service's obligation to notify of change of circumstances**

*Service eligible for child care benefit in respect of a child at risk, a weekly limit of hours is determined and something happens to cause a reduction in weekly limit of hours*

- (1) If:
- (a) a claimant that is an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for care provided by the claimant to a child at risk; and
  - (b) a determination of a weekly limit of hours under section 54C in respect of the claimant and the child is in force; and
  - (c) the weekly limit of hours is more than 24 because a circumstance under subsection 54(3), (5), (7), (9) or (12) or subsection 55(3), (5) or (8) of the Family Assistance Act applies; and
  - (d) either:
    - (i) anything happens that causes a reduction in the weekly limit of hours; or
    - (ii) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the claimant under section 57, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

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Penalty: 60 penalty units.

- (1A) Strict liability applies to the following elements of an offence against subsection (1):
- (a) the element that a child care service's eligibility for a child care benefit is an eligibility under section 47 of the Family Assistance Act;
  - (b) the element that a determination is a determination under section 54C;
  - (c) the element that a circumstance is a circumstance under subsection 54(3), (5), (7), (9) or (12) or subsection 55(3), (5) or (8) of the Family Assistance Act;
  - (d) the element that a notice is a notice given under section 57.

*Service eligible for child care benefit in respect of a child at risk and something happens that affects the rate*

- (2) If:
- (a) a claimant that is an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for care provided by the claimant to a child at risk; and
  - (b) a rate, determined by the Secretary in respect of the claimant and the child under subsection 81(4) of the Family Assistance Act, is in force; and
  - (c) either:
    - (i) anything happens that would have the effect that the rate should not apply; or
    - (ii) the claimant becomes aware that anything is likely to happen that will have that effect;

the claimant must, in the manner set out in a written notice given to the claimant under section 57, as soon as practicable after the claimant becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: 60 penalty units.

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- (2A) Strict liability applies to the following elements of an offence against subsection (2):
- (a) the element that a child care service's eligibility for a child care benefit is an eligibility under section 47 of the Family Assistance Act;
  - (b) the element that a determination of a rate is a determination under subsection 81(4) of the Family Assistance Act;
  - (c) the element that a notice is a notice given under section 57.

*Individual conditionally eligible, individual's rate is determined because child at risk and something happens that affects the rate*

- (3) If:
- (a) a claimant who is an individual has made a claim for child care benefit by fee reduction for care provided by an approved child care service to a child; and
  - (b) a determination of conditional eligibility under section 50F is in force in respect of the claimant and the child; and
  - (c) the rate applicable to the claimant is as determined by the Secretary under subsection 81(3) of the Family Assistance Act; and
  - (d) either:
    - (i) anything happens that would have the effect that the rate should no longer apply; or
    - (ii) the service becomes aware that anything is likely to happen that will have that effect;

the service must, in the manner set out in a written notice given to the service under section 57, as soon as practicable after the service becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: 60 penalty units.

- (3A) Strict liability applies to the following elements of an offence against subsection (3):
- (a) the element that a determination is a determination under section 50F;

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- (b) the element that a determination of a rate is a determination under subsection 81(3) of the Family Assistance Act;
- (c) the element that a notice is a notice given under section 57.

*Individual conditionally eligible, individual's weekly limit of hours is determined because Secretary considers the child is at risk and something happens to cause a reduction of the weekly limit of hours*

- (4) If:
  - (a) a claimant who is an individual has made a claim for child care benefit by fee reduction for care provided by an approved child care service to a child; and
  - (b) determinations of conditional eligibility under section 50F and a weekly limit of hours under section 50H are in force in respect of the claimant and the child; and
  - (c) the weekly limit of hours is such because a circumstance set out in subsection 54(12) or 55(8) of the Family Assistance Act (child at risk) applies to the eligibility of the claimant; and
  - (d) either:
    - (i) anything happens that would have the effect that the weekly limit of hours should not be as high; or
    - (ii) the service becomes aware that anything is likely to happen that will have that effect;

the service must, in the manner set out in a written notice given to the service under section 57, as soon as practicable after the service becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: 60 penalty units.

- (4A) Strict liability applies to the following elements of an offence against subsection (4):
  - (a) the element that a determination is a determination under section 50F;

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- (b) the element that a determination is a determination under section 50H;
- (c) the element that a circumstance is a circumstance set out in subsection 54(12) or 55(8) of the Family Assistance Act;
- (d) the element that a notice is a notice given under section 57.

*Service determined to be sole provider and ceases to be sole provider*

(5) If:

- (a) a determination is in force under section 57 of the Family Assistance Act in respect of an approved child care service that the service is the sole provider in an area; and
- (b) either:
  - (i) anything happens that would have the effect that the service would no longer be the sole provider in that area; or
  - (ii) the service becomes aware that anything is likely to happen that will have that effect;

the service must, in the manner set out in a written notice given to the service under section 57, as soon as practicable after the service becomes aware that the thing has happened or is likely to happen, notify the Secretary that it has happened or is likely to happen.

Penalty: 60 penalty units.

(5A) Strict liability applies to the following elements of an offence against subsection (5):

- (a) the element that a determination is a determination under section 57 of the Family Assistance Act;
- (b) the element that a notice is a notice given under section 57.



**Subdivision L—Secretary's powers****57 Secretary's power to approve a manner of notification for the purposes of sections 56C and 56D**

- (1) The Secretary must approve a manner of notification that a person is to use when notifying the Secretary of a thing under section 56C or 56D (change of circumstances).
- (2) The Secretary must, by written notice, notify the person of the approved manner of notification.

**57A Secretary's power to require bank account details**

If:

- (a) a determination under section 50F is in force under which a claimant who is an individual is conditionally eligible for child care benefit by fee reduction; or
- (b) the claimant has not nominated a bank account into which the amount of the difference referred to in subsection 56(1) is to be paid;

the Secretary may require the claimant to give the Secretary, within 28 days of the requirement being made, details of a bank account maintained by the claimant alone, or jointly or in common with someone else, into which the amount of the difference is to be paid.

**57B Secretary's powers to request in claim form tax file number etc. of TFN claim persons**

- (1) The Secretary may request, in a claim form for child care benefit by fee reduction, that a statement of one of the kinds set out in subsections (2), (3) or (4) is made in relation to each TFN claim person.

*Statement of tax file number*

- (2) The first kind of statement that can be made is a statement of the TFN claim person's tax file number. Regardless of who the TFN

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claim person is, this kind of statement can be made by the claimant only.

*Statement that TFN claim person does not know what his or her tax file number is etc.*

- (3) The second kind of statement that can be made is a statement by the TFN claim person that the person:
- (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  - (c) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) whether the person has a tax file number; and
    - (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (4) The third kind of statement that can be made is a statement by the TFN claim person that the person:
- (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn.

*How statement to be given*

- (5) A statement made by the claimant must be in the claim. A statement made by any other TFN claim person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

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*Exemption from tax file number requirement if Secretary determines*

- (6) The Secretary may determine that the request in subsection (1) does not apply to a TFN claim person if:
- (a) the person is, or was, the claimant's partner; and
  - (b) the claimant cannot obtain from the person:
    - (i) the person's tax file number; or
    - (ii) a statement by the person under subsection (3) or (4).

*Exemption from tax file number requirement if claimant opts for certain things in the claim form*

- (7) The request in subsection (1) does not apply to a TFN claim person if, in the claim, the person opted to have a CCB % of zero % applicable to him or her.

**57C Secretary's power to request tax file numbers etc. of certain TFN claim persons**

If:

- (a) an individual makes a claim for payment of child care benefit by fee reduction for care provided by an approved child care service; and
- (b) the claimant does not opt in the claim to have a CCB % of zero % applicable to him or her; and
- (c) the claimant does not give the Secretary in the claim the tax file number of a TFN claim person; and
- (d) the TFN claim person does not make a statement of a kind set out in subsection 57B(3) or (4); and
- (e) the Secretary has not exempted the TFN claim person under subsection 57B(6) from giving the person's tax file number or making a statement of a kind referred to in subsection 57B(3) or (4);

the Secretary may request the claimant to give the Secretary, within 28 days of the request being made, the tax file number of a TFN claim person.

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**57D Secretary's power to request tax file numbers of TFN determination persons**

(1) If:

- (a) a determination under section 50F is in force under which a claimant who is an individual is conditionally eligible for child care benefit by fee reduction; or
- (b) a determination under section 52E is in force under which a claimant who is an individual is entitled to be paid child care benefit for a past period for care provided by an approved child care service;

the Secretary may request the claimant to give the Secretary, within 28 days of the request being made, a statement, in relation to a specified TFN determination person, of whichever of the kinds set out in subsection (2), (3) or (4) the claimant chooses.

*Statement of tax file number*

- (2) The first kind of statement that can be made is a statement of the TFN determination person's tax file number. Regardless of who the TFN determination person is, this kind of statement can be made by the claimant only.

*Statement that TFN determination person does not know what his or her tax file number is etc.*

- (3) The second kind of statement that can be made is a statement by the TFN determination person that the person:
- (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  - (c) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) whether the person has a tax file number; and
    - (ii) if the person has a tax file number—that number.

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*Statement that an application for a tax file number is pending*

- (4) The third kind of statement that can be made is a statement by the TFN determination person that the person:
- (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn.

**57E Secretary's power to require immunisation details**

If a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual and a child with the effect that the claimant is conditionally eligible for child care benefit by fee reduction in respect of the child, the Secretary may, by written notice given to the claimant, require that the child meets the immunisation requirement set out in section 6 of the Family Assistance Act in respect of the child within 63 days of the notice.

**57F Secretary's power to require data verification information**

- (1) If a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual with the effect that the claimant is conditionally eligible for child care benefit by fee reduction, the Secretary may, by written notice given to the claimant, require the claimant to give the Secretary, within the time specified in the notice, the information specified in the data verification form accompanying the notice.
- (2) To avoid doubt, the Secretary may, before the start of the first week commencing after 1 July 2006, give a notice under subsection (1) requiring the claimant to give the Secretary information about whether or not the claimant will satisfy the

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work/training/study test on or after the start of the first week commencing after 1 July 2006.

Note: The *Family and Community Services Legislation Amendment (Welfare to Work) Act 2005* amends the work/training/study test and applies from the start of the first week commencing after 1 July 2006.

**57G Secretary's power to require further information about children enrolled in child care**

- (1) The Secretary may, by notice, require an approved child care service to give the Secretary further information in relation to any aspect of the care provided, or expected to be provided in the future, to all children:
  - (a) in relation to whom:
    - (i) the service has given the Secretary notice of enrolment under sections 219A and 219AB, or sections 219AA and 219AB;
    - (ii) the Secretary has confirmed the enrolment in accordance with section 219AE; and
  - (b) who remain enrolled for care by the service.
- (2) The notice must specify either:
  - (a) the period in relation to which the information must be provided; or
  - (b) the intervals in which the information must be provided.
- (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 information by making the notice 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 it is made available.
- (5) The information must be given to the Secretary by the service in the form, and in the manner or way, approved by the Secretary.

**Subdivision M—Variations of determinations if failure to provide tax file numbers or bank account details or to meet the immunisation requirement****58 Variation where failure to provide tax file number***Non-compliance with request*

(1) If:

(a) either:

- (i) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of a claimant who is an individual; or
- (ii) a determination of entitlement under section 52E is in force in respect of a claimant who is an individual to be paid child care benefit for a past period for care provided by an approved child care service; and

(b) the Secretary makes a request under subsection 57D(1) (request for tax file number) of the claimant concerned; and

(c) the claimant does not comply with the request within 28 days of the request being made;

then, subject to subsection (2), the consequence in subsection (5) or (6) applies, as the case requires.

*Exemption from request under subsection 57D(1)*

(2) The Secretary may determine that the consequence in subsection (5) or (6) does not apply if:

(a) the TFN determination person concerned is or was the claimant's partner; and

(b) the claimant cannot obtain from the person:

- (i) the person's tax file number; or
- (ii) a statement by the person under subsection 57D(3) or (4).

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*Statement made by TFN determination person under subsection 57D(3)*

- (3) If:
- (a) the Secretary makes a request under subsection 57D(1); and
  - (b) by the end of 28 days after the request is made, the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 57D(3); and
  - (c) the Commissioner of Taxation tells the Secretary that the person has no tax file number;
- the consequence in subsection (5) or (6) applies, as the case requires.

*Statement made by TFN determination person under subsection 57D(4)*

- (4) If:
- (a) the Secretary makes a request under subsection 57D(1); and
  - (b) by the end of 28 days after the request is made, the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 57D(4); and
  - (c) the Commissioner of Taxation tells the Secretary that the person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;
- the consequence in subsection (5) or (6) applies, as the case requires.

*Variation of determination of CCB %*

- (5) For the purposes of subsection (1), (3) or (4), if the situation in subparagraph (1)(a)(i) applies, the Secretary may vary the determination of CCB % applicable to the claimant with the effect that the CCB % is zero %. The variation takes effect from the Monday after the day the variation is made.



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*Variation of determination of entitlement in respect of past period claim by individual*

- (6) For the purposes of subsection (1), (3) or (4), if the situation in subparagraph (1)(a)(ii) applies, the Secretary may vary the determination of entitlement in respect of the past period to which the claim relates.
- (7) For the purposes of this Act and the Family Assistance Act, the variation referred to in subsection (6) has the effect:
- (a) that the claimant continues to be entitled under section 52E to be paid an amount of child care benefit in respect of the past period to which the claim relates; but
  - (b) that the amount of the entitlement is a nil amount.
- This subsection has effect despite section 52E.

*Consequence of Secretary later becoming aware of tax file number*

- (8) If:
- (a) under subsection (5) or (6), the Secretary varies the determination; and
  - (b) the Secretary finds out the tax file number of the TFN determination person concerned:
    - (i) if subsection (5) applies—before the end of the income year following the one in which the variation took effect; or
    - (ii) if subsection (6) applies—at any time after the variation took place;
- the Secretary must vary the determination to undo the effect mentioned in subsection (5) or (6).

**58A Variation where failure to comply with request for bank account details***Non-compliance with request*

- (1) If:
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- (a) a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual; and
- (b) the claimant is subject to a request under section 57A (bank account details); and
- (c) the claimant does not comply with the request within 28 days of the request being made;

then, subject to subsection (2), the consequence in subsection (3) applies.

*Exemption from consequence in subsection (3)*

- (2) The Secretary may determine that the consequence in subsection (3) does not apply if the Secretary considers that it is appropriate to exempt the claimant from the consequence.

*Variation of determination*

- (3) For the purposes of subsection (1), the consequence is that the Secretary may vary the determination so that it has the effect that the claimant is not conditionally eligible from the Monday after the end of 28 days following the day the Secretary made the request under section 57A.

*Consequence of Secretary later becoming aware of bank account details*

- (4) If:
  - (a) under subsection (3), the Secretary varies the determination; and
  - (b) the Secretary finds out the bank account details of the claimant concerned before the end of the income year following the one in which the variation took effect;the Secretary must vary the determination to undo the effect mentioned in subsection (3).

**58B Variation where failure to comply with requirement to meet immunisation requirement**

If:

- (a) a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual and a child; and
  - (b) the Secretary requires the child to meet the immunisation requirement under section 57E; and
  - (c) the requirement is not met as provided for in that section;
- the Secretary must vary the determination with the effect that the claimant is not conditionally eligible from the Monday after the day the variation is made.

**Subdivision N—Variations of determinations if failure to provide data verification****59 Variation for failure to return the data verification form**

(1) If:

- (a) a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual with the effect that the claimant is conditionally eligible for child care benefit by fee reduction; and
  - (b) the Secretary makes a request under section 57F in respect of a data verification form referred to in that section; and
  - (c) the form is not returned in the time specified in the request;
- the Secretary may vary the determination with the effect that the claimant is not conditionally eligible from 1 July in the income year following the one in which the request was made.

(2) Without limiting subsection (1), if:

- (a) determinations of conditional eligibility under section 50F and of a weekly limit of hours under section 50H are in force in respect of a claimant who is an individual; and
- (b) the Secretary makes a request under section 57F in respect of a data verification form referred to in that section; and

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- (c) the request is a request for information of the kind described in subsection 57F(2); and
- (d) the form is not returned in the time specified in the request; the Secretary may vary the determination of a weekly limit of hours with the effect that, on and from the start of the first week commencing after 1 July 2006, the limit is 24 hours.

*Consequence of Secretary later becoming aware of the information*

- (3) If:
- (a) under subsection (2), the Secretary varies the determination; and
  - (b) before the end of the income year following the one in which the variation took effect:
    - (i) the claimant returns the data verification form specified in the request under section 57F and provides the information mentioned in paragraph (2)(c); or
    - (ii) the Secretary finds out the information (whether from the claimant or someone else);
- the Secretary must vary the determination to undo the effect mentioned in subsection (2).

**59A Variation for failure to provide information in the data verification form relating to the name and address of the approved child care service**

- If:
- (a) a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual with the effect that the claimant is conditionally eligible for child care benefit by fee reduction; and
  - (b) the Secretary makes a request under section 57F in respect of a data verification form referred to in that section; and
  - (c) the form is returned within the time specified in the request; and
  - (d) the name and address of the approved child care service requested in the form is not provided;

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the Secretary may vary the determination with the effect that the claimant is not conditionally eligible from 1 July in the income year following the one in which the request was made.

**59B Variation for failure to provide information in the data verification form relating to conditional eligibility**

If:

- (a) a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual with the effect that the claimant is conditionally eligible for child care benefit by fee reduction; and
- (b) the Secretary makes a request under section 57F in respect of a data verification form referred to in that section; and
- (c) the form is returned within the time specified in the request; and
- (d) any information requested in the form relevant to the claimant's conditional eligibility is not provided;

the Secretary may vary the determination with the effect that the claimant is not conditionally eligible from 1 July in the income year following the one in which the request was made.

**59C Variation for failure to provide information in the data verification form relating to schooling %**

(1) If:

- (a) determinations of conditional eligibility under section 50F and of schooling % under section 50K are in force in respect of a claimant who is an individual with the effect, in respect of the latter determination, that the schooling % is 100%; and
- (b) the Secretary makes a request under section 57F in respect of a data verification form referred to in that section; and
- (c) the form is returned within the time specified in the request; and
- (d) any information requested in the form relevant to the schooling % is not provided;

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the Secretary may vary the determination with the effect that the schooling % is 85% from 1 July in the income year following the one in which the request was made.

*Consequence of Secretary later becoming aware of information*

(2) If:

- (a) under subsection (1), the Secretary varies the determination; and
- (b) before the end of the income year following the one in which the variation took effect the claimant gives the information mentioned in subsection (1) or the Secretary finds out the information;

the Secretary must vary the determination to undo the effect mentioned in subsection (1).

**59D Variation for failure to provide information in the data verification form relating to CCB %**

(1) If:

- (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of a claimant who is an individual; and
- (b) the Secretary makes a request under section 57F in respect of a data verification form referred to in that section; and
- (c) the form is returned within the time specified in the request; and
- (d) any information requested in the form relevant to the CCB %:
  - (i) is not provided; or
  - (ii) if the information is provided, and it is an estimate of an amount needed by the Secretary to calculate the CCB %, the Secretary considers that the estimate is not reasonable;

the Secretary may vary the determination with the effect that the CCB % is zero % from 1 July in the income year following the one in which the request was made.

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*Consequence of Secretary later becoming aware of the information*

(2) If:

- (a) under subsection (1), the Secretary varies the determination;  
and
- (b) before the end of the income year following the one in which the variation took effect:
  - (i) if a situation referred to in subparagraph (1)(d)(i) applies—the claimant provides the information mentioned in that subparagraph; or
  - (ii) if a situation referred to in subparagraph (1)(d)(ii) applies—the claimant provides a reasonable estimate of the amount mentioned in that subparagraph; or
  - (iii) the Secretary finds out the actual amount needed to calculate the CCB % (whether from the claimant or someone else);

the Secretary must vary the determination to undo the effect mentioned in subsection (1).

**59E Variation where information in the data verification form relating to CCB % affects the CCB %**

If:

- (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of a claimant who is an individual; and
- (b) the Secretary makes a request under section 57F in respect of a data verification form referred to in that section; and
- (c) the form is returned within the time specified in the request; and
- (d) the information requested in the form relevant to the CCB % is provided; and
- (e) the information provided affects the CCB %;

the Secretary must vary the determination of CCB % with the effect that the CCB % is recalculated under Schedule 2 to the Family Assistance Act, using the information provided, from

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1 July in the income year following the one in which the request was made.

**59F Variation for failure to provide information in the data verification form relating to weekly limit of hours**

(1) If:

- (a) determinations of conditional eligibility under section 50F and of a weekly limit of hours under section 50H are in force in respect of a claimant who is an individual; and
- (b) the Secretary makes a request under section 57F in respect of a data verification form referred to in that section; and
- (c) the form is returned within the time specified in the request; and
- (d) the information requested in the form relevant to the weekly limit is not provided;

the Secretary may vary the determination of a weekly limit of hours with the effect that the limit is 24 hours from 1 July in the income year following the one in which the request was made.

*Consequence of Secretary later becoming aware of the information*

(2) If:

- (a) under subsection (1), the Secretary varies the determination; and
- (b) before the end of the income year following the one in which the variation took effect:
  - (i) the claimant provides the information mentioned in paragraph (1)(d); or
  - (ii) the Secretary finds out the information (whether from the claimant or someone else);

the Secretary must vary the determination to undo the effect mentioned in subsection (1).



**59G Variation for failure to provide information in the data verification form relating to special grandparent rate**

(1) If:

- (a) a determination is in force under section 50F with the effect that a claimant who is an individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and
- (b) a determination is in force under subsection 50T(1) with the effect that the claimant is eligible for the special grandparent rate for the child; and
- (c) the Secretary makes a request under section 57F in respect of a data verification form referred to in that section; and
- (d) the form is returned within the time specified in the request; and
- (e) any information requested in the form relevant to the claimant's eligibility for the special grandparent rate for the child is not provided;

the Secretary may vary the determination under subsection 50T(1) with the effect that the claimant is, from 1 July in the income year following the one in which the request was made, not eligible for the special grandparent rate for the child.

*Consequence of Secretary later becoming aware of information*

(2) If:

- (a) under subsection (1), the Secretary varies the determination under subsection 50T(1); and
- (b) before the end of the income year following the one in which the variation took effect, the claimant gives the information mentioned in subsection (1) or the Secretary finds out the information;

the Secretary must vary the determination under subsection 50T(1) to undo the effect mentioned in subsection (1).

**Subdivision P—Other variations of determinations relating to CCB %**

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

*Variations*

- (1) If:
- (a) a determination is made under subsection 52G(1) in response to a claim by an individual for child care benefit for a past period for care provided to a child by an approved child care service; and
  - (b) when making the determination, subsection 55B(2) caused the Secretary not to be satisfied that, if the claimant were to be entitled to be paid child care benefit, the entitlement would be more than a nil amount; and
  - (c) the claimant complies with:
    - (i) if subparagraph 55B(2)(c)(i) applies to the claimant—subsection (3); and
    - (ii) if subparagraph 55B(2)(c)(ii) applies to the claimant—subsection (4);for the purposes of having the Secretary reconsider the claim; and
  - (d) the Secretary is satisfied that, if the claimant were to be entitled to be paid child care benefit in respect of the period, the amount of the entitlement would be more than a nil amount;
- the Secretary must vary the determination.
- (2) For the purposes of the family assistance law, the variation has the effect that the determination is taken:
- (a) to cease to be a determination made under subsection 52G(1); and

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(b) to be a determination made under section 52E, at the time of the variation, in relation to the claim.

Section 52J does not apply in relation to paragraph (b).

*Condition for variations*

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

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

*Variations*

- (1) If:
- (a) a determination is made under subsection 53E(1) in response to a claim by an individual, in respect of a child, for child care benefit by single payment/in substitution because of the death of another individual; and

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- (b) when making the determination, subsection 55A(2) or 55B(2) caused the Secretary not to be satisfied that, if the claimant were to be entitled to be paid child care benefit, the entitlement would be more than a nil amount; and
  - (c) the claimant complies with:
    - (i) if subsection 55A(2) applies to the claimant—subsection (3); and
    - (ii) if subparagraph 55B(2)(c)(i) applies to the claimant—subsection (4); and
    - (iii) if subparagraph 55B(2)(c)(ii) applies to the claimant—subsection (5);for the purposes of having the Secretary reconsider the claim; and
  - (d) the Secretary is satisfied that, if the claimant were to be entitled to be paid child care benefit in respect of the claim, the amount of the entitlement would be more than a nil amount;
- the Secretary must vary the determination.
- (2) For the purposes of the family assistance law, the variation has the effect that the determination is taken:
- (a) to cease to be a determination made under subsection 53E(1); and
  - (b) to be a determination made under section 53D, at the time of the variation, in relation to the claim.
- Section 53G does not apply in relation to paragraph (b).

*Condition for variations*

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

**60B Variation where CCB % is zero % because of subsection 55(2) or 55B(1), or section 55C, and claimant gives certain information so that CCB % is recalculated**

- (1) If:
- (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of the claimant who is an individual and the effect of the former determination is that the individual is conditionally eligible for child care benefit by fee reduction; and
  - (b) the CCB % is zero % because any or all of the following provisions apply:
    - (i) subsection 55(2);
    - (ii) subparagraph 55B(1)(c)(i) or (ii);
    - (iii) section 55C; and
  - (c) later, the claimant:

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

the Secretary must vary the determination of CCB % with the effect that the CCB % is recalculated under Schedule 2 to the Family Assistance Act.

- (2) The variation takes effect from the Monday after the day the variation is made.
- (3) After the Secretary makes the variation under subsection (1), the amount of the claimant's entitlement determined under section 51B in respect of the income year:
  - (a) in which the variation took effect; and
  - (b) preceding the income year in which the variation took effect; is calculated, or recalculated, as the case may be, using the CCB % worked out under Schedule 2 to the Family Assistance Act.

**60C Variation where CCB % calculated under Schedule 2 to Family Assistance Act and Secretary receives information from Commissioner of Taxation**

- (1) If:

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- (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J in force in respect of a claimant who is an individual were made after the period referred to in paragraph 50D(1)(e); and
  - (b) later, the Commissioner of Taxation tells the Secretary one of the following things:
    - (i) the TFN determination person has not applied for a tax file number;
    - (ii) an application by the TFN determination person for a tax file number has been refused;
    - (iii) the TFN determination person has withdrawn an application for a tax file number;
- the Secretary must vary the determination of CCB % with the effect that the CCB % is zero %.
- (2) The variation takes effect from the Monday after the day the variation is made.

*Consequence of Secretary later becoming aware of tax file number*

- (3) If:
- (a) under subsection (1), the Secretary varies the determination; and
  - (b) the Secretary finds out the tax file number of the TFN determination person before the end of the income year following the one in which the variation took effect, the Secretary must vary the determination to undo the effect mentioned in subsection (1).

**60D Variation where income tax return not lodged**

- (1) If:
- (a) a determination of entitlement under section 51B is in force in respect of a claimant who is an individual and a particular income year; and
  - (b) any of the following people:
    - (i) the claimant;

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- (ii) the claimant's partner at the end of the second income year (the *later income year*) following the particular income year (if he or she was also the claimant's partner in the particular income year);
    - (iii) both the claimant and the claimant's partner (as described in subparagraph (ii));are required to lodge an income tax return for the particular income year but have not done so by the end of the later income year; and
  - (c) by the end of the later income year, an assessment has not been made under the *Income Tax Assessment Act 1936* of the taxable income for the particular income year for everyone to whom paragraph (b) applies;
- the Secretary may vary the determination.
- (2) For the purposes of this Act and the Family Assistance Act, the variation has the effect:
- (a) that the claimant continues to be entitled under section 51B to be paid an amount of child care benefit for the particular income year; but
  - (b) that the amount of the entitlement is a nil amount.
- This subsection has effect despite subsection 51B(1).

*Consequence of later lodgement of income tax return*

- (3) If:
- (a) under subsection (1), the Secretary varies the determination; and
  - (b) an assessment has been made under the *Income Tax Assessment Act 1936* for the particular income year for everyone:
    - (i) who was required to lodge an income tax return as mentioned in subsection (1); and
    - (ii) in respect of whom an assessment had not been made before the determination was varied;
- the Secretary must again vary the determination so that it has the effect that the amount of the entitlement for which the Secretary



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considers the claimant to be eligible is the amount recalculated under Schedule 2 to the Family Assistance Act and, for that particular income year, the claimant is only entitled to the amount as recalculated.

**60E Variation where estimate of an amount given other than in response to a request by the Secretary is not reasonable**

- (1) If:
- (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of the claimant who is an individual and the effect of the former determination is that the individual is conditionally eligible for child care benefit by fee reduction; and
  - (b) the claimant gives the Secretary, other than in response to a request by the Secretary under section 57F, an estimate of an amount needed by the Secretary to calculate CCB %; and
  - (c) the Secretary does not consider the estimate to be reasonable; the Secretary may vary the determination so that it has the effect that the CCB % is zero %.
- (2) The variation takes effect from the Monday after the day the variation is made.

*Consequence of later provision of reasonable estimate or Secretary finding out the actual amount*

- (3) If:
- (a) under subsection (1), the Secretary varies the determination; and
  - (b) either:
    - (i) a variation under section 65B is made in respect of the claimant, by the end of the income year following the one in which the variation took effect; or
    - (ii) the Secretary finds out the actual amount needed to calculate the CCB % (whether from the claimant or

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someone else) by the end of the income year following the one in which the variation took effect;  
the Secretary must vary the determination to undo the effect mentioned in subsection (1).

**Subdivision Q—Variation of determinations relating to conditional eligibility and schooling %**

**61 Variation where schooling % is 85% under section 55D and information about whether the child is a school child provided**

- (1) If:
- (a) determinations of conditional eligibility under section 50F and of schooling % under section 50K are in force in respect of a claimant who is an individual and the effect of the former determination is that the individual is conditionally eligible for child care benefit by fee reduction; and
  - (b) the schooling % is determined to be 85% under section 55D; and
  - (c) later, the claimant provides the information, or the Secretary finds out, that the child is not a school child;
- the Secretary must vary the determination of schooling % with the effect that the schooling % is 100%.
- (2) The variation takes effect from the Monday after the day the variation is made.

**61A Variation where failure to notify that the service has ceased to provide care to child**

- (1) If:
- (a) a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual with the effect that the individual is conditionally eligible for child care benefit by fee reduction; and

- (b) the Secretary has reason to believe that care has ceased to be provided to the child the subject of the claim by the approved child care service last indicated by the claimant to the Secretary;

the Secretary may vary the determination with the effect that the claimant is not conditionally eligible from the Monday after the day the variation is made.

*Consequence of Secretary later finding out that child is receiving care from the service*

- (2) If:

- (a) under subsection (1), the Secretary varies the determination; and  
(b) before the end of the income year following the one in which the variation took effect, the Secretary finds out that the child is receiving care from the service;

the Secretary must vary the determination to undo the effect mentioned in subsection (1).

**Subdivision R—Variations of determinations because of failure to meet requirements arising under Division 1 of Part 6**

**62 Variation where failure to provide information relevant to conditional eligibility etc.**

- (1) If:

- (a) a determination of conditional eligibility under section 50F is in force in respect of a claimant who is an individual with the effect that the claimant is conditionally eligible for child care benefit by fee reduction; and  
(b) the Secretary:  
(i) in order to make a decision about the conditional eligibility at any time; or

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- (ii) in order to make a decision about the claimant's eligibility for child care benefit by fee reduction under section 43 of the Family Assistance Act at any time; or
- (iii) in relation to a matter referred to in subsection 154(5) of this Act;

requires the claimant, or the claimant's partner, under Division 1 of Part 6 of this Act, to give information or produce documents; and

- (c) the claimant or the claimant's partner refuses or fails to comply with the requirements;

the Secretary may vary the determination with the effect that the claimant is not conditionally eligible from the Monday after the day the variation is made.

*Consequence of later provision of information or documents*

- (2) If:

- (a) under subsection (1), the Secretary varies the determination; and
- (b) the claimant gives the information or produces the documents mentioned in paragraph (1)(b) by the end of the income year following the one in which the variation took effect;

the Secretary must vary the determination to undo the effect mentioned in subsection (1).

**62A Variation where failure to provide information relevant to CCB %**

- (1) If:

- (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of a claimant who is an individual; and
- (b) the Secretary, in order to make a decision about the CCB % applicable at any time, requires the claimant, or the claimant's partner, under Division 1 of Part 6, to give information or produce documents; and

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- (c) the claimant or the claimant's partner refuses or fails to comply with the requirements;  
the Secretary may vary the determination of the CCB % with the effect that the CCB % is zero %.
- (2) The variation has effect from the Monday after the day the variation is made.

*Consequence of later provision of information or documents*

- (3) If:
  - (a) under subsection (1), the Secretary varies the determination; and
  - (b) the claimant gives the information or produces the documents mentioned in paragraph (1)(b) by the end of the income year following the one in which the variation took effect;the Secretary must vary the determination to undo the effect mentioned in subsection (1).

**62B Variation where failure to provide information relevant to schooling %**

- (1) If:
  - (a) determinations of conditional eligibility under section 50F and of schooling % under section 50K are in force in respect of a claimant who is an individual with the effect, in respect of the latter determination, that the schooling % is 100%; and
  - (b) the Secretary, in order to make a decision about the schooling % applicable at any time, requires the claimant, or the claimant's partner, under Division 1 of Part 6, to give information or produce documents; and
  - (c) the claimant or the claimant's partner refuses or fails to comply with the requirements;the Secretary may vary the determination of the schooling % with the effect that the schooling % is 85%.
- (2) The variation has effect from the Monday after the day the variation is made.

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*Consequence of later provision of information or documents*

- (3) If:
- (a) under subsection (1), the Secretary varies the determination; and
  - (b) the claimant gives the information or produces the documents mentioned in paragraph (1)(b) by the end of the income year following the one in which the variation took effect;
- the Secretary must vary the determination to undo the effect mentioned in subsection (1).

**62C Variation where failure to provide information relevant to a weekly limit of hours**

- (1) If:
- (a) determinations of conditional eligibility under section 50F and of a weekly limit of hours under section 50H are in force in respect of a claimant who is an individual; and
  - (b) the Secretary, in order to make a decision about the weekly limit of hours applicable at any time, requires the claimant, or the claimant's partner, under Division 1 of Part 6, to give information or produce documents; and
  - (c) the claimant or the claimant's partner refuses or fails to comply with the requirements;
- the Secretary may vary the determination of the weekly limit of hours with the effect that the limit is reduced to a limit specified by the Secretary.
- (2) The variation has effect from the Monday after the day the variation is made.

*Consequence of later provision of information or documents*

- (3) If:
- (a) under subsection (1), the Secretary varies the determination; and

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- (b) the claimant gives the information or produces the documents mentioned in paragraph (1)(b) by the end of the income year following the one in which the variation took effect;
- the Secretary must vary the determination to undo the effect mentioned in subsection (1).

**62CA Variation where failure to provide information relevant to eligibility for special grandparent rate**

- (1) If:
- (a) a determination is in force under subsection 50T(1) with the effect that a claimant who is an individual is eligible for the special grandparent rate for a child; and
  - (b) the Secretary, in order to make a decision about whether the claimant is eligible for that rate for the child at any time, requires the claimant, or the claimant's partner, under Division 1 of Part 6, to give information or produce documents; and
  - (c) the claimant or the claimant's partner refuses or fails to comply with the requirements;
- the Secretary may vary the determination with the effect that the individual is not eligible for that rate for the child.
- (2) The variation has effect from the Monday after the day the variation is made.

*Consequence of later provision of information or documents*

- (3) If:
- (a) under subsection (1), the Secretary varies the determination; and
  - (b) the claimant, or the claimant's partner, gives the information or produces the documents mentioned in paragraph (1)(b) by the end of the income year following the one in which the variation took effect;
- the Secretary must vary the determination to undo the effect mentioned in subsection (1).

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**Subdivision S—Further variations after certain variations that can be undone**

**62D Secretary finds out information after undoing period is over**

If:

- (a) the Secretary makes a variation (the *first variation*) of a determination under sections 58, 59C, 59D, 59F, 59G, 60C, 60E, 62A, 62B, 62C and 62CA or under subsection 59(2); and
- (b) the period specified under the particular section passes during which the Secretary is required to vary again the determination to undo the effect of the first variation; and
- (c) after the period the Secretary is provided with the information, or finds out the information, the lack of which caused the Secretary to make the first variation;

the Secretary must again vary the determination using the information provided or found out with effect from the Monday after this variation.

**Subdivision T—Notice requirement for variations under Subdivision M, N, P, Q, R or S**

**63 Notice of variation of determinations under Subdivision M, N, P, Q, R or S**

- (1) The Secretary must give notice of a variation of a determination under Subdivision M, N, P, Q, R or S to the claimant stating the effect of the variation and that the claimant may apply for review of the decision involved in the manner set out in Part 5.
- (3) The variation is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.
- (4) The Secretary may make notice of a variation of:
  - (a) a determination of conditional eligibility; or
  - (b) a determination of CCB%; or



- (c) a determination of a weekly limit of hours; or
  - (d) a determination of schooling %; or
  - (e) a determination under subsection 50T(1);
- available to the approved child care service providing care to the child, including by making the notice available to the service using an electronic interface.

**Subdivision U—Variations of determinations of weekly limit of hours because of a circumstance in section 54, 55 or 56 of the Family Assistance Act**

**64 Determination of weekly limit of hours may be varied**

- (1) After a determination of a weekly limit of hours has:
  - (a) been made under section 50H in respect of an individual (a *claimant*); or
  - (b) been taken to have been made under section 54C in respect of an approved child care service (a *claimant*);it may be varied as provided for in this Subdivision.
- (2) Whether a variation of a determination occurs depends on whether a circumstance listed in section 54, 55 or 56 of the Family Assistance Act applies in a week in respect of a claimant.

**64A Varying determination so that a limit of 50 hours in a week applies**

*Determination to which this section applies*

- (1) This section applies to a determination of a weekly limit of hours:
  - (a) in force under section 50H in respect of a claimant who is an individual and a child; or
  - (b) in force under section 54C, in respect of a claimant that is an approved child care service and a child.

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*Variation by Secretary on application*

- (2) A determination to which this section applies may be varied by the Secretary on application so that a limit of 50 hours in a week applies if:
- (a) a circumstance listed in subsection 54(2), (3), (4), (5), (6), (7), (8), (9), (12), (13) or (14) of the Family Assistance Act applies in the week; and
  - (b) a limit of more than 50 hours does not apply in the week; and
  - (c) a 24 hour care limit does not apply in the week.

*Who may apply*

- (3) An application under subsection (2) must be made by:
- (a) the claimant, if a circumstance listed in subsection 54(2), (3), (4), (5), (6), (7), (8), (9), (13) or (14) of the Family Assistance Act applies in the week; or
  - (b) the approved child care service providing care to the child, if a circumstance listed in subsection 54(12) of that Act applies in the week.

*Variation is taken to have been made if an approved child care service gives certificate*

- (4) A determination to which this section applies is taken to have been varied so that a limit of 50 hours in a week applies if the approved child care service providing the care to the child gives a certificate under subsection 54(10) of the Family Assistance Act in respect of the week.

*Variations under subsection 59(2), section 59F and section 62C prevail*

- (5) If:
- (a) when a variation under subsection (2) takes place, a variation is in force under subsection 59(2) or under section 59F or 62C; and

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- (b) the variation under subsection 59(2) or under section 59F or 62C has effect for any period when the variation under this section would have effect;

the variation under subsection 59(2) or under section 59F or 62C prevails over the variation under this section unless the variation under this section takes place because a circumstance listed in subsection 54(12) of the Family Assistance Act applies in a week.

### **64B Varying determination so that a limit of more than 50 hours in a week applies**

#### *Determination to which this section applies*

- (1) This section applies to a determination of a weekly limit of hours:
  - (a) in force under section 50H in respect of a claimant who is an individual and a child; or
  - (b) in force under section 54C in respect of a claimant that is an approved child care service and a child.

#### *Variation by Secretary on application*

- (2) A determination to which this section applies may be varied by the Secretary on application so that a limit of more than 50 hours in a week applies if:
  - (a) a circumstance listed in subsection 55(2), (3), (4), (5) or (8) of the Family Assistance Act applies in the week; and
  - (b) a 24 hour care limit does not apply in the week.

#### *Amount of limit*

- (3) If the Secretary varies the determination because a circumstance listed in the section referred to in paragraph (2)(a) applies, the amount of the limit of hours more than 50 is the particular number of hours worked out using the relevant subsection.

#### *Who may apply*

- (4) An application under subsection (2) must be made by:

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- (a) the claimant, if a circumstance listed in subsection 55(2), (3), (4) or (5) of the Family Assistance Act applies in the week; or
- (b) the approved child care service providing the care to the child, if a circumstance listed in subsection 55(8) of the Family Assistance Act applies in the week.

*Variation if an approved child care service gives certificate*

- (5) A determination to which this section applies is taken to have been varied so that a limit of more than 50 hours in a week applies if the approved child care service providing the care to the child gives a certificate under subsection 55(6) of the Family Assistance Act in respect of the week. The amount of the limit of hours more than 50 is the particular number of hours worked out by the service using that subsection.

*Variations under subsection 59(2), section 59F and section 62C prevail*

- (6) If:
  - (a) when a variation under subsection (2) takes place, a variation is in force under subsection 59(2) or under section 59F or 62C; and
  - (b) the variation under subsection 59(2) or under section 59F or 62C has effect for any period when the variation under this section would have effect;the variation under subsection 59(2) or under section 59F or 62C prevails over the variation under this section unless the variation under this section takes place because a circumstance listed in subsection 55(8) of the Family Assistance Act applies in a week.

**64C Varying determination so that a 24 hour care limit in a week applies**

*Determination to which this section applies*

- (1) This section applies to a determination of a weekly limit of hours:

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- (a) in force under section 50H in respect of a claimant who is an individual and a child; or
- (b) in force under section 54C in respect of a claimant that is an approved child care service and a child.

*Variations by Secretary on application*

- (2) A determination to which this section applies may be varied by the Secretary on application so that a 24 hour care limit in a week applies if the circumstances listed in subsection 56(6) or (8) of the Family Assistance Act apply in the week.

*Who may apply*

- (3) An application under subsection (2) must be made by the claimant.

*Variation if an approved child care service gives certificate*

- (4) A determination to which this section applies is taken to have been varied so that a 24 hour care limit in a week applies if the approved child care service providing the care to the child gives a certificate under subsection 56(3) or (4) of the Family Assistance Act in respect of the week.

*Variations under subsection 59(2), section 59F and section 62C prevail*

- (5) If:
  - (a) when a variation under this section takes place, a variation is in force under subsection 59(2) or under section 59F or 62C; and
  - (b) the variation under subsection 59(2) or under section 59F or 62C has effect for any period when the variation under this section would have effect;the variation under subsection 59(2) or under section 59F or 62C prevails over the variation under this section.

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**64D Varying determination so that a limit of 24 hours in a week applies**

*Determination to which this section applies*

- (1) This section applies to a determination of a weekly limit of hours:
  - (a) in force under section 50H in respect of a claimant who is an individual and a child; or
  - (b) in force under section 54C, in respect of a claimant that is an approved child care service and a child.

*Variation by Secretary to 24 hour limit*

- (2) A determination to which this section applies may be varied by the Secretary so that a limit of 24 hours applies in a week if a limit of 50 hours, more than 50 hours or a 24 hour care limit does not apply in the week.

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

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

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

**64E Notice of variation of determination under this Subdivision**

- (1) If a determination of a weekly limit of hours is varied by the Secretary under this Subdivision, the notice of variation must:

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- (a) be given to the claimant, unless the claimant is an individual and the variation is made because a circumstance listed in subsection 54(12) or 55(8) of the Family Assistance Act applies in the week; and
  - (c) state the effect of the variation, including in particular:
    - (i) the day from which the variation has effect (see section 64EA); and
    - (ii) if the variation is to have effect for a period of one or more weeks—the period of one or more weeks that the variation is to have the effect; and
    - (iii) if the variation is to have the effect that the weekly limit of hours is to be more than 50 hours—the particular number of hours more than 50; and
    - (iv) if the variation is to have the effect that the weekly limit of hours is a 24 hour care limit—the number of 24 hour care periods in each week during which the variation has the effect; and
  - (d) state that the claimant may apply for review of the decision involved in the manner set out in Part 5.
- (2) The variation is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.
- (3) If the claimant is an individual, the Secretary may make a notice of variation of a determination of weekly limit of hours available to the approved child care service providing care to the child, including by making the notice available to the service using an electronic interface.

**64EA When variations take effect**

- (1) If a determination of a weekly limit of hours is varied by the Secretary under this Subdivision, the variation has effect from the start of the week in which the circumstance:
- (a) listed in section 54, 55 or 56 of the Family Assistance Act; and
  - (b) in relation to which the variation is made;

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first applies.

(2) However, if:

- (a) the variation was made on application; and
- (b) the application was not made until after the end of the income year following the one in which the circumstance first applies; and
- (c) the effect of the variation is to increase the weekly limit of hours under the determination;

then the variation has effect only from the start of the income year that precedes the one in which the application was made.

**64F Form of application**

An application under this Subdivision must:

- (a) be made in the form and manner; and
  - (b) contain any information; and
  - (c) be accompanied by any documents;
- required by the Secretary.

**Subdivision V—Variations of determinations for changes in circumstances**

**65 Variation of determination of conditional eligibility to reflect changes in conditional eligibility**

(1) If:

- (a) a determination of conditional eligibility under section 50F is made in respect of a claimant who is an individual with the effect that the claimant is conditionally eligible; and
- (b) after the determination is made, an event occurs; and
- (c) the determination has the effect as set out in paragraph (a) at some time after the occurrence; and
- (d) when the Secretary becomes aware of the occurrence of the event, the Secretary considers that, if he or she were making the determination immediately after the occurrence, he or she



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would not have made the determination but instead would have made a determination of no entitlement in respect of the claimant;

the Secretary must vary the determination of conditional eligibility so that the claimant is not conditionally eligible with effect from the date of the occurrence.

- (2) For the purpose of subsection (1), the occurrence includes the expiration of a period of time if the expiration is relevant to the operation of this Act.

**65A Variation of determination of CCB % to reflect changes in CCB %**

- (1) If:
- (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are made in respect of a claimant who is an individual; and
  - (b) after the determinations are made, an event occurs; and
  - (c) the determination of conditional eligibility has, at some time after the occurrence, the effect that the claimant is conditionally eligible; and
  - (d) when the Secretary becomes aware of the occurrence, the Secretary considers that, if he or she were making the determination of CCB % immediately after the occurrence, the CCB % would be different to the CCB % previously determined;

the Secretary must, subject to subsection (4), vary the determination of CCB % with effect from the date of the occurrence.

- (2) For the purpose of subsection (1), the occurrence of an event includes the expiration of a period of time if the expiration is relevant to the operation of this Act.
- (3) The reference in subsection (1) to the occurrence does not include the occurrence of any event that causes the claimant to provide a

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revised estimate of the claimant's adjusted taxable income to the Secretary unless:

- (a) the event also affects the claimant's CCB % for a reason other than the amount of the claimant's adjusted taxable income; or
- (b) the event is the claimant's becoming, or ceasing to be, a member of a couple.

*Beneficial variations only to have limited effect*

(4) If:

- (a) the Secretary does not become aware of the occurrence until after the end of the income year (the **second income year**) following the one in which the event occurred; and
- (b) the claimant did not notify the Secretary of the event before the end of the second income year; and
- (c) apart from this subsection, the Secretary would be required by subsection (1) to vary the determination so as to increase the claimant's CCB % under the determination;

the Secretary must vary the determination so that it has that effect only from the beginning of the income year that precedes the one in which the Secretary becomes aware of the event.

*Section 58, 59D, 60C, 60D, 60E and 62A variations prevail*

(5) If:

- (a) when a variation under this section takes place, a variation is in force under section 58, 59D, 60C, 60D, 60E or 62A; and
- (b) the variation under section 58, 59D, 60C, 60D, 60E or 62A has effect for any period when the variation under this section would have effect;

the variation under section 58, 59D, 60C, 60D, 60E or 62A prevails over the variation under this section.

**65B Variation of determination of CCB % to reflect revised adjusted taxable income estimates**

(1) If:

- (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are made in respect of a claimant who is an individual and the effect of the former determination is that the individual is conditionally eligible for child care benefit by fee reduction; and
- (b) the CCB %:
  - (i) is worked out on the basis of an estimate of the claimant's adjusted taxable income, an indexed estimate for the claimant or an indexed actual income for the claimant; or
  - (ii) is varied under section 60E; and
- (c) the claimant provides the Secretary with a revised estimate of the claimant's adjusted taxable income for the current income year or the next income year that is not attributable to an event mentioned in paragraph 65A(3)(a) or (b); and
- (d) the Secretary considers the revised estimate to be reasonable; and
- (e) if the claimant's CCB % were calculated using the revised estimate—a new CCB % would be required;

the Secretary must vary the determination of CCB % so that it is determined on the basis of that revised estimate.

Note: Section 55AC affects the meaning of subparagraph (1)(b)(i) for members of couples.

(2) A variation of a determination under subsection (1) has effect:

- (a) if it results in an increase in the claimant's CCB %:
  - (i) unless subparagraph (ii) applies—from the Monday after the day the variation is made; or
  - (ii) if the first day of the income year to which the revised estimate relates occurs after the day identified in subparagraph (i)—from that first day; and
- (b) if it results in a decrease in the claimant's CCB %:

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- (i) unless subparagraph (ii) applies—from the Monday after the day the variation is made; or
- (ii) if the first day of the income year to which the revised estimate relates occurs after the day identified in subparagraph (i)—from that first day.

*Section 58, 59D, 60C, 60D, 60E and 62A variations prevail*

- (3) If:
- (a) when a variation under this section takes place, a variation is in force under section 58, 59D, 60C, 60D, 60E or 62A; and
  - (b) the variation under section 58, 59D, 60C, 60D, 60E or 62A has effect for any period when the variation under this section would have effect;
- the variation under section 58, 59D, 60C, 60D, 60E or 62A prevails over the variation under this section.

**65BA Variation of determination of CCB % to reflect indexation of estimate of adjusted taxable income**

- (1) If:
- (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of a claimant who is an individual and the effect of the former determination is that the individual is conditionally eligible for child care benefit by fee reduction; and
  - (b) the Secretary gives the claimant a notice under subsection 55AA(2); and
  - (c) the claimant does not, before the start day specified in the notice, give the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
  - (d) if the claimant's CCB % were calculated using the indexed estimate stated in the notice—a new CCB % would be required;
- the Secretary must vary the determination of CCB % so that it is determined on the basis of the indexed estimate stated in the notice.

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Note: Section 55AC affects the meaning of this provision for members of couples.

(2) The variation has effect:

- (a) from the start day specified in the notice; or
- (b) if the variation is made after that start day—from the Monday after the variation is made.

**65BB Variation of determination of CCB % to reflect indexation of adjusted taxable income**

(1) If:

- (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of a claimant who is an individual and the effect of the former determination is that the individual is conditionally eligible for child care benefit by fee reduction; and
- (b) the Secretary gives the claimant a notice under subsection 55AB(2); and
- (c) the claimant does not, before the start day specified in the notice, give the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
- (d) if the claimant's CCB % were calculated using the indexed actual income stated in the notice—a new CCB % would be required;

the Secretary must vary the determination of CCB % so that it is determined on the basis of the indexed actual income stated in the notice.

Note: Section 55AC affects the meaning of this provision for members of couples.

(2) The variation has effect:

- (a) from the start day specified in the notice; or
- (b) if the variation is made after that start day—from the Monday after the variation is made.

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**65C Variation of determination of schooling % to reflect changes in schooling %**

(1) If:

- (a) determinations of conditional eligibility under section 50F and of schooling % under section 50K are made in respect of a claimant who is an individual; and
- (b) after the determinations are made, an event occurs; and
- (c) the determination of conditional eligibility has, at some time after the occurrence, the effect that the claimant is conditionally eligible; and
- (d) when the Secretary becomes aware of the occurrence, the Secretary considers that, if he or she were making the determination of schooling % immediately after the occurrence, the schooling % would be different to the schooling % previously determined;

the Secretary must, subject to subsection (2), vary the determination of schooling % with effect from the date of the occurrence.

*Beneficial variations only to have limited effect*

(2) If:

- (a) the Secretary does not become aware of the event until after the end of the income year (the *second income year*) following the one in which the event occurred; and
- (b) the claimant did not notify the Secretary of the event before the end of the second income year; and
- (c) apart from this subsection, the Secretary would be required by subsection (1) to vary the determination so as to increase the claimant's schooling % under the determination;

the Secretary must vary the determination so that it has that effect only from the beginning of the income year that precedes the one in which the Secretary becomes aware of the event.

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*Section 59C and 62B variations prevail*

- (3) If:
- (a) when a variation under this section takes place, a variation is in force under section 59C or 62B; and
  - (b) the variation under section 59C or 62B has effect for any period when the variation under this section would have effect;
- the variation under section 59C or 62B prevails over the variation under this section.

**65D Variation of determination of a weekly limit of hours to reflect changes in weekly limit of hours**

- (1) If:
- (a) determinations of conditional eligibility under section 50F and of a weekly limit of hours under section 50H are made in respect of a claimant who is an individual; and
  - (b) after the determination is made, an event occurs; and
  - (c) the determination of conditional eligibility has, at some time after the event, the effect that the claimant is conditionally eligible; and
  - (d) when the Secretary becomes aware of the change, the Secretary considers that, if he or she were making the determination of a weekly limit of hours immediately after the event, the weekly limit of hours would be different to the weekly limit of hours previously determined;
- the Secretary must, subject to subsection (3), vary the determination of a weekly limit of hours so as to determine the weekly limit of hours with the effect from the day of the occurrence.
- (2) For the purpose of subsection (1), the occurrence includes the expiration of a period of time if the expiration is relevant to the operation of this Act.

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*Beneficial variations only to have limited effect*

(3) If:

- (a) the Secretary does not become aware of the occurrence in the claimant's circumstances until after the end of the income year (the **second income year**) following the one in which the event occurred; and
  - (b) the claimant did not notify the Secretary of the event before the end of the second income year; and
  - (c) apart from this subsection, the Secretary would be required by subsection (1) to vary the determination so as to increase the claimant's weekly limit of hours under the determination;
- the Secretary must vary the determination so that it has that effect only from the beginning of the income year that precedes the one in which the Secretary becomes aware of the event.

*Variations under subsection 59(2), section 59F and section 62C prevail*

(4) If:

- (a) when a variation under this section takes place, a variation is in force under subsection 59(2) or under section 59F or 62C; and
- (b) the variation under subsection 59(2) or under section 59F or 62C has effect for any period when the variation under this section would have effect;

the variation under subsection 59(2) or under section 59F or 62C prevails over the variation under this section.

**65DA Variation of determination of eligibility for special grandparent rate**

*Variation with effect that individual is not eligible for special grandparent rate*

(1) If:



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- (a) a determination of conditional eligibility under section 50F is made in respect of a claimant who is an individual and in respect of a child; and
  - (b) a determination is in force under subsection 50T(1) with the effect that the claimant is eligible for the special grandparent rate for the child; and
  - (c) after the determinations are made, an event occurs; and
  - (d) the determination of conditional eligibility has, at some time after the occurrence, the effect that the claimant is conditionally eligible; and
  - (e) when the Secretary becomes aware of the occurrence, the Secretary considers that, if he or she were making the determination under subsection 50T(1) immediately after the occurrence, the claimant would not be eligible for the special grandparent rate for the child;
- the Secretary must vary the determination under subsection 50T(1) with effect that the claimant is not eligible for that rate for the child.
- (2) The variation under subsection (1) has effect from the date of the occurrence.

*Variation with effect that individual is again eligible for special grandparent rate*

- (3) If:
- (a) a determination of conditional eligibility under section 50F is made in respect of a claimant who is an individual and in respect of a child; and
  - (b) a determination is made under subsection 50T(1) with the effect that the claimant is eligible for the special grandparent rate for the child; and
  - (c) the determination referred to in paragraph (b) is varied with the effect that the claimant is not eligible for the special grandparent rate for the child; and
  - (d) an event occurs while the variation referred to in paragraph (c) is in force; and

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- (e) the determination of conditional eligibility has, at some time after the occurrence, the effect that the claimant is conditionally eligible; and
  - (f) when the Secretary becomes aware of the occurrence, the Secretary considers that, if he or she were making the determination under subsection 50T(1) immediately after the occurrence, the claimant would be eligible for the special grandparent rate for the child;

the Secretary must vary the determination under subsection 50T(1) with effect that the claimant is eligible for that rate for the child.
- (4) The variation under subsection (3) has effect from:
  - (a) if no day is specified in the notice of determination—the day the variation is made; or
  - (b) on the day specified in the notice of variation.
- (5) The Secretary may specify a day, not more than 4 weeks before:
  - (a) if the Secretary becomes aware of the occurrence because the claimant notifies the Secretary of the occurrence—the day on which the claimant notifies the Secretary of the occurrence; or
  - (b) in any other case—the day on which the Secretary makes the variation;

as the day from which the variation is to have effect.
- (6) The Secretary may only specify a day under subsection (5) if the Secretary is satisfied that, the individual was eligible for the special grandparent rate for the child on and since that specified earlier day.

*Section 59G and 62CA variations prevail*

- (7) If:
  - (a) when a variation under this section takes place, a variation is in force under section 59G or 62CA; and
  - (b) the variation under section 59G or 62CA has effect for any period when the variation under this section would have effect;

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the variation under section 59G or 62CA prevails over the variation under this section.

**65E Notice of variation under this Subdivision**

- (1) The Secretary must give notice of any variation of a determination under this Subdivision to the claimant, stating the effect of the variation and that the claimant may apply for review of the decision involved in the manner set out in Part 5.
- (2) The variation is not ineffective by reason only that any or all the requirements of subsection (1) are not complied with.
- (3) The Secretary may make notice of any variation of a determination under this Subdivision available to the approved child care service providing care to the child of the claimant, including by making the notice available to the service using an electronic interface.

**Division 4AA—Child care rebate**

**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).

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- (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:

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- (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

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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 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 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).

**65EAAAC 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 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) 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



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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

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- (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.
- (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:
  - (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 65EAAAC(2), (3) and (6) apply to the increase as if the increase were the amount applicable under section 65EAAA.

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- (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.

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

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

*When Secretary calculates and pays quarterly payments*

- (1) If:
- (a) the Secretary is satisfied that an individual is eligible under subsection 57EA(1) of the Family Assistance Act for child care rebate for a quarter in respect of a child; and
  - (b) the quarter has passed;
- the Secretary must calculate the amount of the rebate which the Secretary considers is applicable in respect of the individual and the child for the quarter.

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

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

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

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

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

- (3) The Secretary may direct that the whole or a part of an amount that is to be paid under this section is to be paid in a different way from that provided for by subsection (2). If the Secretary gives the direction, the amount is to be paid in accordance with the direction.
- (4) This section is subject to:
- (a) section 65EAAF; and

- (b) section 65EAB; and
- (c) Part 4; and
- (d) Division 3 of Part 8B.

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

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

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

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

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

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

- (1) This section applies in respect of an individual and a child for a period in an income year if:

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- (a) the Secretary has determined under section 51B that the individual is entitled to be paid child care benefit by fee reduction for one or more sessions of care provided by an approved child care service to the child during the period; or
- (b) the Secretary has determined under subsection 51C(1) or (2) that the individual is not entitled to be paid child care benefit by fee reduction for one or more sessions of care provided by an approved child care service to the child during the period.

*Determining entitlement to child care rebate*

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

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

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

*Determining no entitlement to child care rebate*

- (3) If:
  - (a) the Secretary is not satisfied that the individual is eligible under subsection 57F(1) of the Family Assistance Act for child care rebate in respect of:
    - (i) the child for the income year; and

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- (ii) the care provided during the period; or
  - (b) the Secretary is satisfied that the individual is so eligible, but is not satisfied that, if the individual were to be entitled to child care rebate in respect of that eligibility, the amount of rebate would be more than a nil amount;
- the Secretary must determine that the individual is not entitled to be paid child care rebate in respect of the child for the care provided during the period.

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

- (1) This section applies in respect of an individual, a child and care provided to the child during a period in an income year if:
  - (a) the Secretary has determined under section 52E that the individual is entitled to be paid child care benefit for the period in respect of the child; or
  - (b) the Secretary has determined under subsection 52G(1) or (2) that the individual is not entitled to be paid child care benefit for the period in respect of the child.

*Determining entitlement to child care rebate*

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

the Secretary must determine that the individual is entitled to be paid child care rebate in respect of the child for the income year.



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

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

*Determining no entitlement to child care rebate*

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

**65EC Later determinations of entitlement to child care rebate**

- (1) If:
- (a) a determination is made under subsection 65EA(2) or 65EB(2), or this subsection because of a previous application of this subsection, in respect of an individual and a child for an income year (the ***earlier rebate determination***); and
  - (b) a determination is later made under section 51B or 52E or subsection 51C(1) or 52G(1) in respect of the individual and the child and one or more sessions of care provided by an approved child care service during a period in the income year (the ***later CCB determination***); and
  - (c) the later CCB determination is not the result of a review of an earlier determination under the relevant section; and

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- (d) as a result of the later CCB determination, the Secretary considers the individual is entitled to be paid an increased amount of child care rebate;  
the Secretary must determine that the individual is entitled to be paid the increased amount of child care rebate in respect of the child for the year (the *later rebate determination*).
- (2) The earlier rebate determination ceases to be in force when the later rebate determination is made.

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

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

*Determining entitlement to child care rebate*

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

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

*Determining no entitlement to child care rebate*

- (4) If:

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

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

**65ED When determination is in force**

Subject to subsection 65EC(2), a determination under this Subdivision comes into force when it is made and remains in force at all times afterwards.

**65EE Notice of determination**

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

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- (ii) whether, under the determination, the individual is entitled to be paid child care rebate in respect of the period; and
  - (c) if the individual is so entitled, the amount of the entitlement; and
  - (d) that the individual may apply for review of the determination in the manner set out in Part 5.
- (2) The determination is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.

**Subdivision B—Payment**

**65EF Payment of child care rebate**

*Rebate because of eligibility for child care benefit by fee reduction or for past period*

- (1) If a determination is made under section 65EA, 65EB or 65EC that an individual is entitled to be paid child care rebate in respect of a child for an income year, the Secretary must pay the amount to which the individual is determined to be entitled, at such time as the Secretary considers appropriate, to the credit of a bank account nominated and maintained by the individual.
- (2) Subsection (1) has effect subject to subsections (2A), (2B) and (2C).
- (2A) If the determination of entitlement is made under section 65EA, the Secretary must reduce the amount to be paid under subsection (1) by:
  - (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.

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(2B) If:

- (a) the determination of entitlement is made under section 65EC; and
- (b) when working out the amount of the entitlement under section 84A of the Family Assistance Act, the base weeks included one or more base weeks for which a determination under section 51B, or subsection 51C(1), was applicable;

the Secretary must reduce the amount to be paid under subsection (1) by the amount of any child care rebate already paid:

- (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
- (c) under Subdivision AA in respect of the individual and the child for a quarter included in the income year; and
- (d) under subsection (1) in respect of the individual and the child for the income year.

(2C) If the determination of entitlement is made under section 65EC in a case not covered by subsection (2B), the Secretary must reduce the amount to be paid under subsection (1) by the amount of any child care rebate already paid under subsection (1) in respect of the individual and the child for the income year.

*Rebate because of eligibility for child care benefit in substitution*

(2D) If a determination is made under section 65ECA that an individual is entitled to be paid child care rebate:

- (a) because of the death of another individual; and
- (b) in respect of a child and a period;

the Secretary must pay the amount to which the individual is determined to be entitled, at such time as the Secretary considers appropriate, to the credit of a bank account nominated and maintained by the individual.

(2E) However, the Secretary must reduce the amount to be paid under subsection (2D) by the amount of any child care rebate already paid:

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- (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.

*Secretary may direct payment in a different way*

- (3) The Secretary may direct that the whole or a part of an amount which is to be paid under this section is to be paid in a different way from that provided for by subsection (1) or (2D). If the Secretary gives the direction, the amount is to be paid in accordance with the direction.

*Payment is subject to other provisions*

- (4) This section is subject to Part 4 and to Division 3 of Part 8B.

## **Division 4A—One-off payment to families**

### **65F Payment of one-off payment to families**

If an individual is entitled to a one-off payment to families, the Secretary must pay the payment to the individual in a single lump sum:

- (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
- (b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.

**Division 4B—Economic security strategy payment to families**

**65G Payment of economic security strategy payment to families**

If an individual is entitled to an economic security strategy payment to families, the Secretary must pay the payment to the individual in a single lump sum:

- (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
- (b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.



**Division 4C—Back to school bonus and single income family bonus**

**65H Payment of back to school bonus and single income family bonus**

If an individual is entitled to a back to school bonus or a single income family bonus, the Secretary must pay the bonus to the individual in a single lump sum:

- (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the bonus to be made; and
- (b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the bonus.

## **Division 4CA—ETR payment**

### **65HA Payment of ETR payment**

- (1) If an individual is entitled to an ETR payment, the Secretary must pay the payment to the individual in a single lump sum:
  - (a) on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
  - (b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the payment.

- (2) If, on 8 May 2012, section 32AA or 32AD prevents the Secretary from making a payment of family tax benefit to the individual, or the individual's partner, worked out on an estimated income basis, the Secretary must not pay the ETR payment to the individual at a time that is earlier than the time family tax benefit is paid to the individual, or the individual's partner, in relation to that day.

## **Division 4D—Clean energy advance**

### **65J Payment of clean energy advance**

- (1) Subject to this section, if an individual is entitled to a clean energy advance, the Secretary must pay the advance to the individual in a single lump sum:
- (a) on the day that the Secretary considers to be the earliest day on which it is reasonably practicable for the advance to be paid; and
  - (b) in such manner as the Secretary considers appropriate.

Note: The individual does not have to make a claim for the advance.

- (2) If:
- (a) the decision day (see subsection 105(1) of the Family Assistance Act) or the trigger day (see subsection 108(1), (1A) or (2) of that Act), as the case may be, is on or after 1 July 2012 and before 1 July 2013; and
  - (b) on that day, section 32AA or 32AD of this Act prevents the Secretary from making a payment of family tax benefit to the individual, or the individual's partner, worked out on an estimated income basis;
- then the Secretary must not pay the clean energy advance to the individual at a time that is earlier than the time family tax benefit is paid to the individual, or the individual's partner, in relation to that day.

- (3) If:
- (a) the decision day (see subsection 105(1) of the Family Assistance Act) is on or after 1 July 2013; and
  - (b) in relation to one or more days in the 2012-13 income year, section 32AA or 32AD of this Act prevents the Secretary from making a payment of family tax benefit to the individual, or the individual's partner, worked out on an estimated income basis;

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then the Secretary must not pay the clean energy advance to the individual at a time that is earlier than the time family tax benefit is paid to the individual, or the individual's partner, in relation to those days.

## **Division 4E—Single income family supplement**

### **Subdivision A—Making claims**

#### **65K Need for a claim**

- (1) Subject to subsection (2), the only way that an individual can become entitled to be paid single income family supplement is to make a claim in accordance with this Division.
- (2) If:
  - (a) in relation to a period in an income year:
    - (i) a determination under section 16 or 17 is in force in respect of an individual as a claimant; or
    - (ii) a determination under section 18 is in force in respect of an individual because the Secretary is satisfied that the individual is eligible for family tax benefit under section 32 of the Family Assistance Act; and
  - (b) the individual's rate of family tax benefit payable under the determination in relation to that period takes into account one or more FTB children of the individual;the individual is not required to make a claim for single income family supplement in relation to that period.

#### **65KA How to claim**

- (1) An individual (a *claimant*) may make a claim:
  - (a) for payment of single income family supplement for a past period; or
  - (b) for payment of single income family supplement by single payment/in substitution because of the death of another individual.

*Form etc. of claim*

- (2) To be effective:

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- (a) a claim must:
  - (i) be made in a form and manner; and
  - (ii) contain any information; and
  - (iii) be accompanied by any documents; required by the Secretary; and
- (b) in the case of a claim for payment of single income family supplement for a past period—the tax file number requirement in section 65KB must be satisfied in relation to the claim; and
- (c) in the case of a claim for payment of single income family supplement in substitution because of the death of another individual—the tax file number requirement in section 65KC must be satisfied in relation to the claim.

**65KB Tax file number requirement to be satisfied for claims for a past period**

- (1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 65KA(2)(b) (which states what is required for certain claims to be effective).
- (2) Subject to subsection (7), the requirement is that a statement of one of the kinds set out in subsections (3), (4) and (5) must be made in relation to each TFN claim person.

*Statement of tax file number*

- (3) The first kind of statement that can be made is a statement of the TFN claim person's tax file number. Regardless of who the TFN claim person is, this kind of statement can be made by the claimant only.

*Statement that TFN claim person does not know what his or her tax file number is etc.*

- (4) The second kind of statement that can be made is a statement by the TFN claim person that the person:

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- (a) has a tax file number but does not know what it is; and
- (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
- (c) authorises the Commissioner of Taxation to tell the Secretary:
  - (i) whether the person has a tax file number; and
  - (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (5) The third kind of statement that can be made is a statement by the TFN claim person that the person:
  - (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn.

*How statement to be given*

- (6) A statement made by the claimant must be in the claim. A statement made by any other TFN claim person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

*Exemption from tax file number requirement*

- (7) The Secretary may determine that the requirement in subsection (2) does not apply to a TFN claim person if:
  - (a) the person is, or was, the claimant's partner; and
  - (b) the claimant cannot obtain from the person:
    - (i) the person's tax file number; or
    - (ii) a statement by the person under subsection (4) or (5).

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**65KC Tax file number requirement to be satisfied for claim in substitution because of the death of another individual**

- (1) This section sets out the tax file number requirement that must be satisfied in relation to a claim for the purposes of paragraph 65KA(2)(c) (which states what is required for claims in substitution because of the death of another individual to be effective).
- (2) Subject to subsections (7) and (8), the requirement is that a statement of one of the kinds set out in subsections (3), (4) and (5) must be made in relation to each TFN substitution person.

*Statement of tax file number*

- (3) The first kind of statement that can be made is a statement of a TFN substitution person's tax file number. Regardless of who the TFN substitution person is, this kind of statement can be made by the claimant only.

*Statement that TFN substitution person does not know what his or her tax file number is etc.*

- (4) The second kind of statement that can be made is a statement by a TFN substitution person who was the deceased individual's partner during the period in respect of which the payment is claimed to the effect that the TFN substitution person:
  - (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
  - (c) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) whether the person has a tax file number; and
    - (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (5) The third kind of statement that can be made is a statement by a TFN substitution person who was the deceased individual's partner



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during the period in respect of which the payment is claimed to the effect that the TFN substitution person:

- (a) has an application for a tax file number pending; and
- (b) authorises the Commissioner of Taxation to tell the Secretary:
  - (i) if a tax file number is issued to the person—that number; or
  - (ii) if the application is refused—that the application has been refused; or
  - (iii) if the application is withdrawn—that the application has been withdrawn.

*How statement to be given*

- (6) A statement made by the claimant must be made in the claim. A statement made by a TFN substitution person must be in a document, in a form approved by the Secretary, that the claimant gives the Secretary together with the claim.

*Exemption from tax file number requirement*

- (7) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant does not know the person's tax file number.
- (8) The Secretary may determine that the requirement in subsection (2) does not apply in relation to a TFN substitution person if the claimant cannot obtain a statement referred to in subsection (4) or (5) in respect of the person.

**65KD Restrictions on claims for payment for a past period**

*Restriction where previous claim*

- (1) A claim for payment of single income family supplement for a past period is not effective if the claimant has previously made a claim for payment of single income family supplement for any of the past period (whether or not the claim has yet been determined).

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*Other restrictions*

- (2) A claim for payment of single income family supplement for a past period is not effective if:
  - (a) the period does not fall wholly within one income year; or
  - (b) the period does fall wholly within one income year (the **relevant income year**) but the claim is made after the end of:
    - (i) the first income year after the relevant income year; or
    - (ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the claimant from lodging the claim before the end of that first income year.
- (2A) The further period referred to in subparagraph (2)(b)(ii) must end no later than the end of the second income year after the relevant income year.
- (3) A claim for payment of single income family supplement for a past period is not effective if the period occurs in the income year in which the claim is made.

**65KE Restrictions on bereavement claims**

*Restriction where previous claim*

- (1) A claim for payment of single income family supplement by single payment/in substitution because of the death of another individual is not effective if the claimant has previously made a claim for payment of single income family supplement because of the death of that individual (whether or not the claim has yet been determined).

*Other restrictions*

- (2) If a claim for payment of single income family supplement by single payment/in substitution because of the death of another individual is based on eligibility for an amount of single income family supplement under section 57GF or 57GG of the Family

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Assistance Act, the claim is not effective if it is made after the end of the income year following the one in which the death occurred.

**65KF Claim may be withdrawn or varied**

- (1) A claimant may withdraw or vary a claim before the claim is determined.
- (2) The claimant may only do so in a manner determined by the Secretary.
- (3) If a claim is withdrawn, it is taken never to have been made.

**Subdivision B—Determination of claims and payment of single income family supplement**

**65KG Secretary must determine claim**

If an effective claim is made, the Secretary must determine the claim in accordance with this Subdivision. If a claim is not effective, it is taken not to have been made.

**65KH Restriction on determining claim where income tax assessment not made**

- (1) If, in relation to a claim for payment of single income family supplement made by an individual:
  - (a) the claim is for payment of that supplement for a past period; and
  - (b) the past period falls in an income year (the *past period income year*) that is one of the 2 income years before the one in which the claim is made; and
  - (c) either or both of subsections (2) and (3) apply;the Secretary can only determine the claim if each assessment concerned has been made.
- (2) This subsection applies if:

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- (a) the claimant is required to lodge an income tax return for the past period income year; and
  - (b) at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on the claimant's taxable income for the past period income year.
- (3) This subsection applies if:
- (a) a person is the claimant's partner at any time during the past period; and
  - (b) that person is required to lodge an income tax return for the past period income year; and
  - (c) at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on that person's taxable income for the past period income year.

**65KI Restriction on determining claim where income tax return not lodged**

- (1) If, in relation to a claim for payment of single income family supplement made by an individual:
- (a) the claim is for payment of that supplement for a past period; and
  - (b) the past period falls in an income year (the ***past period income year***) that is one of the 2 income years before the one in which the claim is made; and
  - (c) either or both of subsections (2) and (3) apply;
- then the claim is taken never to have been made.
- (2) This subsection applies if:
- (a) the claimant is required to lodge an income tax return for the past period income year; and
  - (b) the claimant has not lodged the return before the end of:
    - (i) the first income year after the past period income year;
    - or

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- (ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the claimant from lodging the return before the end of that first income year.
- (3) This subsection applies if:
  - (a) a person is the claimant's partner at any time during the past period; and
  - (b) that person is required to lodge an income tax return for the past period income year; and
  - (c) that person has not lodged the return before the end of:
    - (i) the first income year after the past period income year; or
    - (ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the return before the end of that first income year.
- (4) The further period referred to in subparagraph (2)(b)(ii) or (3)(c)(ii) must end no later than the end of the second income year after the past period income year.

**65KJ Restriction on determining claim where tax file number not provided etc.**

*Statement that TFN claim person or TFN substitution person does not know what his or her tax file number is etc.*

- (1) If:
  - (a) a TFN claim person makes a statement of the kind set out in subsection 65KB(4); or
  - (b) a TFN substitution person makes a statement of the kind set out in subsection 65KC(4);the Secretary can only determine the claim concerned if:
  - (c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or

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- (d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that the person has no tax file number.

*Statement that an application for a tax file number is pending*

- (2) If:
  - (a) a TFN claim person makes a statement of the kind set out in subsection 65KB(5); or
  - (b) a TFN substitution person makes a statement of the kind set out in subsection 65KC(5);the Secretary can only determine the claim concerned if:
  - (c) within 28 days after the claim is made, the Commissioner of Taxation tells the Secretary the person's tax file number; or
  - (d) 28 days pass after the claim is made without the Commissioner of Taxation telling the Secretary that:
    - (i) the person has not applied for a tax file number; or
    - (ii) an application by the person for a tax file number has been refused; or
    - (iii) the person has withdrawn an application for a tax file number.
- (3) If, after the 28 days mentioned in subsection (1) or (2) have passed, the Secretary cannot, because of that subsection, determine the claim, the claim is taken never to have been made.

**65KK Determination of past period entitlement claim**

- If:
- (a) the claim is one for payment of single income family supplement for a past period; and
  - (b) the Secretary is satisfied that the claimant was eligible for single income family supplement:
    - (i) for the whole of the period in accordance with Subdivision A of Division 6 of Part 3 of the Family Assistance Act; or

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(ii) for part of the period in accordance with that Subdivision and for the remainder of the period in accordance with section 57GE of that Act;  
the Secretary must determine that the claimant is entitled to be paid single income family supplement for the past period.

**65KL Determination of bereavement entitlement claim**

If:

- (a) the claim is one for payment of single income family supplement by single payment/in substitution because of the death of another individual; and
- (b) the Secretary is satisfied that the claimant is eligible for single income family supplement under section 57GF or 57GG of the Family Assistance Act;

the Secretary must determine that the claimant is entitled to be paid the single income family supplement.

**65KM Determination that no entitlement**

If the Secretary is not satisfied as mentioned in section 65KK or 65KL, the Secretary must determine that the claimant is not entitled to be paid single income family supplement for the past period or because of the death of the other individual, as the case requires.

**65KN When determination is in force**

A determination under this Division comes into force when it is made and remains in force at all times afterwards.

**65KO Notice of determination**

- (1) The Secretary must give notice of a determination under this Subdivision to the claimant, stating:
  - (a) whether the claimant is entitled to be paid single income family supplement under the determination; and

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- (b) if the claimant is so entitled—the amount of the supplement and how it is to be paid; and
  - (c) that the claimant may apply for review of the determination in the manner set out in Part 5.
- (2) The determination is not ineffective by reason only that the requirements of subsection (1) are not complied with.

**65KP Payment of single income family supplement—no claim required**

- (1) Subject to this section, if an individual is not required to make a claim for single income family supplement in relation to a period (the *past period*) in an income year (the *past period income year*), the Secretary must pay any amount of single income family supplement the individual is eligible for in relation to that past period:
    - (a) on the day that the Secretary considers to be the earliest day on which it is reasonably practicable for the amount to be paid; and
    - (b) in such manner as the Secretary considers appropriate.
- Note: Subsection 65K(2) sets out when a claim for single income family supplement is not required.
- (2) If either or both of the following apply:
    - (a) the individual is required to lodge an income tax return for the past period income year;
    - (b) the following apply:
      - (i) a person is the individual's partner at any time during the past period;
      - (ii) that person is required to lodge an income tax return for the past period income year;

then the amount of single income family supplement cannot be paid to the individual unless, in relation to each person who is required to lodge an income tax return for that income year, an assessment has been made under the *Income Tax Assessment Act*



1936 of the tax payable on that person's taxable income for that income year.

- (3) If either or both of the following apply:
- (a) the individual is required to lodge an income tax return for the past period income year, but the individual has not lodged the return before the end of:
    - (i) the first income year after the past period income year; or
    - (ii) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the individual from lodging the return before the end of that first income year;
  - (b) the following apply:
    - (i) a person is the individual's partner at any time during the past period;
    - (ii) that person is required to lodge an income tax return for the past period income year;
    - (iii) that person has not lodged the return before the end of the first income year after the past period income year, or of such further period (if any) as the Secretary allows if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the income tax return before the end of that first income year;
- then the amount of single income family supplement is not to be paid to the individual.
- (3A) The further period referred to in subparagraph (3)(a)(ii) or (3)(b)(iii) must end no later than the end of the second income year after the past period income year.
- (4) This section is subject to Part 4, Division 3 of Part 8B and sections 225 and 226.

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**65KQ Payment of single income family supplement—claim required**

- (1) If an individual is entitled to be paid an amount of single income family supplement under a determination on a claim for payment of single income family supplement:
  - (a) for a past period; or
  - (b) by single payment/in substitution because of the death of another individual;the Secretary must pay the amount to the individual at such time and in such manner as the Secretary considers appropriate.
- (2) This section is subject to Part 4, Division 3 of Part 8B and sections 225 and 226.

**65KR Secretary's power to request tax file numbers**

- (1) If a determination is in force under which the claimant is entitled to be paid single income family supplement for a past period, the Secretary may request the claimant to give the Secretary, within 28 days of the request being made, a written statement, in relation to a specified TFN determination person, of whichever of the kinds set out in subsections (2), (3) and (4) the claimant chooses.

*Statement of tax file number*

- (2) The first kind of statement that can be made is a statement of the TFN determination person's tax file number. Regardless of who the TFN determination person is, this kind of statement can be made by the claimant only.

*Statement that TFN person does not know what his or her tax file number is etc.*

- (3) The second kind of statement that can be made is a statement by the TFN determination person that the person:
  - (a) has a tax file number but does not know what it is; and
  - (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and

- (c) authorises the Commissioner of Taxation to tell the Secretary:
  - (i) whether the person has a tax file number; and
  - (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (4) The third kind of statement that can be made is a statement by the TFN determination person that the person:
  - (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn.

#### **65KS Variation of past period determinations where failure to provide tax file number**

*Non-compliance with request*

- (1) If:
  - (a) the Secretary makes a request under subsection 65KR(1); and
  - (b) the claimant does not comply with the request within 28 days of the request being made;then, subject to subsection (2), the consequence in subsection (7) applies.

*Exemption from request under subsection 65KR(1)*

- (2) The Secretary may determine that the consequence in subsection (7) does not apply if:
  - (a) the TFN determination person concerned is or was the claimant's partner; and

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- (b) the claimant cannot obtain from the person:
  - (i) the person's tax file number; or
  - (ii) a statement by the person under subsection 65KR(3) or (4).

*Statement made by TFN determination person under subsection 65KR(3)*

- (3) If:
  - (a) the Secretary makes a request under subsection 65KR(1); and
  - (b) by the end of 28 days after the request is made, the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 65KR(3); and
  - (c) the Commissioner of Taxation subsequently tells the Secretary that the TFN determination person has no tax file number;the consequence in subsection (7) applies.

*Statement made by TFN determination person under subsection 65KR(4)*

- (4) If:
  - (a) the Secretary makes a request under subsection 65KR(1); and
  - (b) by the end of 28 days after the request is made, the claimant gives the Secretary a statement by the TFN determination person of the kind set out in subsection 65KR(4); and
  - (c) the Commissioner of Taxation subsequently tells the Secretary that the TFN determination person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;the consequence in subsection (7) applies.

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*Statement made by TFN claim person under subsection 65KB(4)*

- (5) If:
- (a) a TFN claim person has made a statement of the kind set out in subsection 65KB(4); and
  - (b) a determination is in force under which the claimant is entitled to be paid single income family supplement for a past period; and
  - (c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has no tax file number;
- the consequence in subsection (7) applies.

*Statement made by TFN claim person under subsection 65KB(5)*

- (6) If:
- (a) a TFN claim person has made a statement of the kind set out in subsection 65KB(5); and
  - (b) a determination is in force under which the claimant is entitled to be paid single income family supplement for a past period; and
  - (c) the Commissioner of Taxation subsequently tells the Secretary that the TFN claim person has not applied for a tax file number, that an application by the person for a tax file number has been refused or that the person has withdrawn an application for a tax file number;
- the consequence in subsection (7) applies.

*Consequence—variation of determination*

- (7) For the purposes of subsection (1), (3), (4), (5) or (6), the consequence is that the Secretary may, if the determination is one under which the claimant is entitled to be paid single income family supplement for a past period, vary the determination so that it has the effect that the claimant is not entitled to be paid single income family supplement for any day in the past period.

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*Consequence of Secretary later becoming aware of tax file number*

- (8) If:
- (a) under subsection (7), the Secretary varies the determination;  
and
  - (b) the Secretary finds out the tax file number of the TFN  
determination person or TFN claim person, as the case  
requires, at any time after the variation takes place;
- the Secretary must vary the determination to undo the effect  
mentioned in subsection (7).

**65KT Notice of variation of determination**

- (1) The Secretary must give notice of any variation of a determination  
under this Subdivision to the claimant, stating the effect of the  
variation and that the claimant may apply for review of the  
decision involved in the manner set out in Part 5.
- (2) The variation is not ineffective by reason only that the  
requirements of subsection (1) are not complied with.

## **Division 5—Payment protection and garnishee orders**

### **66 Protection of payments under this Part**

- (1) Payments of the following are absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise:
- (a) family tax benefit;
  - (b) family tax benefit advances;
  - (ba) schoolkids bonus;
  - (c) stillborn baby payments;
  - (e) child care benefit;
  - (ea) child care rebate;
  - (eb) single income family supplement;
  - (f) payments under section 219Q or subsection 219QA(2) in respect of fee reduction;
  - (faa) payments under section 219QC or subsection 219QD(2) in respect of child care rebate;
  - (fa) payments of enrolment advances under section 219RA;
  - (fb) payments under section 219RD (business continuity payments);
  - (g) one-off payment to families;
  - (h) economic security strategy payment to families;
  - (i) back to school bonus or single income family bonus;
  - (j) clean energy advance;
  - (k) ETR payment.
- (2) Subsection (1) has effect subject to:
- (a) subsections 56(3) and 56A(3) (about payment of child care benefit in a different way); and
  - (aa) subsections 65EAA(3), 65EAAC(3) and 65EF(3) (about payment of child care rebate in a different way); and

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- (aaa) subsection 65EAAF(3) (about setting off a decrease in a weekly amount of child care rebate against rebate for a later period); and
- (ab) subsection 65EAB(3) (about setting off a decrease in a quarterly amount of child care rebate against rebate for a later quarter); and
- (b) section 84 (about deductions from a person's family tax benefit to repay a debt of the person); and
- (ba) section 84A (about setting off a person's entitlement to family assistance against a debt of the person); and
- (bb) section 87A (setting off debts against various payments);
- (c) section 92 (about a person consenting to deductions from the person's family tax benefit to repay the debt of someone else); and
- (ca) section 92A (about setting off family assistance of a person to repay the debt of another person); and
- (cb) section 219QA (setting off a recalculated fee reduction against various payments);
- (cba) section 219QD (setting off a recalculated weekly payment of child care rebate against various payments);
- (cc) section 219RC (setting off an enrolment advance against various payments);
- (cd) Division 3 of Part 8B (about payments to payment nominee); and
- (d) section 225 (about making of deductions from family assistance for payment to the Commissioner of Taxation); and
- (e) section 226 (about setting off a family assistance entitlement against a tax liability); and
- (f) section 227 (about deductions from family tax benefit to repay certain child support debts); and
- (g) Part 3B of the *Social Security (Administration) Act 1999*.



## **67 Effect of garnishee etc. order**

- (1) If:
- (a) a person has an account with a financial institution; and
  - (b) payments of any of the kinds mentioned in subsection 66(1) are being paid, or have been paid, to the credit of the account; and
  - (c) a court order in the nature of a garnishee order comes into force in respect of the account;
- the court order does not apply to the saved amount (if any) in the account.
- (2) The saved amount is worked out as follows:

*Method statement*

- Step 1. Work out the total amount of the payments mentioned in subsection (1) that have been paid to the credit of the account during the 4 week period immediately before the court order came into force.
- Step 2. Subtract from the step 1 amount the total amount withdrawn from the account during the same 4 week period: the result is the ***saved amount***.

## Part 4—Overpayments and debt recovery

### Division 1—Preliminary

#### 68 Meaning of *amount paid to person*

- (1) For the purposes of this Part, *amount paid to person* in respect of whom a determination of entitlement to be paid child care benefit has been made—means the amount of the entitlement (see subsection 3(1)) paid to the person.
- (1A) In the case of a person in respect of whom a determination of entitlement to be paid child care benefit by fee reduction has been made under section 51B (individual) or 54B (approved child care service), the amount of the entitlement paid to the person consists of:
  - (a) the amount:
    - (i) in the case of an individual—that the service that provided care in respect of which the determination under section 51B was made is required, under section 219B, to pass on to the individual as a fee reduction for that care; or
    - (ii) in the case of a service that provided care in respect of which a determination under section 54B was made—that the service is required, under section 219BA, to pass on to itself as a fee reduction for that care; and
  - (b) the amount, as paid to the person, of the difference (if any) referred to in:
    - (i) in the case of an individual—subsection 56(1); and
    - (ii) in the case of an approved child care service—subsection 56B(1).
- (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

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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.

- (2) For the purposes of this Part, an amount of family assistance is taken to be paid to a person if that amount is applied against a liability of that person or another person for:
- (a) a primary tax; or
  - (b) a debt under this Act or the *Social Security Act 1991*.

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

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

**69 Special provisions relating to approved child care services**

For the purposes of this Part, a reference to an amount being paid to a person when the person is an approved child care service includes a reference to an amount that, at the time when it was paid, was paid to an approved child care service even if:

- (a) the service is no longer approved; or
- (b) the service operator no longer operates the service concerned.

## **Division 2—Amounts recoverable under this Act**

### **70 Debts due to the Commonwealth**

If an amount has been paid by way of family assistance, one-off payment to families, a payment under section 219Q, subsection 219QA(2), section 219QC or subsection 219QD(2), a payment of an enrolment advance under section 219RA, a payment under section 219RD, economic security strategy payment to families, back to school bonus, single income family bonus, a clean energy advance or ETR payment, the amount is a debt due to the Commonwealth only to the extent to which a provision of:

- (a) this Act; or
- (b) the *Data-matching Program (Assistance and Tax) Act 1990*; expressly provides that it is.

### **71 Debts arising in respect of family assistance other than child care benefit, child care rebate and family tax benefit advance**

#### *No entitlement to amount*

(1) If:

- (a) an amount has been paid to a person by way of family tax benefit, stillborn baby payment, single income family supplement or schoolkids bonus (the *assistance*) in respect of a period or event; and
- (b) the person was not entitled to the assistance in respect of that period or event;

the amount so paid is a debt due to the Commonwealth by the person.

#### *Overpayment*

(2) If:

- (a) an amount (the *received amount*) has been paid to a person by way of assistance; and

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- (b) the received amount is greater than the amount (the **correct amount**) of assistance that should have been paid to the person under the family assistance law;  
the difference between the received amount and the correct amount is a debt due to the Commonwealth by the person.

**71A Debts arising in respect of family tax benefit advances**

*No entitlement to advance*

- (1) If:
  - (a) a family tax benefit advance has been paid to an individual;  
and
  - (b) the individual was not entitled to the advance;the amount so paid is a debt due to the Commonwealth by the individual.

*Overpayment*

- (2) If:
  - (a) an amount (the **received amount**) of family tax benefit advance has been paid to an individual; and
  - (b) the received amount is greater than the amount (the **correct amount**) of family tax benefit advance that should have been paid to the individual under the family assistance law;the difference between the received amount and the correct amount is a debt due to the Commonwealth by the individual.

*Debt arising during the repayment period for a family tax benefit advance*

- (3) If:
  - (a) an individual is paid a family tax benefit advance; and
  - (b) the repayment period for the advance has not expired; and
  - (c) one of the following occurs:
    - (i) the individual ceases to be entitled to be paid family tax benefit by instalment;

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- (ii) the individual's Part A rate becomes nil (before reduction under clause 5 or 25A of Schedule 1 to the Family Assistance Act);

the amount of unrepaid family tax benefit advance becomes a debt due to the Commonwealth by the individual.

*Debt arising due to variation or review after the repayment period for a family tax benefit advance has expired*

(4) If:

- (a) an individual is paid a family tax benefit advance; and
- (b) the individual's Part A rate has been reduced under clause 5 or 25A of Schedule 1 to the Family Assistance Act to repay the advance; and
- (c) the repayment period for the advance has expired; and
- (d) due to a variation in a determination, or a variation or substitution of a decision on review (other than a variation under subsection 28(2) or (6)), the reduction in the individual's Part A rate under clause 5 or 25A of Schedule 1 to the Family Assistance Act has not been sufficient to repay the advance; and
- (e) at the time of the variation of the determination, or the variation or substitution of the decision on review:
  - (i) the individual is not entitled to be paid family tax benefit by instalment; or
  - (ii) the individual's Part A rate is nil (before reduction under clause 5 or 25A of Schedule 1 to the Family Assistance Act);

the amount of the family tax benefit advance left unrepaid as a result of the variation of the determination, or the variation or substitution of the decision on review, becomes a debt due to the Commonwealth by the individual.

**Note:** If the individual is entitled to be paid family tax benefit by instalment and has a Part A rate greater than nil, the unrepaid amount of the advance is to be repaid by reductions in the individual's Part A rate (see clause 51 of Schedule 1 to the Family Assistance Act).

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*Debt arising due to variation under subsection 28(2) or (6)*

- (5) If:
- (a) an individual is paid a family tax benefit advance; and
  - (b) the individual's Part A rate has been reduced under clause 5 or 25A of Schedule 1 to the Family Assistance Act to repay the advance; and
  - (c) due to a variation in a determination of the individual's entitlement to family tax benefit made under subsection 28(2) or (6), the reduction in the individual's Part A rate under clause 5 or 25A of Schedule 1 to the Family Assistance Act has not been sufficient to repay the advance;
- the amount of the family tax benefit advance left unrepaid as a result of the variation of the determination becomes a debt due to the Commonwealth by the individual.
- (6) If a debt is created under subsection (5) and the Secretary varies the determination of the individual's entitlement to family tax benefit under subsection 28(3) or (4), the debt is taken never to have been created.

Note: If, after the variation, the individual's Part A rate was not sufficient to repay the advance, the unrepaid amount of the advance is to be repaid either by reductions in the individual's Part A rate (see clauses 48 and 51 of Schedule 1 to the Family Assistance Act) or as a debt under subsection (3) or (4).

*Debt arising due to determination under clause 45 of Schedule 1 to the Family Assistance Act*

- (7) If:
- (a) an individual is paid a family tax benefit advance; and
  - (b) the Secretary determines under clause 45 of Schedule 1 to the Family Assistance Act that the amount of the advance that is unrepaid is to be a debt;
- the amount of the family tax benefit advance becomes a debt due to the Commonwealth by the individual.

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*Meaning of **FTB advance debt***

- (8) The debt due to the Commonwealth under subsection (1), (2), (3), (4), (5) or (7) is an **FTB advance debt**.

**71B Debts where no entitlement or where enrolment advance wrongly paid**

- (1) If:

- (a) an approved child care service is required under section 219B to pass an amount on to an individual (the **recipient**) in respect of one or more sessions of child care provided by the service to a child, but the recipient was not entitled to child care benefit in respect of the session or sessions of care; or
- (b) an approved child care service is required under section 219BA to pass an amount on to itself (the **recipient**) in respect of one or more sessions of child care provided by the service to a child at risk, but the recipient was not entitled to child care benefit in respect of the session or sessions of care; or
- (c) an amount has been paid to a person (the **recipient**) by way of child care benefit in respect of a period, but the recipient was not entitled to child care benefit in respect of that period; 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;

the amount so paid is, subject to section 71F, a debt due to the Commonwealth by the recipient.

- (2) If:

- (a) an enrolment advance was paid to a child care service under section 219RA; and
- (b) the service was not entitled to be paid the advance;



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the amount of the advance becomes a debt due to the Commonwealth by the service.

(3) If:

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

an amount equal to the amount of the payment made to the institution is, subject to subsection 93A(5), a debt due to the Commonwealth by the person, or jointly and severally by the persons, as the case requires, in whose name the incorrect account was kept.

**71C Debts arising in respect of child care benefit where overpayment**

If:

- (a) an amount (the *received amount*) has been paid to a person by way of child care benefit in respect of a period; and
- (b) the received amount is greater than the amount (the *correct amount*) of benefit that should have been paid to the person under the family assistance law in respect of that period;

the difference between the received amount and the correct amount is, subject to section 71F, a debt due to the Commonwealth by the person.

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

*No entitlement to rebate arising from CCB by fee reduction*

(1) If:

- (a) an amount has been paid to an individual by way of child care rebate for a week under Subdivision AAB or for a quarter under Subdivision AA of Division 4AA of Part 3 in respect of a period during which the individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and
- (b) the individual is not entitled to rebate in respect of the child and that period;

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

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

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

(2) If:

- (a) an amount has been paid to an individual by way of child care rebate in respect of a child for an income year as a result of:
  - (i) a determination under subsection 65EA(2) in respect of a period of care covered by a determination made under section 51B or subsection 51C(1); or
  - (ii) a determination under subsection 65EC(1) in respect of a period of care covered by a determination made under section 51B or subsection 51C(1); and
- (b) the individual is not entitled to rebate in respect of the child and that period;

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

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*No entitlement to rebate arising from CCB for past period*

- (3) If:
- (a) an amount has been paid to an individual by way of child care rebate in respect of a child for an income year as a result of:
    - (i) a determination under subsection 65EB(2) in respect of a period of care covered by a determination made under section 52E or subsection 52G(1); or
    - (ii) a determination under subsection 65EC(1) in respect of a period of care covered by a determination made under section 52E or subsection 52G(1); and
  - (b) the individual is not entitled to rebate in respect of the child and that period;
- the amount is a debt due to the Commonwealth by the individual.

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

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

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

- (5) If:
- (a) an amount has been paid to an individual by way of child care rebate in respect of a child for a period:

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

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

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

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

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

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

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

(2) If:

- (a) an amount (the ***received amount***) has been paid to an individual by way of child care rebate in respect of a child for an income year in respect of a period of care covered by a determination made under section 51B or subsection 51C(1); and
- (b) the received amount is greater than the amount (the ***correct amount***) of rebate to which the individual is entitled under subsection 65EA(2) or 65EC(1) in respect of the child and that period;

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

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

*Overpayment of rebate arising from CCB for past period*

(3) If:

- (a) an amount (the ***received amount***) has been paid to an individual by way of child care rebate in respect of a child for an income year in respect of a period of care covered by a determination made under section 52E or subsection 52G(1); and
- (b) the received amount is greater than the amount (the ***correct amount***) of rebate to which the individual is entitled under subsection 65EB(2) or 65EC(1) in respect of the child and that period;

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

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

*Overpayment of rebate arising from CCB in substitution*

(4) If:

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- (a) an amount (the *received amount*) has been paid to an individual by way of child care rebate in respect of a child for a period of care covered by a determination made under section 53D or subsection 53E(1); and
  - (b) the received amount is greater than the amount (the *correct amount*) of rebate to which the individual is entitled under subsection 65ECA(2) in respect of the child and that period;
- the difference between the received amount and the correct amount is a debt due to the Commonwealth by the individual.

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

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

Subject to subsection 93A(5), if:

- (a) a payment by way of child care rebate is made to a financial institution for the credit of an account kept with the institution (the *incorrect account*); and
- (b) the Secretary is satisfied that the amount paid to the institution was intended to be paid for the credit of an account kept in the name of someone who was not the person or one of the persons in whose name or names the incorrect account was kept;

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

**71CA Debts arising in respect of fee reduction payments 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 219QB (fee reductions that it is not reasonably practicable for the service to pass on), the amount is a debt due to the Commonwealth by the service.

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**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.

**71D Debt arising in respect of child care benefit where false or misleading statement by individual—debt owed by individual**

*Child care benefit paid to service because of false or misleading statement by individual*

- (1) If:
- (a) an individual knowingly makes a false or misleading statement to:
    - (i) an approved child care service; or
    - (ii) an officer; and
  - (b) because of the false or misleading statement, the service is:
    - (i) eligible under section 47 of the Family Assistance Act in respect of the child and the session; or
    - (ii) being so eligible, is entitled to an amount of child care benefit in respect of the child and the session; and
  - (c) an amount of child care benefit is paid to the service for a session of care provided by the service to a child who was in the care of the individual immediately before the session was provided;
- the difference between the amount paid to the service and the amount that would have been paid if the individual had not made the statement is a debt due to the Commonwealth by the individual.
- (2) For the purposes of subsection (1), the amount that would have been paid if the individual had not made the statement may be nil.

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*Child care benefit, paid to individual who is conditionally eligible, following service's certificate because of false or misleading statement by individual*

- (3) If:
- (a) an individual knowingly makes a false or misleading statement to an approved child care service; and
  - (b) the service, in reliance on the statement:
    - (i) certifies a rate under subsection 76(1) of the Family Assistance Act; or
    - (ii) gives a certificate relating to a weekly limit of hours under subsection 54(10), 55(6) or 56(3) of that Act; and
  - (c) an amount of child care benefit is paid to the individual because of the certificate;
- the difference between the amount paid to the individual and the amount that would have been paid if the individual had not made the statement is a debt due to the Commonwealth by the individual.

**71E Debt arising in respect of child care benefit when false or misleading statement etc. by service—debt owed by service**

*Child care benefit paid at rate certified by service because of false or misleading statement by service in certificate*

- (1) If:
- (a) an approved child care service certifies a rate under section 76 of the Family Assistance Act in relation to a session of care provided by the service to:
    - (i) an FTB child, or a regular care child, of an individual, or the individual's partner; or
    - (ii) a child who was in the care of an individual immediately before the session was provided; and
  - (b) the service certifies the rate knowing that the reason for certifying the rate does not apply in respect of the child or the individual; and



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- (c) an amount of child care benefit is paid because of the certificate;

the difference between the amount paid and the amount that would have been paid if the service had not certified the rate is a debt due to the Commonwealth by the service.

*Child care benefit paid following service's certificate relating to weekly limit of hours made because of false or misleading statement by service in certificate*

(2) If:

- (a) an approved child care service gives a certificate under subsection 54(10), 55(6) or 56(3) or (4) of the Family Assistance Act relating to a weekly limit of hours in sessions of care provided by the service to:

- (i) an FTB child, or a regular care child, of an individual, or the individual's partner; or  
(ii) a child who was in the care of an individual immediately before the first session of care was provided; and

- (b) the service gives the certificate knowing that the reason for giving the certificate does not apply in respect of the child or the individual; and

- (c) an amount of child care benefit is paid because of the certificate;

the difference between the amount paid and the amount that would have been paid if the service had not given the certificate is a debt due to the Commonwealth by the service.

*Child care benefit paid at rate determined by Secretary because of false or misleading statement by service*

(3) If:

- (a) an approved child care service knowingly makes a false or misleading statement to an officer; and

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- (b) a determination of rate is made by the Secretary under subsection 81(2) or (3) of the Family Assistance Act in reliance on the statement; and
- (c) an amount of child care benefit is paid because of the determination;

the difference between the amount paid because of the determination and the amount that would have been paid if the service had not made the statement is a debt due to the Commonwealth by the service.

*Child care benefit paid following variation of determination of weekly limit of hours made because of service's false or misleading statement by service*

(4) If:

- (a) an approved child care service knowingly makes a false or misleading statement to an officer; and
- (b) a variation of a determination of a weekly limit of hours is made by the Secretary under subsection 64A(2), 64B(2) or 64C(2), in reliance on the statement; and
- (c) an amount of child care benefit is paid because of the variation;

the difference between the amount paid and the amount that would have been paid if the service had not made the statement is a debt due to the Commonwealth by the service.

*Service eligible for child care benefit and service makes false or misleading statement as to eligibility*

(5) If:

- (a) an approved child care service is eligible for child care benefit under section 47 of the Family Assistance Act for care provided by the service to a child at risk; and
- (b) the service is so eligible knowing that it does not, at the time the care is provided, believe the child to be at risk of serious abuse or neglect; and

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- (c) a determination of entitlement to be paid child care benefit by fee reduction for care provided to the child has been made under section 54B in respect of the service; and
- (d) an amount of child care benefit is paid because of the determination;

the difference between the amount paid and the amount that would have been paid if the service was not so eligible, is a debt due to the Commonwealth by the service.

**71F Debts arising under more than one provision**

(1) If:

- (a) a debt is due to the Commonwealth by an individual under subsection 71B(1) or section 71C; and
- (b) part or all of the amount of the debt is attributable to a false or misleading statement etc. made by an approved child care service as referred to in section 71E; and
- (c) a debt is due by the service to the Commonwealth under section 71E in respect of the false or misleading statement etc.;

the amount of the debt due by the individual under subsection 71B(1) or section 71C that is also a debt owed by the service under section 71E is, despite the operation of subsection 71B(1) or section 71C, not an amount of the debt owed by the individual.

(2) If:

- (a) a debt is due to the Commonwealth by an approved child care service under subsection 71B(1) or section 71C; and
- (b) part or all of the amount of the debt is attributable to a false or misleading statement by an individual as referred to in section 71D; and
- (c) a debt is due by the individual to the Commonwealth under section 71D in respect of the false or misleading statement;

the amount of the debt due by the service under subsection 71B(1) or section 71C that is also a debt owed by the individual under

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section 71D is, despite the operation of subsection 71B(1) or section 71C, not an amount of the debt owed by the service.

**71G Debts arising where child care services approval is suspended or cancelled—debt owed by service**

*Child care benefit—fee reduction*

(1) If:

(a) either:

- (i) an amount is paid under section 219Q or subsection 219QA(2) to a person that is an approved child care service (weekly fee reduction payments); 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 session of care in respect of which the payment was made;

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

(2) If:

- (a) an amount is required to be set off under subsection 219QA(3) against the payment of another amount to a person that is an approved child care service (payment where recalculation reduces the amount of a fee reduction); 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 219QA(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.

*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.

*Enrolment advances*

(3) If:

(a) either:

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- (i) an amount is paid under section 219RA to an approved child care service (payment of enrolment advances); or
  - (ii) such an amount would be paid, but for a set off under subsection 82(2) or section 219QA, 219RC or 219RE; 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 section 219RC 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.

**71GA Debt arising in respect of remittance of enrolment advances under paragraph 200(1)(g)**

If, under paragraph 200(1)(g), the Secretary requires an approved child care service to remit enrolment advances paid to the service under section 219RA, an amount equal to the advances that the service is required to remit is a debt due to the Commonwealth by the service.

**71GB Debts arising in respect of business continuity payments paid to service—debt owed by service**

- (1) If:
- (a) an amount is paid to an approved child care service under section 219RD (business continuity payments); and
  - (b) the service's approval is suspended or cancelled under this Act; and
  - (c) the whole or a part of the amount has not already been set off against another amount under section 219RE by the day the service's approval is suspended or cancelled;
- then that whole or part is a debt due to the Commonwealth by the service immediately before its approval was suspended or cancelled.

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- (2) Subject to subsection 93A(5), if:
- (a) a payment under section 219RD is made to a financial institution for the credit of an account kept with the institution (the *incorrect account*); and
  - (b) the Secretary is satisfied that the amount paid to the institution was intended to be paid for the credit of an account kept in the name of a person who was not the person or one of the persons in whose name or names the incorrect account was kept;
- an amount equal to the amount of the payment made to the institution is a debt due to the Commonwealth by the person, or jointly and severally by the persons, in whose name or names the incorrect account was kept.

**71H Debts arising where reporting period limit is exceeded—debt owed by service**

- (1) If:
- (a) an approved child care service has, by certificates given under section 76 of the Family Assistance Act, committed amounts of child care benefit in a reporting period; and
  - (b) the total amount of child care benefit so committed by the service exceeds the reporting period limit for that reporting period (see section 79 of the Family Assistance Act); and
  - (c) the service gives, during that reporting period, a further certificate under section 76 of the Family Assistance Act; and
  - (d) an amount of child care benefit is paid because of that further certificate;
- the difference between the amount paid and the amount that would have been paid if the service had not given the further certificate is a debt due to the Commonwealth by the service.

**71I Debts arising in respect of one-off payment to families**

- (1) This section applies in relation to an individual (the *recipient*) who has been paid a one-off payment to families (the *relevant payment*).

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*What determinations are relevant?*

- (2) Each of the following is a **relevant determination** in relation to the recipient:
- (a) if the relevant payment was made because, at that time, subsection 86(2) of the Family Assistance Act applied to the recipient (whether or not it was also made because subsection 86(3) of that Act also applied)—the determination referred to in paragraph 86(2)(a) of the Family Assistance Act;
  - (b) if the relevant payment was made because, at that time, subsection 86(3) of the Family Assistance Act applied to the recipient (whether or not it was also made because subsection 86(2) also applied)—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the, or an, instalment that satisfied paragraphs 86(3)(a), (b) and (c) of the Family Assistance Act was paid;
  - (c) if the relevant payment was made because, at that time, subsection 86(4) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 86(4)(b) of the Family Assistance Act.

*Situation in which whole amount is a debt*

- (3) If:
- (a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to:
    - (i) 11 May 2004 (if the relevant determination is covered by paragraph (2)(a) or (b)); or
    - (ii) all or part of the 2002-03 income year (if the relevant determination is covered by paragraph (2)(c));is or was (however described) changed, revoked, set aside, or superseded by another determination; and
  - (b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for



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reasons including the reason, that the following person knowingly made a false or misleading statement, or knowingly provided false information:

- (i) unless subparagraph (ii) applies—the recipient; or
- (ii) if the relevant determination is covered by paragraph (2)(b)—the other individual, or one of the other individuals, referred to in paragraph 86(3)(b) of the Family Assistance Act; and
- (c) had the change, revocation, setting aside or superseding occurred on or before 11 May 2004, the relevant payment would not have been made;

the amount of the relevant payment is a debt due to the Commonwealth by the recipient.

*Situation in which part of amount is a debt*

- (4) If:
- (a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to:
    - (i) 11 May 2004 (if the relevant determination is covered by paragraph (2)(a) or (b)); or
    - (ii) all or part of the 2002-03 income year (if the relevant determination was covered by paragraph (2)(c));is or was (however described) changed, revoked, set aside, or superseded by another determination; and
  - (b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the following person knowingly made a false or misleading statement, or knowingly provided false information:
    - (i) unless subparagraph (ii) applies—the recipient; or
    - (ii) if the relevant determination is covered by paragraph (2)(b)—the other individual, or one of the other individuals, referred to in paragraph 86(3)(b) of the Family Assistance Act; and

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- (c) had the change, revocation, setting aside or superseding occurred on or before 11 May 2004, the amount of the relevant payment would have been reduced;  
the amount by which the relevant payment would have been reduced is a debt due to the Commonwealth by the recipient.

**71J Debts arising in respect of economic security strategy payment to families**

- (1) This section applies in relation to an individual (the *recipient*) who has been paid an economic security strategy payment to families (the *relevant payment*).

*What determinations are relevant?*

- (2) Each of the following is a **relevant determination** in relation to the recipient:
  - (a) if the relevant payment was made because, at that time, subsection 89(2) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 89(2)(a) of that Act;
  - (b) if the relevant payment was made because, at that time, subsection 89(3) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 89(3)(a) of that Act;
  - (c) if the relevant payment was made because, at that time, subsection 89(4) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 89(4)(a) of that Act;
  - (d) if the relevant payment was made because, at that time, subsection 89(5) of the Family Assistance Act applied to the recipient—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied paragraphs 89(5)(a), (b) and (c) of the Family Assistance Act was paid;
  - (e) if the relevant payment was made because, at that time, subsection 89(6) of the Family Assistance Act applied to the

- recipient—a determination under the ABSTUDY Policy Manual because of which the whole or part of the instalment was paid in the circumstances described in that subsection;
- (f) if the relevant payment was made because, at that time, subsection 89(7) of the Family Assistance Act applied to the recipient—a determination under the Veterans' Children Education Scheme because of which the whole or part of the allowance was paid in the circumstances described in that subsection;
  - (g) if the relevant payment was made because, at that time, subsection 89(8) of the Family Assistance Act applied to the recipient—a determination under the Military Rehabilitation and Compensation Act Education and Training Scheme because of which the whole or part of the allowance was paid in the circumstances described in that subsection;
  - (h) if the relevant payment was made because, at that time, subsection 93(2) of the Family Assistance Act applied to the recipient—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied paragraphs 93(2)(a) and (b) of the Family Assistance Act was paid;
  - (i) if the relevant payment was made because, at that time, subsection 93(3) of the Family Assistance Act applied to the recipient—a determination under the ABSTUDY Policy Manual because of which the whole or part of the instalment was paid in the circumstances described in that subsection;
  - (j) if the relevant payment was made because, at that time, subsection 93(4) of the Family Assistance Act applied to the recipient—a determination under the Veterans' Children Education Scheme because of which the allowance was paid in the circumstances described in that subsection;
  - (k) if the relevant payment was made because, at that time, subsection 93(5) of the Family Assistance Act applied to the recipient—a determination under the Military Rehabilitation and Compensation Act Education and Training Scheme because of which the allowance was paid in the circumstances described in that subsection.

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*Situation in which whole amount is a debt*

- (3) If:
- (a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to 14 October 2008, is or was (however described) changed, revoked, set aside, or superseded by another determination; and
  - (b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the following person knowingly made a false or misleading statement, or knowingly provided false information:
    - (i) unless subparagraph (ii) or (iii) applies—the recipient;
    - (ii) if the relevant determination is covered by paragraph (2)(d)—the recipient or the other individual, or one of the other individuals, covered by paragraph 89(5)(b) of the Family Assistance Act;
    - (iii) if the relevant determination is covered by paragraph (2)(e), (f) or (g)—the recipient or the student, or one of the students, covered by paragraph 89(6)(a), (7)(a) or (8)(a) of the Family Assistance Act; and
  - (c) had the change, revocation, setting aside or superseding occurred on or before 14 October 2008, the relevant payment would not have been made;
- the amount of the relevant payment is a debt due to the Commonwealth by the recipient.

*Situation in which part of amount is a debt*

- (4) If:
- (a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to 14 October 2008, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

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- (b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the following person knowingly made a false or misleading statement, or knowingly provided false information:
  - (i) unless subparagraph (ii) or (iii) applies—the recipient;
  - (ii) if the relevant determination is covered by paragraph (2)(d)—the recipient or the other individual, or one of the other individuals, covered by paragraph 89(5)(b) of the Family Assistance Act;
  - (iii) if the relevant determination is covered by paragraph (2)(e), (f) or (g)—the recipient or the student, or one of the students, covered by paragraph 89(6)(a), (7)(a) or (8)(a) of the Family Assistance Act; and
- (c) had the change, revocation, setting aside or superseding occurred on or before 14 October 2008, the amount of the relevant payment would have been reduced;  
the amount by which the relevant payment would have been reduced is a debt due to the Commonwealth by the recipient.

**71K Debts arising in respect of back to school bonus or single income family bonus**

- (1) This section applies in relation to an individual (the *recipient*) who has been paid a back to school bonus or a single income family bonus (the *relevant payment*).

*What determinations are relevant?*

- (2) Each of the following is a *relevant determination* in relation to the recipient:
  - (a) if the relevant payment was made because, at that time, subsection 95(2) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 95(2)(a) of that Act;
  - (b) if the relevant payment was made because, at that time, subsection 95(3) of the Family Assistance Act applied to the

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- recipient—the determination referred to in paragraph 95(3)(a) of that Act;
- (c) if the relevant payment was made because, at that time, subsection 95(4) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 95(4)(a) of that Act;
  - (d) if the relevant payment was made because, at that time, section 98 of the Family Assistance Act applied to the recipient—the determination made under Part 3 of the *Social Security (Administration) Act 1999* that resulted in the recipient receiving the carer payment or disability support pension;
  - (e) if the relevant payment was made because, at that time, subsection 101(2) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 101(2)(a) of that Act;
  - (f) if the relevant payment was made because, at that time, subsection 101(3) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 101(3)(a) of that Act;
  - (g) if the relevant payment was made because, at that time, subsection 101(4) of the Family Assistance Act applied to the recipient—the determination referred to in paragraph 101(4)(a) of that Act.

*Situation in which whole amount is a debt*

- (3) If:
  - (a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to 3 February 2009, is or was (however described) changed, revoked, set aside, or superseded by another determination; and
  - (b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the recipient knowingly

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made a false or misleading statement, or knowingly provided false information; and

- (c) had the change, revocation, setting aside or superseding occurred on or before 3 February 2009, the relevant payment would not have been made;

the amount of the relevant payment is a debt due to the Commonwealth by the recipient.

*Situation in which part of amount is a debt*

(4) If:

- (a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to 3 February 2009, is or was (however described) changed, revoked, set aside, or superseded by another determination; and
- (b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the recipient knowingly made a false or misleading statement, or knowingly provided false information; and
- (c) had the change, revocation, setting aside or superseding occurred on or before 3 February 2009, the amount of the relevant payment would have been reduced;

the amount by which the relevant payment would have been reduced is a debt due to the Commonwealth by the recipient.

**71L Debts arising in respect of clean energy advance**

- (1) This section applies in relation to an individual who has been paid a clean energy advance.
- (2) For the purposes of this section, the **relevant determination** in relation to the individual is the determination referred to in paragraph 103(1)(a) or (2)(a) or 104(1)(a) of the Family Assistance Act.

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*Situation in which whole amount is a debt*

- (3) If:
- (a) after the advance was paid to the individual, the relevant determination in relation to the individual, at least so far as it relates to a day in the period starting on 1 July 2012 and ending on 30 June 2013, is or was (however described) changed, revoked, set aside or superseded by another determination; and
  - (b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and
  - (c) had the change, revocation, setting aside or superseding occurred on or before the day the advance was paid, the advance would not have been paid;
- the amount of the advance is a debt due to the Commonwealth by the individual.

*Situation in which part of amount is a debt*

- (4) If:
- (a) after the advance was paid to the individual, the relevant determination in relation to the individual, at least so far as it relates to a day in the period starting on 1 July 2012 and ending on 30 June 2013, is or was (however described) changed, revoked, set aside or superseded by another determination; and
  - (b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and
  - (c) had the change, revocation, setting aside or superseding occurred on or before the day the advance was paid, the amount of the advance would have been reduced;



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the amount by which the advance would have been reduced is a debt due to the Commonwealth by the individual.

**71M Debts arising in respect of ETR payment**

- (1) This section applies in relation to an individual who has been paid an ETR payment.
- (2) For the purposes of this section, each of the following is a ***relevant determination*** in relation to the individual:
  - (a) if the ETR payment was made because, at that time, subsection 102A(1) of the Family Assistance Act applied to the individual—the determination referred to in paragraph 102A(1)(a) of that Act;
  - (b) if the ETR payment was made because, at that time, subsection 102A(2) of the Family Assistance Act applied to the individual—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied paragraphs 102A(2)(a), (b), (c) and (e) of the Family Assistance Act was paid;
  - (c) if the ETR payment was made because, at that time, subsection 102A(3) of the Family Assistance Act applied to the individual—a determination under the ABSTUDY Policy Manual because of which the whole or part of the instalment was paid in the circumstances described in that subsection;
  - (d) if the ETR payment was made because, at that time, subsection 102A(4) of the Family Assistance Act applied to the individual—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied:
    - (i) paragraphs 102A(4)(a), (c), (d) and (f) of the Family Assistance Act was paid; or
    - (ii) paragraphs 102A(4)(b), (c), (d) and (f) of the Family Assistance Act was paid, if that instalment was paid to the individual;
  - (e) if the ETR payment was made because, at that time, subsection 102D(1) of the Family Assistance Act applied to

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- the individual—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied paragraphs 102D(1)(a), (b) and (c) of the Family Assistance Act was paid;
- (f) if the ETR payment was made because, at that time, subsection 102D(2) of the Family Assistance Act applied to the individual—a determination under the ABSTUDY Policy Manual because of which the whole or part of the instalment was paid in the circumstances described in that subsection;
- (g) if the ETR payment was made because, at that time, subsection 102D(3) of the Family Assistance Act applied to the individual—a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment that satisfied:
- (i) paragraphs 102D(3)(a), (c) and (d) of the Family Assistance Act was paid; or
  - (ii) paragraphs 102D(3)(b), (c) and (d) of the Family Assistance Act was paid, if that instalment was paid to the individual;
- (h) if the ETR payment was made because, at that time, subsection 102F(1) of the Family Assistance Act applied to the individual—the determination referred to in paragraph 102F(1)(a) of that Act.

*Situation in which whole amount is a debt*

- (3) If:
- (a) after the ETR payment was paid to the individual, the relevant determination in relation to the individual, at least so far as it relates to 8 May 2012, is or was (however described) changed, revoked, set aside or superseded by another determination; and
  - (b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

- (c) had the change, revocation, setting aside or superseding occurred on or before the day the ETR payment was paid, the ETR payment would not have been paid;
- the amount of the ETR payment is a debt due to the Commonwealth by the individual.

*Situation in which part of amount is a debt*

- (4) If:
- (a) after the ETR payment was paid to the individual, the relevant determination in relation to the individual, at least so far as it relates to 8 May 2012, is or was (however described) changed, revoked, set aside or superseded by another determination; and
  - (b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and
  - (c) had the change, revocation, setting aside or superseding occurred on or before the day the ETR payment was paid, the amount of the ETR payment would have been reduced;
- the amount by which the ETR payment would have been reduced is a debt due to the Commonwealth by the individual.

### **73 Debts arising from AAT stay orders**

- If:
- (a) a person applies to the AAT under section 142 for review of a decision; and
  - (b) the AAT makes an order under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975*; and
  - (c) as a result of the order, the amount that has in fact been paid to the person by way of family assistance is greater than the amount that should have been paid to the person under the family assistance law;

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the difference between the amount that was in fact paid to the person and the amount that should have been paid is a debt due to the Commonwealth.

### **74 Person other than payee obtaining payment of a cheque**

If:

- (a) an amount of family assistance, one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance or ETR payment is paid by cheque; and
- (b) a person other than the payee obtains possession of the cheque from the payee; and
- (c) the cheque is not endorsed by the payee to the person; and
- (d) the person obtains value for the cheque;

the amount of the cheque is a debt due by the person to the Commonwealth.

### **75 Debts arising from conviction of person for involvement in contravention of family assistance law by debtor**

If:

- (a) a person (the *recipient*) is liable to repay an amount paid to the recipient under the family assistance law; and
- (b) the amount was paid to the recipient because the recipient contravened a provision of the family assistance law; and
- (c) another person is convicted of an offence:
  - (i) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or
  - (ii) against section 11.4 or 11.5 of the *Criminal Code*;in relation to that contravention;

the recipient and the other person are jointly and severally liable to pay the debt.

## **76 Data-matching Program (Assistance and Tax) Act debts**

If:

- (a) an amount has been paid to a person by way of family assistance; and
- (b) the amount is a debt due to the Commonwealth under subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990*;

the amount so paid is recoverable by the Commonwealth.

## **77 Notices in respect of debt**

- (1) If a debt by a person to the Commonwealth under a provision of this Part has not been wholly paid, the Secretary must give the person a notice specifying:
  - (a) the date on which it was issued (the *date of the notice*); and
  - (b) the reason the debt was incurred, including a brief explanation of the circumstances that led to the debt being incurred; and
  - (c) the period to which the debt relates; and
  - (d) the outstanding amount of the debt at the date of the notice; and
  - (e) the day on which the outstanding amount is due and payable; and
  - (f) that a range of options is available for repayment of the debt; and
  - (g) the contact details for inquiries concerning the debt.
- (2) The outstanding amount of the debt is due and payable on the 28th day after the date of the notice.
- (3) If the debt has not been wholly paid and:
  - (a) the person has failed to enter into an arrangement under section 91 to pay the outstanding amount of the debt; or
  - (b) the person has entered into an arrangement under that section but has failed to make a payment in accordance with the

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- arrangement or, if the arrangement has been amended, in accordance with the arrangement as amended;
- the Secretary may give to the person a further notice specifying:
- (c) the date on which it was issued (the *date of the further notice*); and
  - (d) the matters mentioned in paragraphs (1)(b) to (g); and
  - (e) the effect of sections 78 and 78B; and
  - (f) how the interest under section 78 is to be calculated.
- (4) A notice given under subsection (1) may also specify the matters mentioned in paragraphs (3)(e) and (f) and, if it does so, it is taken also to be a further notice given under subsection (3).

### **78 Interest on debt**

- (1) This section applies to a person who:
  - (a) receives a further notice given under subsection 77(3); and
  - (b) is not receiving instalments of family tax benefit.
- (2) If:
  - (a) the person has not entered into an arrangement, on or before the final payment day, to pay the outstanding amount of the debt; and
  - (b) the Secretary has notified the person in writing that the person will be required to pay interest under this subsection;the person is liable to pay interest:
  - (c) from and including the first day after the final payment day until the debt is wholly paid; and
  - (d) at the penalty interest rate;on the outstanding amount from time to time.
- (2A) Under this section, a person is not liable to pay interest on a debt, or the proportion of a debt, that was incurred because of an administrative error made by the Commonwealth or an agent of the Commonwealth.
- (3) If:

- (a) the person has entered into an arrangement to pay the outstanding amount of the debt; and
  - (b) the person has failed to make a particular payment in accordance with the arrangement; and
  - (c) the Secretary has notified the person in writing that the person will be required to pay interest under this subsection;
- the person is liable to pay interest:
- (d) if the failure occurs on or before the final payment day—  
from and including the first day after the final payment day until the debt is wholly paid; or
  - (e) if the failure occurs after the final payment day—from and including the day after the day in respect of which the last payment in respect of the debt was made until the debt is wholly paid;
- at the penalty interest rate, on the outstanding amount from time to time.
- (4) For the purposes of subsections (2) and (3), the ***final payment day*** is the latest of the following days:
- (a) the 90th day after the day on which the outstanding amount of the debt was due and payable;
  - (b) the 28th day after the date of the further notice given under subsection 77(3);
  - (c) if a request for review has been made within 90 days after the receipt of a notice issued under subsection 77(1)—90 days after the day on which an authorised review officer makes a decision in respect of the request.
- (5) The interest payable on the outstanding amount of a debt is a debt due to the Commonwealth.
- (6) If:
- (a) interest is payable on the debt; and
  - (b) an amount is paid for the purpose of paying the debt and the interest;
- the amount so paid is to be applied as follows:

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- (c) until the debt (excluding interest) is fully paid—in satisfaction of the amount of the debt that is due when the payment is made;
  - (d) after the debt (excluding interest) is fully paid—in satisfaction of the interest that had become payable on the debt before the debt was fully paid.
- (7) In this section:
- arrangement** means:
- (a) an arrangement entered into with the Secretary under section 91; or
  - (b) if such an arrangement has been amended—the arrangement as amended.

### **78A Determination that interest not to be payable**

- (1) The Secretary may determine that interest is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a debt.
- (1A) The Secretary may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:
  - (a) failing to enter into an arrangement under section 91 to pay the outstanding amount of the debt; or
  - (b) having entered an arrangement, failing to make a payment in accordance with that arrangement.
- (2) The determination may relate to a period before, or to a period that includes a period before, the making of a determination.
- (3) The determination may be expressed to be subject to the person complying with one or more specified conditions.
- (4) If the person has been notified under subsection 78(2) or (3) that he or she will be required to pay interest under that subsection, the Secretary must give written notice of the determination to the person as soon as practicable after the determination is made.



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- (5) Contravention of subsection (4) does not invalidate a determination.
- (6) If:
  - (a) the determination is expressed to be subject to the person complying with one or more specified conditions; and
  - (b) the person contravenes a condition or conditions without reasonable excuse;the determination ceases to have effect from and including the day on which the contravention or the earliest of the contraventions occurred.
- (7) The Secretary may cancel or vary the determination by written notice given to the person.

**78B Administrative charge**

- (1) When a person first becomes liable to pay interest under section 78 in respect of the outstanding amount of a particular debt, the person is liable to pay an administrative charge of \$50 in respect of the outstanding amount of that debt.
- (2) An administrative charge payable by a person is a debt due to the Commonwealth.

**79 Penalty interest rate**

- (1) The penalty interest rate is:
  - (a) 20% per year; or
  - (b) if a lower rate is determined under subsection (2)—that lower rate.
- (2) The Minister may, by legislative instrument, determine a rate of less than 20% per year that is to be the penalty interest rate.

**79A Guidelines on the penalty interest provisions**

The Minister must, not later than one month after:

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- (a) the day on which the *Family and Community Services and Veterans' Affairs Legislation Amendment (Debt Recovery) Act 2001* receives the Royal Assent; or
  - (b) 1 July 2001;
- whichever is the later, and thereafter from time to time, by legislative instrument, determine guidelines for the operation of the provisions of this Act dealing with penalty interest.

**80 Debt from failure to comply with garnishee notice**

- (1) If:
  - (a) a person (the ***garnishee debtor***) is given a notice under section 89 in respect of a debt due by another person (the ***original debtor***) under this Act; and
  - (b) the garnishee debtor fails to comply with the notice to the extent that he or she is capable of complying with it;then the amount of the debt outstanding (worked out under subsection (2)) is recoverable from the garnishee debtor by the Commonwealth by means of:
  - (c) legal proceedings; or
  - (d) garnishee notice.
- (2) The amount of the debt outstanding is the amount equal to:
  - (a) as much of the amount required by the notice under section 89 to be paid by the garnishee debtor as the garnishee debtor was able to pay; or
  - (b) as much of the debt due by the original debtor at the time when the notice was given as remains due from time to time;whichever is the lesser.
- (3) If the Commonwealth recovers:
  - (a) the whole or part of the debt due by the garnishee debtor under subsection (1); or
  - (b) the whole or part of the debt due by the original debtor;then:

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- (c) both debts are reduced by the amount that the Commonwealth has so recovered; and
  - (d) the amount specified in the notice under section 89 is to be taken to be reduced by the amount so recovered.
- (4) This section applies to an amount in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.
- (5) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

### **81 Overseas application of provisions**

Sections 71 to 75 extend to:

- (a) acts, omissions, matters and things outside Australia, whether in a foreign country or not; and
- (b) all persons (irrespective of nationality or citizenship).

## Division 3—Methods of recovery

### 82 Methods of recovery

- (1) A debt owed by a person, other than an approved child care service, is recoverable by the Commonwealth by one or more of the following means:
  - (a) deductions from instalments of family tax benefit to which the person is entitled;
  - (b) setting off (otherwise than as mentioned in paragraph (a)) family assistance to which the person is entitled against the debt;
  - (c) repayment by instalments under an arrangement entered into under section 91;
  - (d) if section 92 applies to another person who is entitled to be paid family tax benefit by instalment—deductions from that other person's instalments of family tax benefit;
  - (e) if section 92A applies to another person who is entitled to family assistance—setting off (otherwise than as mentioned in paragraph (d)) the family assistance against the debt;
  - (f) the application of an income tax refund owed to the person;
  - (g) if section 93 applies to another person to whom an income tax refund is owed—the application of that refund;
  - (h) legal proceedings;
  - (i) garnishee notice.
- (2) A debt owed by an approved child care service (the **first service**) is recoverable by the Commonwealth by one or more of the following means:
  - (a) setting off the amount of the debt against one or more child care service payments that are to be made to 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).

- (c) repayment by instalments under an arrangement entered into under section 91;
  - (d) legal proceedings;
  - (e) garnishee notice.
- (3) In this section:

**debt** means:

- (a) a debt due to the Commonwealth under section 71, 71A, 71B, 71C, 71CAA, 71CAB, 71CA, 71CB, 71CAC, 71D, 71E, 71G, 71GA, 71GB, 71H, 71I, 71J, 71K, 71L, 71M, 73, 74, 76, 77, 78 or 80; or
- (b) a debt due to the Commonwealth for which a person is liable because of section 75.

#### **84 Deductions from debtor's family tax benefit**

- (1) This section applies to a debt if:
- (a) under section 82, the debt is recoverable by the Commonwealth by means of deductions from instalments of family tax benefit to which the person is entitled; or
  - (b) the debt is a debt due by the person to the Commonwealth under the *Social Security Act 1991*, the *Data-matching Program (Assistance and Tax) Act 1990*, the *Farm Household Support Act 2014*, the *Paid Parental Leave Act 2010*, the *Social Security Act 1947*, the *Student Assistance Act 1973*, the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*; or
  - (c) the debt was incurred under Part 8 of the *Student and Youth Assistance Act 1973* as in force before 1 July 1998.
- (2) The debt is to be deducted from instalments of family tax benefit to which the person is entitled in the following way:
- (a) the Secretary is to determine the amount by which each instalment of family tax benefit is to be reduced; and
  - (aa) a determination under paragraph (a) may be an amount that would reduce the payment to nil if the person has consented

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to the amount of the deduction being an amount that would reduce the payment to nil; and

- (b) each instalment of family tax benefit is to be reduced by the amount determined by the Secretary until the sum of those amounts, and any amounts recovered under an Act referred to in paragraph (1)(b), is equal to the debt.

The Secretary may from time to time vary the amount by which instalments of family tax benefit are to be reduced.

**84A Setting off family assistance against debt owed**

- (1) This section applies:

- (a) to a person if the person is entitled to an amount of family assistance; and

- (b) to a debt owed by the person if:

- (i) under section 82, the debt is recoverable by the Commonwealth by means of setting off family assistance to which the person is entitled against the debt; or

- (ii) the debt is a debt due by the person to the Commonwealth under the *Social Security Act 1991*, the *Data-matching Program (Assistance and Tax) Act 1990*, the *Farm Household Support Act 2014*, the *Paid Parental Leave Act 2010*, the *Social Security Act 1947*, the *Student Assistance Act 1973*, the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*; or

- (iii) the debt was incurred under Part 8 of the *Student and Youth Assistance Act 1973* as in force before 1 July 1998.

- (2) The Secretary may determine that the whole or a part of the entitlement is to be set off against the debt.

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

- (4) If the Secretary makes a determination under subsection (2), the amount of the entitlement and the amount of the debt are reduced accordingly.

### **86 Time limits on recovery action under sections 84, 84A and 87A**

- (1) Subject to subsections (3), (4) and (5), action under section 84, 84A or 87A for the recovery of a debt is not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.
- (3) If:
- (a) subsection (1) applies so that action under section 84, 84A or 87A for the recovery of a debt must be commenced within a particular period; and
  - (b) within that period part of the amount owing is paid;
- action under that section for the recovery of the balance of the debt may be commenced within the period of 6 years starting on the day of payment.
- (4) If:
- (a) subsection (1) applies so that action under section 84, 84A or 87A for the recovery of a debt must be commenced within a particular period; and
  - (b) within that period, the person who owes the amount acknowledges that he or she owes it;
- action under that section for the recovery of the debt may be commenced within the period of 6 years starting on the day of acknowledgment.
- (5) If:
- (a) subsection (1) applies so that action under section 84, 84A or 87A for the recovery of a debt must be commenced within a particular period; and
  - (b) within that period:
    - (i) action is taken under section 87, 88 or 89 for the recovery of the debt; or

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- (ii) a review of a file relating to action for the recovery of the debt occurs; or
  - (iii) other internal Departmental activity relating to action for the recovery of the debt occurs;
- action under section 84, 84A or 87A for the recovery of the debt may be commenced within the period of 6 years after the end of the activity or action referred to in paragraph (b).

**87 Application of income tax refund owed to person**

- (1) If, under section 82, a debt owed by a person is recoverable by the Commonwealth by means of application of an income tax refund payable to the person, the Commissioner of Taxation may apply the whole or a part of the refund to the debt.
- (2) The amount of the refund and the amount of the debt are reduced accordingly.
- (3) Subject to subsection (4), action under this section for the recovery of a debt is not to be taken after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.
- (4) If:
  - (a) action is taken under this section to recover a debt owed by a person from an income tax refund that relates to a particular income year; and
  - (b) the action is taken within 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt; and
  - (c) the amount of the refund is not sufficient to reduce the amount of the debt to nil;action may be taken under this section to apply an income tax refund payable to the person for a later income year to the remainder of the debt.



**87A Setting off debts of an approved child care service against child care service payments**

- (1) This section applies if a debt owed by an approved child care service is to be recovered by the Commonwealth by means of setting off the debt against a payment referred to in paragraph 82(2)(a).
- (2) The Secretary must determine the amount by which the payment is to be reduced. The determination has effect accordingly.
- (3) A determination under subsection (2) may cover one or more payments and may make different provision for different payments.
- (4) The Secretary may vary a determination under subsection (2).
- (5) If a payment is reduced by an amount in accordance with this section, the debt is reduced by that amount.
- (6) A determination under subsection (2) is not a legislative instrument.

**88 Legal proceedings**

- (1) If, under section 82, a debt is recoverable by the Commonwealth by means of legal proceedings, the debt is recoverable by the Commonwealth in a court of competent jurisdiction.
- (2) Subject to subsections (4), (5) and (6), legal proceedings for the recovery of the debt are not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.
- (4) If:
  - (a) subsection (2) applies so that legal proceedings for the recovery of a debt must be commenced within a particular period; and
  - (b) within that period part of the amount owing is paid;

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legal proceedings for the recovery of the balance of the debt may be commenced within the period of 6 years starting on the day of payment.

(5) If:

- (a) subsection (2) applies so that legal proceedings for the recovery of a debt must be commenced within a particular period; and
- (b) within that period, the person who owes the amount acknowledges that he or she owes it;

legal proceedings for the recovery of the debt may be commenced within the period of 6 years starting on the day of acknowledgment.

(6) If:

- (a) subsection (2) applies so that action for the recovery of a debt must be commenced within a particular period; and
- (b) within that period:
  - (i) action is taken under this section, or section 84, 84A, 87, 87A or 89, for the recovery of the debt; or
  - (ii) a review of a file relating to action for the recovery of the debt occurs; or
  - (iii) other internal Departmental activity relating to action for the recovery of the debt occurs;

action for the recovery of the debt may be commenced within the period of 6 years after the end of the activity or action referred to in paragraph (b).

**89 Garnishee notice**

(1) If, under section 82, a debt is recoverable from a person (the **debtor**) by the Commonwealth by means of a garnishee notice, the Secretary may by written notice given to another person:

- (a) by whom any money is due or accruing, or may become due, to the debtor; or
- (b) who holds or may subsequently hold money for or on account of the debtor; or

(c) who holds or may subsequently hold money on account of some other person for payment to the debtor; or

(d) who has authority from some other person to pay money to the debtor;

require the person to whom the notice is given to pay the Commonwealth:

(e) an amount specified in the notice, not exceeding the amount of the debt or the amount of the money referred to in paragraph (a), (b), (c) or (d); or

(f) such amount as is specified in the notice out of each payment that the person becomes liable from time to time to make to the debtor until that debt is satisfied; or

(g) such percentage as is specified in the notice of each payment that the person becomes liable from time to time to make to the debtor until that debt is satisfied.

(2) The time for making a payment in compliance with a notice under subsection (1) is such time as is specified in the notice, not being a time before the money concerned becomes due or is held or before the end of the period of 14 days after the notice is given.

(3) A person must not refuse or fail to comply with a notice under subsection (1) to the extent to which the person is capable of complying with the notice.

Penalty: Imprisonment for 12 months.

(4) If the Secretary gives a notice to a person under subsection (1), the Secretary must give a copy of the notice to the debtor.

(5) A person who makes a payment to the Commonwealth in compliance with a notice under subsection (1) is to be taken to have made the payment under the authority of the debtor and of any other person concerned.

(6) If:

(a) a notice is given to a person under subsection (1) in respect of a debt; and

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- (b) an amount is paid by another person in reduction or in satisfaction of the debt;
- the Secretary must notify the first-mentioned person accordingly, and the amount specified in the notice is to be taken to be reduced by the amount so paid.
- (7) If, apart from this subsection, money is not due or repayable on demand to a person unless a condition is fulfilled, the money is to be taken, for the purposes of this section, to be due or repayable on demand, as the case may be, even though the condition has not been fulfilled.
- (8) This section applies to money in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.
- (9) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

**90 Time limits on recovery action under section 89**

- (1) Subject to subsections (3), (4) and (5), action under section 89 for the recovery of a debt is not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.
- (3) If:
  - (a) subsection (1) applies so that action under section 89 for the recovery of a debt must be commenced within a particular period; and
  - (b) within that period part of the amount owing is paid;action under that section for the recovery of the balance of the debt may be commenced within the period of 6 years starting on the day of payment.
- (4) If:

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- (a) subsection (1) applies so that action under section 89 for the recovery of a debt must be commenced within a particular period; and
  - (b) within that period, the person who owes the amount acknowledges that he or she owes it;
- action under that section for the recovery of the debt may be commenced within the period of 6 years starting on the day of acknowledgment.
- (5) If:
- (a) subsection (1) applies so that action under section 89 for the recovery of a debt must be commenced within a particular period; and
  - (b) within that period:
    - (i) action is taken under section 84, 84A, 87, 87A or 88 for the recovery of the debt; or
    - (ii) a review of a file relating to action for the recovery of the debt occurs; or
    - (iii) other internal Departmental activity relating to action for the recovery of the debt occurs;
- action under section 89 for the recovery of the debt may be commenced within the period of 6 years after the end of the activity or action referred to in paragraph (b).

## **91 Arrangement for payment of debt by instalments**

- (1) The Secretary may, on behalf of the Commonwealth, enter into an arrangement with a person, other than an approved child care service, who owes a debt under which the person is to pay the debt, or the outstanding amount of the debt, by instalments in accordance with the terms of the arrangement.
- (1A) The Secretary may, on behalf of the Commonwealth, enter into an arrangement with an approved child care service that owes a debt under which the service is to pay the debt, or the outstanding amount of the debt, by instalments in accordance with the terms of the arrangement.

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- (2) An arrangement entered into under subsection (1) or (1A) has effect, or is taken to have had effect, on and after the day specified in the arrangement as the day on which the arrangement commences (whether that day is the day on which the arrangement is entered into or an earlier or later day).
- (3) If an arrangement entered into under subsection (1) or (1A) does not specify a day as mentioned in subsection (2), it has effect on and after the day on which it is entered into.
- (4) The Secretary may terminate or alter an arrangement entered into under subsection (1) or (1A):
  - (a) at the debtor's request; or
  - (b) after giving 28 days' notice to the debtor of the proposed termination or alteration; or
  - (c) without notice, if the Secretary is satisfied that the debtor has failed to disclose material information about the debtor's true capacity to repay the debt.
- (5) In this section:

***debt*** means a debt recoverable by the Commonwealth under Division 2.

**92 Deduction by consent from a person's family tax benefit to meet another person's debt**

- (1) If:
  - (a) a person (the ***debtor***):
    - (i) has a debt under this Act or under the *Data-matching Program (Assistance and Tax) Act 1990*, the *Farm Household Support Act 2014*, the *Paid Parental Leave Act 2010*, the *Social Security Act 1947*, the *Social Security Act 1991*, the *Student Assistance Act 1973*, the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*; or

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- (ii) had incurred a debt under Part 8 of the *Student and Youth Assistance Act 1973* as in force before 1 July 1998; and
  - (b) another person (the **consenting person**) is entitled to be paid family tax benefit by instalment; and
  - (c) for the purpose of the recovery of the debt, the consenting person consents to the deduction of an amount from the consenting person's instalments;
- the Secretary may deduct the amount from the consenting person's instalments of family tax benefit.
- (2) The debtor's debt is reduced by an amount equal to the amount deducted from the consenting person's family tax benefit.
  - (3) The consenting person may revoke the consent at any time.

**92A Setting off family assistance of person against another person's debt**

- (1) If:
  - (a) a person (the **debtor**):
    - (i) has a debt under this Act or under the *Data-matching Program (Assistance and Tax) Act 1990*, the *Farm Household Support Act 2014*, the *Paid Parental Leave Act 2010*, the *Social Security Act 1947*, the *Social Security Act 1991*, the *Student Assistance Act 1973*, the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*; or
    - (ii) had incurred a debt under Part 8 of the *Student and Youth Assistance Act 1973* as in force before 1 July 1998; and
  - (b) another person (the **consenting person**) is entitled to an amount of family assistance (except family tax benefit to which section 92 applies); and
  - (c) for the purpose of the recovery of the debt, the consenting person consents to the deduction of an amount from the consenting person's entitlement;

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the Secretary may determine that the whole or a part of the entitlement is to be set off against the debt.

- (2) Subsection (1) does not apply to an entitlement to child care benefit or child care rebate.
- (3) If the Secretary makes a determination under subsection (1), the amount of the entitlement and the amount of the debt are reduced accordingly.
- (4) The consenting person may revoke the consent at any time.

**93 Application of income tax refund owed to another person**

- (1) If:
  - (a) a person (the *debtor*) has a debt under this Act; and
  - (b) another person (the *consenting person*) is entitled to an income tax refund; and
  - (c) for the purpose of the recovery of the debt, the consenting person consents to the application of an amount from the consenting person's refund to the debt;the Commissioner of Taxation may apply the whole or a part of the refund to the debt.
- (2) The amount of the refund and the amount of the debt are reduced accordingly.
- (3) The consenting person may revoke the consent at any time.

**93A Recovery of amounts from financial institutions**

- (1) If:
  - (a) a family assistance payment or family assistance payments are made to a financial institution for the credit of an account kept with the institution; and
  - (b) the Secretary is satisfied that the payment or payments were intended to be paid to someone who was not the person or one of the persons in whose name or names the account was kept;



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the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

- (c) an amount specified in the notice, being the amount, or the sum of the amounts, of the family assistance payment or family assistance payments;
- (d) the amount standing to the credit of the account when the notice is given to the institution.

(2) If:

- (a) a family assistance payment or family assistance payments that are intended to be paid to a person are made to a financial institution for the credit of an account that was kept with the institution by the person or by the person and one or more other persons; and

(b) the person died before the payment or payments were made; the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

- (c) an amount specified in the notice, being the amount, or the sum of the amounts, of the family assistance payment or family assistance payments;
- (d) the amount standing to the credit of the account when the notice is received by the institution.

(2A) As soon as possible after issuing a notice under subsection (2), the Secretary must inform the deceased estate in writing of:

- (a) the amount sought to be recovered from the deceased person's account; and
- (b) the reasons for the recovery action.

(3) A financial institution must comply with a notice given to it under subsection (1) or (2).

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Penalty: 300 penalty units.

- (4) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) or (2) if the financial institution proves that it was incapable of complying with the notice.
- (5) If a notice is given to a financial institution under subsection (1) (payment made to wrong account) or under subsection (2) (death of person in whose name the account was kept) in respect of a family assistance payment or family assistance payments, any amount recovered by the Commonwealth from the institution in respect of the debt reduces any debt owed to the Commonwealth by any other person in respect of the family assistance payment or family assistance payments.
- (6) In this section:

***family assistance payment*** means:

- (a) a payment of family tax benefit, stillborn baby payment, child care benefit or family tax benefit advance; or
- (aa) a payment of single income family supplement; or
- (ab) a payment of schoolkids bonus; or
- (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 65EAA(2)); or
- (be) a payment of child care rebate under section 65EAB (including as that section applies because of subsection 65EAB(2)); or
- (bf) a payment of child care rebate under section 65EF; or

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- (c) a payment of one-off payment to families; or
- (d) a payment of economic security strategy payment to families;  
or
- (e) a payment of back to school bonus or single income family  
bonus; or
- (f) a payment of clean energy advance; or
- (g) a payment of ETR payment.

## Division 4—Non-recovery of debts

### 94 Meaning of *debt*

In this Division:

*debt* means a debt recoverable by the Commonwealth under Division 2.

### 95 Secretary may write off debt

- (1) The Secretary may, on behalf of the Commonwealth, decide to write off a debt for a stated period or otherwise, but only if subsection (2), (4A) or (4B) applies.

*Secretary may write off debt if debt irrecoverable or debt will not be repaid etc.*

- (2) The Secretary may decide to write off a debt under subsection (1) if:

- (a) the debt is irrecoverable at law; or
- (b) the debtor has no capacity to repay the debt; or
- (c) the debtor's whereabouts are unknown after all reasonable efforts have been made to locate the debtor; or
- (d) it is not cost effective for the Commonwealth to take action to recover the debt.

- (3) For the purposes of paragraph (2)(a), a debt is taken to be irrecoverable at law if, and only if:

- (a) the debt cannot be recovered by means of:
  - (i) deductions under section 84; or
  - (iaa) deductions under section 1231 of the *Social Security Act 1991*; or
  - (ia) setting off under section 84A family assistance; or
  - (ii) application of an income tax refund under section 87; or

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- (iia) setting off under section 87A against a payment referred to in paragraph 82(2)(a); or
  - (iii) legal proceedings under section 88; or
  - (iv) garnishee notice under section 89;  
because the relevant time limit for recovery action under that section has elapsed; or
  - (b) there is no proof of the debt capable of sustaining legal proceedings for its recovery; or
  - (c) the debtor is discharged from bankruptcy and the debt was incurred before the debtor became bankrupt and was not incurred by fraud; or
  - (d) the debtor has died leaving no estate or insufficient funds in the debtor's estate to repay the debt.
- (4) For the purposes of paragraph (2)(b), if a debt is recoverable by means of:
- (a) deductions under section 84; or
  - (aa) deductions under section 1231 of the *Social Security Act 1991*; or
  - (b) setting off under section 84A family assistance; or
  - (c) application of an income tax refund under section 87; or
  - (d) setting off under section 87A against a payment referred to in paragraph 82(2)(a);
- the person is taken to have a capacity to repay the debt unless recovery by those means would cause the person severe financial hardship.

*Secretary may write off subsection 28(2) or (6) debt if claimant and partner separate*

- (4A) The Secretary may, under subsection (1), decide to write off a debt arising because of subsection 28(2) or (6) (which deal with when income tax returns have not been lodged) if the following conditions are met:
- (a) the claimant and the partner mentioned in subparagraph 28(1)(b)(iii) (the ***ex-partner***) ceased to be members of the same couple after the end of the income year

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after the cancellation income year mentioned in subsection 28(1);

- (b) if the claimant was required to lodge an income tax return for the cancellation income year—an assessment is or has been made under the *Income Tax Assessment Act 1936* of the claimant's taxable income for the cancellation income year;
- (c) in any case—the ex-partner was required to lodge an income tax return for the cancellation income year but still had not done so by the time when the claimant and the ex-partner ceased to be members of the same couple.

*Secretary may write off subsection 60D(2) debt if claimant and partner separate*

- (4B) The Secretary may, under subsection (1), decide to write off a debt arising because of subsection 60D(2) (which deals with when income tax returns have not been lodged) if the following conditions are met:
- (a) the claimant and the partner mentioned in paragraph 60D(1)(b) (the *ex-partner*) ceased to be members of the same couple after the end of the second income year following the particular income year mentioned in paragraph 60D(1)(a);
  - (b) if the claimant was required to lodge an income tax return for the particular income year—an assessment is or has been made under the *Income Tax Assessment Act 1936* of the claimant's taxable income for the particular income year;
  - (c) in any case—the ex-partner was required to lodge an income tax return for the particular income year but still had not done so by the time when the claimant and the ex-partner ceased to be members of the same couple.

*When decision under subsection (1) takes effect*

- (5) A decision made under subsection (1) takes effect:
- (a) if no day is specified in the decision—on the day on which the decision is made; or

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- (b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).

*Debt that has been written off may be recovered*

- (6) Nothing in this section prevents anything being done at any time to recover a debt that has been written off under this section.

## **96 Power to waive Commonwealth's right to recover debt**

- (1) On behalf of the Commonwealth, the Secretary may waive the Commonwealth's right to recover the whole or a part of a debt from a debtor only in the circumstances described in section 97, 98, 99, 100, 101 or 102.
- (2) A waiver takes effect:
  - (a) on the day specified in the waiver (whether that day is before, after or on the day on which the decision to waive is made); or
  - (b) if the waiver does not specify when it takes effect—on the day on which the decision to waive is made.

## **97 Waiver of debt arising from error**

- (1) The Secretary must waive the right to recover the proportion (the ***administrative error proportion***) of a debt that is attributable solely to an administrative error made by the Commonwealth if subsection (2) or (3) applies to that proportion of the debt.
- (2) The Secretary must waive the administrative error proportion of a debt if:
  - (a) the debtor received in good faith the payment or payments that gave rise to the administrative error proportion of the debt; and
  - (b) the person would suffer severe financial hardship if it were not waived.

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- (3) The Secretary must waive the administrative error proportion of a debt if:
- (a) the payment or payments were made in respect of the debtor's eligibility for family assistance for a period or event (the *eligibility period or event*) that occurs in an income year; and
  - (b) the debt is raised after the end of:
    - (i) the debtor's next income year after the one in which the eligibility period or event occurs; or
    - (ii) the period of 13 weeks starting on the day on which the payment that gave rise to the debt was made; whichever ends last; and
  - (c) the debtor received in good faith the payment or payments that gave rise to the administrative error proportion of the debt.
- (4) For the purposes of this section, the administrative error proportion of the debt may be 100% of the debt.

**98 Waiver of debt relating to an offence**

- (1) If:
- (a) a debtor has been convicted of an offence that gave rise to a proportion of a debt; and
  - (b) the court indicated in sentencing the debtor that it imposed a longer custodial sentence on the debtor because he or she was unable or unwilling to pay the debt;
- the Secretary must waive the right to recover the proportion of the debt that arose in connection with the offence.
- (2) For the purposes of this section, a proportion of a debt may be 100% of the debt.

**99 Waiver of small debt**

- (1) The Secretary must waive the right to recover a debt if:
- (a) the debt is, or is likely to be, less than \$200; and



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- (b) it is not cost effective for the Commonwealth to take action to recover the debt.
- (2) Subsection (1) does not apply if the debt is at least \$50 and could be recovered:
  - (a) by deductions under:
    - (i) section 84 of this Act; or
    - (ii) section 1231 of the *Social Security Act 1991*; or
  - (b) by setting off under section 84A family assistance; or
  - (c) by setting off under section 87A against a payment referred to in paragraph 82(2)(a).

**100 Waiver in relation to settlements***Settlement of civil action*

- (1) If the Commonwealth has agreed to settle a civil action against a debtor for recovery of a debt for less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

*Settlement of proceedings before the AAT*

- (2) If the Secretary has agreed to settle proceedings before the AAT relating to recovery of a debt on the basis that the debtor will pay less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

*Waiver where at least 80% of debt recovered and debtor cannot pay more*

- (3) If:
  - (a) the Commonwealth has recovered at least 80% of the original value of a debt from a debtor; and
  - (b) the Commonwealth and the debtor agree that the recovery is in full satisfaction for the whole of the debt; and

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(c) the debtor cannot repay a greater proportion of the debt;  
the Secretary must waive the remaining 20% or less of the value of the original debt.

*Agreement for part-payment in satisfaction of outstanding debt*

- (4) If the Secretary and a debtor agree that the debtor's debt will be fully satisfied if the debtor pays the Commonwealth an agreed amount less than the amount of the debt outstanding at the time of the agreement (the **unpaid amount**), the Secretary must waive the right to recover the difference between the unpaid amount and the agreed amount.

*Limits on agreement to accept part-payment in satisfaction of outstanding debt*

- (5) The Secretary must not make an agreement described in subsection (4) unless the Secretary is satisfied that the agreed amount is at least the present value of the unpaid amount if it is repaid in instalments of amounts, and at times, determined by the Secretary.

*Formula for working out present value of unpaid amount*

- (6) For the purposes of subsection (5), the **present value of the unpaid amount** is the amount worked out in accordance with the following formula:

$$\frac{\text{Annual repayment}}{\text{Interest}} \times \left[ 1 - \frac{1}{\left( 1 + \text{Interest} \right)^p} \right]$$

where:

**annual repayment** is the amount of the debt that the Secretary believes would be recovered under Division 2 in a year if subsection (4) did not apply in relation to the debt.

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**interest** is the annual rate of interest specified by the Minister by legislative instrument.

**rp** (repayment period) is the number of years needed to repay the unpaid amount if repayments equal to the annual repayment were made each year.

### **101 Waiver in special circumstances**

The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:
  - (i) making a false statement or a false representation; or
  - (ii) failing or omitting to comply with a provision of the family assistance law; and
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off the debt or part of the debt.

### **102 Secretary may waive debts of a particular class**

- (1) The Secretary may, on behalf of the Commonwealth, decide to waive the Commonwealth's right to recover debts, or parts of debts, arising under or as a result of this Act that are included in a class of debts specified by the Minister by legislative instrument.
- (1A) An instrument made by the Minister under subsection (1):
  - (a) may specify conditions to be met before the Secretary exercises the power to waive debts, or parts of debts, in the specified class; and
  - (b) may specify limits on the amounts to be waived in relation to debts in the specified class.

The Secretary must exercise the power to waive in accordance with any conditions or limits specified in the instrument.

- (2) A decision under subsection (1) takes effect:

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- (a) if no day is specified in the decision—on the day on which the decision is made; or
- (b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).

## **Part 5—Review of decisions**

### **Division 1—Internal review**

#### **Subdivision A—Review initiated by the Secretary**

##### **104 Decisions that may be reviewed by the Secretary on own initiative**

Under section 105, the Secretary may review a decision of any officer under the family assistance law except:

- (a) a determination of entitlement under section 51B in respect of an individual in so far as it relates to:
  - (i) a rate certified by an approved child care service under subsection 76(1) of the Family Assistance Act; or
  - (ii) a certificate relating to a weekly limit of hours given by an approved child care service under subsection 54(10), 55(6) or 56(3) of the Family Assistance Act; or
- (b) a determination of entitlement under section 54B in respect of an approved child care service in so far as it relates to:
  - (i) the service's eligibility under section 47 of the Family Assistance Act; or
  - (ii) a rate certified by the service under subsection 76(2) of the Family Assistance Act; or
  - (iii) a certificate relating to a weekly limit of hours given by the service under subsection 54(10), 55(6) or 56(4) of the Family Assistance Act; or
- (ba) a decision to give a person a notice under section 204A; or
- (c) a calculation of an amount of fee reduction under section 50Z or 50ZB, or a recalculation of such an amount under section 50ZA or 50ZC; or
- (d) a decision by the Secretary under section 219Q or subsection 219QA(2) to pay an amount in respect of fee reduction; or

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- (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
- (e) a decision under Division 2 of Part 8C (infringement notices).

**105 Secretary may review certain decisions on own initiative**

- (1) If:
  - (a) a decision (the *original decision*) is a decision that, under section 104, the Secretary may review under this section; and
  - (b) the Secretary is satisfied that there is sufficient reason to review the decision;the Secretary may review the decision.

*Secretary may review decision even if application has been made to the SSAT or the AAT*

- (2) The Secretary may review the original decision even if an application has been made to the SSAT or the AAT for review of the decision.

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*Secretary must not review decision if review under section 109A occurring*

- (3) The Secretary must not review the original decision under this section while any review of the decision is taking place under section 109A.

*Secretary may make decisions in respect of an original decision*

- (4) The Secretary may decide (the **review decision**) to:
- (a) affirm the original decision; or
  - (b) vary the original decision; or
  - (c) set the original decision aside and substitute a new decision.

(4A) If:

- (a) the review involves (wholly or partly) a review of an original decision that is a care percentage decision; and
- (b) a consideration of an objection to a decision carried out under Part VII of the *Child Support (Registration and Collection) Act 1988* has involved (wholly or partly) the consideration of the determination to which the care percentage decision relates;

the Secretary must not vary the original decision, or set the original decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

*Secretary may deem certain events to have occurred*

(5) If:

- (a) the Secretary makes a review decision to set the original decision aside under subsection (4); and
- (b) the Secretary is satisfied that an event that did not occur would have occurred if the original decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

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**105A Review of determination or variation—taking account of FTB**  
**Part A supplement or FTB Part B supplement**

- (1) This section applies to a decision of the Secretary to make or vary a section 16 or 17 determination if, as a result of the decision, an individual (the *first individual*) is entitled to be paid family tax benefit at a particular rate in respect of a period (the *same-rate benefit period*) that consists of, or is included in, a particular income year (the *relevant income year*).
- (2) If:
- (a) in making or varying the determination, the Secretary disregarded one or more of the following provisions:
    - (i) paragraph (ca) of step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act;
    - (ii) paragraph (d) of step 1 of the method statement in clause 25 of Schedule 1 to the Family Assistance Act;
    - (iia) paragraph 29(1)(b) of Schedule 1 to the Family Assistance Act;
    - (iib) paragraph (b) of step 1 of the method statement in subclause 29(2) of Schedule 1 to the Family Assistance Act;
    - (iiba) paragraph 29A(2)(b) of Schedule 1 to the Family Assistance Act;
    - (iic) subclause 31A(1) of Schedule 1 to the Family Assistance Act;
    - (iii) subclause 38A(1) of Schedule 1 to the Family Assistance Act; and
  - (b) if section 32A had not been enacted, the Secretary would have been required to take account of one or more of the provisions mentioned in paragraph (a); and
  - (c) either:
    - (i) if the same-rate benefit period to which the decision relates is the only same-rate benefit period for the first individual for the relevant income year—the first individual satisfies the FTB reconciliation conditions for the same-rate benefit period; or



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- (ii) if the same-rate benefit period to which the decision relates is one of 2 or more same-rate benefit periods for the first individual for the relevant income year—the first individual satisfies the FTB reconciliation conditions for each of those same-rate benefit periods;

then:

- (d) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the determination or variation; and
- (e) the Secretary must exercise the power conferred by subsection 105(1) to review the determination or variation; and
- (f) the review must take account of whichever of the provisions mentioned in paragraph (a) are relevant.

Note: To work out when the first individual has satisfied the FTB reconciliation conditions, see section 32B.

- (3) Paragraph (2)(f) does not limit the scope of the review.

### **105B Review of instalment determination—taking account of energy supplements**

- (1) This section applies if:
  - (a) a determination under section 16 is in force in a quarter under which an individual is entitled to be paid family tax benefit by instalment; and
  - (b) disregarding subsections (2) and (2A) of this section, an election made by the individual under subsection 58A(1) of the Family Assistance Act is in force on one or more days in that quarter.
- (2) The consequences in subsection (2A) apply:
  - (a) once one of the following applies in that quarter:
    - (i) the individual ceases to be entitled to be paid family tax benefit under the determination;
    - (ii) a revocation of the election takes effect;

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- (iii) the election ceases to be in force under subsection 58A(3A) of the Family Assistance Act; or
- (b) otherwise—after the end of that quarter.

(2A) The consequences are:

- (a) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the determination; and
- (b) the Secretary must exercise the power conferred by subsection 105(1) to review the determination; and
- (c) the review must be done by assuming that:
  - (i) Division 2B of Part 4 of Schedule 1 to the Family Assistance Act and Division 2AA of Part 5 of that Schedule applied in relation to those days; and
  - (ii) the election was not in force on those days.

**Note:** Those Divisions deal with energy supplement (Part A) and energy supplement (Part B).

*Definition*

(3) In this section:

**quarter** means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April.

**106 Notice of review decision to be given**

*Notice of review decision to be given if original decision relates to determination of conditional eligibility etc.*

(1) If:

- (a) the Secretary makes a review decision under section 105 affecting an individual in respect of whom a determination of conditional eligibility for child care benefit by fee reduction is, or was, in force (the **applicant**); and
- (b) the review decision is to:
  - (i) vary an original decision in respect of the applicant; or

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- (ii) set aside an original decision in respect of the applicant and substitute a new decision; and
- (c) the review decision relates to one of the following decisions:
  - (i) a determination decision in respect of conditional eligibility (a determination of conditional eligibility is made under section 50F);
  - (ii) a determination decision in respect of a weekly limit of hours, unless it is a variation of the kind referred to in subsection (2) (a determination of a weekly limit of hours is made under section 50H);
  - (iii) a determination decision in respect of CCB % (a determination of CCB % is made under section 50J);
  - (iv) a determination decision in respect of schooling % (a determination of schooling % is made under section 50K);
  - (iva) a determination decision in respect of eligibility for the special grandparent rate (a determination of this eligibility is made under subsection 50T(1));
  - (v) a determination decision in respect of rate under subsection 81(2) of the Family Assistance Act;
  - (vi) a determination decision in respect of no entitlement (a determination of no entitlement is made under section 50G);

the Secretary must give notice of the review decision to:

- (d) in all cases mentioned in paragraph (c)—the applicant; and
- (e) in the case mentioned in subparagraph (c)(v)—the approved child care service, or services, providing care to the child concerned.

- (1A) The Secretary may make notice of a review decision mentioned in paragraph (1)(c) (other than subparagraph (1)(c)(v)) available to the approved child care service, or services, providing care to the child concerned, including by making the notice available to the service using an electronic interface.

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- (1B) The Secretary may give notice of a review decision mentioned in subparagraph (1)(c)(v) by making the notice available to the service using an electronic interface.

*Notice of review decision to be given where original decision relates to a weekly limit of hours or rate set because child at risk*

(2) If:

- (a) the Secretary makes a review decision under section 105 affecting an individual in respect of whom a determination of conditional eligibility for child care benefit by fee reduction is, or was, in force (the **applicant**); and
- (b) the review decision is to:
  - (i) vary an original decision in respect of the applicant; or
  - (ii) set aside an original decision in respect of the applicant and substitute a new decision; and
- (c) the review decision relates to an original decision:
  - (i) to vary a determination of a weekly limit of hours under section 64A because a circumstance listed in subsection 54(12) of the Family Assistance Act applies; or
  - (ii) to vary a determination of a weekly limit of hours under section 64B because a circumstance listed in subsection 55(8) of the Family Assistance Act applies; or
  - (iii) to determine a rate under subsection 81(3) of the Family Assistance Act;

the Secretary must give notice of the review decision to the approved child care service providing care to the child concerned.

*Notice to be given of other review decisions*

(3) If:

- (a) the Secretary makes a review decision under section 105 to:
  - (i) vary an original decision; or
  - (ii) set aside an original decision and substitute a new decision; and

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- (b) the review decision is in respect of any other original decision that, under section 104, may be reviewed (other than a review decision referred to in subsection (1) or (2));

the Secretary must give notice of the review decision to the person whose entitlement, or possible entitlement, to family assistance, one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance or ETR payment is affected by the decision.

*Notice must state effect of review decision*

- (4) A notice must state the effect of the review decision and that the applicant, or person whose entitlement or possible entitlement is affected by the decision, may apply for review of the review decision involved in the manner set out in this Part.

*Review decision not affected by lack of notice*

- (5) A contravention of subsection (1), (2), (3) or (4) in relation to a review decision does not affect the validity of the decision.

*Notice of review decisions to be given to the SSAT or the AAT if application made for review*

- (6) If:
- (a) the Secretary makes a review decision to:
    - (i) vary an original decision; or
    - (ii) set aside an original decision and substitute a new decision; and
  - (b) by the time the Secretary makes that decision, a person has applied to the SSAT or the AAT for review of the original decision that was reviewed by the Secretary;
- the Secretary must give written notice of the Secretary's review decision to the Principal Member of the SSAT or to the Registrar of the AAT, as the case requires.

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*Meaning of determination decision*

(7) In this section:

**determination decision** means a decision that is a determination as originally made, or, if varied, the variation of the determination.

**107 Date of effect of certain decisions made under section 105**

(1) Subject to subsections (3), (3A), (3B), (3C) and (3D), if:

- (a) the Secretary reviews, under section 105, a decision (the **original decision**) relating to the payment to a person of family tax benefit by instalment; and
- (b) the Secretary decides (the **review decision**) to vary the original decision or set aside the original decision and substitute a new decision; and
- (c) the review decision will have the effect of creating or increasing an entitlement to be paid family tax benefit by instalment; and
- (d) the review decision is made more than 52 weeks after the person concerned was given notice of the original decision;

the date of effect of the review decision is:

- (e) unless paragraph (f) applies—the date that would give full effect to the review decision; or
- (f) if the date referred to in paragraph (e) is earlier than the first day of the income year before the income year in which the review decision was made—that first day.

(2) Subject to subsection (3), if:

- (a) under section 105, the Secretary reviews any of the following decisions (the **original decision**):
  - (i) a determination decision in respect of a weekly limit of hours (a determination of a weekly limit of hours is made under section 50H);
  - (ii) a determination decision in respect of CCB % (a determination of CCB % is made under section 50J);

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- (iii) a determination decision in respect of schooling % (a determination of schooling % is made under section 50K);
- (iv) a determination decision in respect of no entitlement (a determination of no entitlement is made under section 50G);
- (v) a determination decision in respect of eligibility for the special grandparent rate (a determination of this eligibility is made under subsection 50T(1)); and
- (b) the Secretary decides (the **review decision**) to vary the original decision or set aside the original decision and substitute a new decision; and
- (c) the review decision would have the effect of creating or increasing an entitlement to be paid child care benefit by fee reduction; and
- (d) the review decision is made more than 52 weeks after the person concerned was given notice of the original decision; the date of effect of the review decision is:
  - (e) unless paragraph (f) applies—the date that would give full effect to the review decision; or
  - (f) if the date referred to in paragraph (e) is earlier than the first day of the income year before the income year in which the review decision was made—that first day.
- (3) Subsection (1) or (2) does not limit the date of effect of a review decision in respect of an original decision that relates to the payment to a person of:
  - (a) family tax benefit by instalment; or
  - (b) child care benefit by fee reduction;if the review was undertaken because the Commissioner of Taxation had made an assessment of the taxable income for a particular income year of each person:
  - (c) whose taxable income is relevant in determining the first-mentioned person's eligibility for, or rate of, family tax benefit, or CCB %; and

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- (d) who was required to lodge an income tax return in respect of that year;  
on the basis of the return lodged by each such person in accordance with subsection (3AA).
- (3AA) For the purposes of subsection (3), the income tax return of a person in respect of a particular income year (the *base year*) must be lodged before the end of:
- (a) the first income year after the base year; or
  - (b) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the return before the end of that first income year.
- (3AB) The further period under paragraph (3AA)(b) must end no later than the end of the second income year after the base year.
- (3A) Subsection (1) does not limit the date of effect of a review decision, in respect of an original decision that relates to the payment to a person of family tax benefit by instalment, if the following apply:
- (a) under section 61A of the Family Assistance Act, the Secretary disregarded clause 38A of Schedule 1 to that Act in relation to the person, an FTB child of the person and a day;
  - (b) the review is undertaken because:
    - (i) before the end of the first income year after the income year in which the FTB child turned 4 or of the further period (if any) allowed by the Secretary under paragraph 61A(2A)(a) of that Act, the Secretary becomes aware of information suggesting that section 61A of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day; and
    - (ii) at any time, the Secretary is satisfied that section 61A of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day.



- (3B) Subsection (1) does not limit the date of effect of a review decision, in respect of an original decision that relates to the payment to a person of family tax benefit by instalment, if the review is undertaken because of subsections 61A(1), (2) and (2A) of the Family Assistance Act not applying in relation to the person because of the operation of subsection 61A(3) of that Act.
- (3C) Subsection (1) does not limit the date of effect of a review decision, in respect of an original decision that relates to the payment to a person of family tax benefit by instalment, if the following apply:
- (a) under section 61B of the Family Assistance Act, the Secretary disregarded clause 38A of Schedule 1 to that Act in relation to the person, an FTB child of the person and a day;
  - (b) the review is undertaken because:
    - (i) before the end of the first income year after the income year in which the FTB child turned 1, 2 or 5 (as the case requires) or of the further period (if any) allowed by the Secretary under paragraph 61B(3)(a) of that Act, the Secretary becomes aware of information suggesting that section 61B of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day; and
    - (ii) at any time, the Secretary is satisfied that section 61B of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day.
- (3D) Subsection (1) does not limit the date of effect of a review decision, in respect of an original decision that relates to the payment to a person of family tax benefit by instalment, if the review is undertaken because of subsections 61B(1), (2) and (3) of the Family Assistance Act not applying in relation to the person because of the operation of subsection 61B(4) of that Act.
- (4) In this section:

***determination decision*** means a decision that is a determination as originally made, or, if varied, the variation of the determination.

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**Subdivision B—Review initiated by the applicant**

**108 Decisions that may be reviewed under section 109A**

*Decisions that may and may not be reviewed under section 109A*

- (1) A decision of any officer under the family assistance law must be reviewed on application under section 109A unless an exception set out in subsection (2) applies to the decision.
- (2) The exceptions to the rule in subsection (1) are:
  - (a) a decision made by:
    - (i) the Secretary personally; or
    - (ii) another agency head himself or herself in the exercise of a delegated power; or
    - (iii) the Chief Executive Centrelink in the exercise of a delegated power; or
    - (iv) the Chief Executive Medicare in the exercise of a delegated power; or
  - (b) a determination of entitlement under section 51B in respect of an individual in so far as it relates to:
    - (i) a rate certified by an approved child care service under subsection 76(1) of the Family Assistance Act; or
    - (ii) a certificate relating to a weekly limit of hours given by an approved child care service under subsection 54(10), 55(6) or 56(3) of the Family Assistance Act; or
  - (c) a determination of entitlement under section 54B in respect of an approved child care service in so far as it relates to:
    - (i) the service's eligibility under section 47 of the Family Assistance Act; or
    - (ii) a rate certified by the service under subsection 76(2) of the Family Assistance Act; or
    - (iii) a certificate relating to a weekly limit of hours given by the service under subsection 54(10), 55(6) or 56(4) of the Family Assistance Act; or
  - (ca) a decision to give a person a notice under section 204A; or

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- (d) a calculation of an amount of fee reduction under section 50Z or 50ZB, or a recalculation of such an amount under section 50ZA or 50ZC; or
- (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
- (dba) a decision under subsection 219RA(1A) not to pay enrolment advance; 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
- (e) except as mentioned in subsection (3) or (4), a determination about a person's eligibility for, or entitlement to, family assistance other than child care benefit if that determination:
  - (i) is neither a determination made under section 19 because the Secretary is not satisfied that an estimate of adjusted taxable income is reasonable nor a determination varied under section 28A; and
  - (ii) is wholly or partly based on an estimate of the amount of adjusted taxable income, or maintenance income, in a particular income year, to the extent that the determination is so based; or

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- (f) except as mentioned in subsection (3), a determination about a person's entitlement to child care benefit or a person's CCB % under section 50J, if that determination:
    - (i) is not a determination made under section 50J, because of the application of subsection 55(2), or an entitlement determination made under section 53D, because of the operation of subsection 55A(2), or a determination varied under section 60E; and
    - (ii) is wholly or partly based on an estimate of the amount of adjusted taxable income in a particular income year, to the extent that the determination is so based; or
  - (fa) a decision under section 201B to publicise information about:
    - (i) the doing of one or more of the things mentioned in paragraphs 200(1)(a) to (i); or
    - (ii) a suspension under subsection 201A(1); or
  - (g) a decision under Division 2 of Part 8C (infringement notices); or
  - (h) a decision under an instrument (including regulations) made under this Act or the Family Assistance Act.
- (2A) Paragraph (2)(h) does not apply in relation to a decision under an instrument if the instrument provides that the decision is reviewable for the purposes of this section.
- (3) A determination about a person's (the **applicant's**):
- (a) eligibility for, or entitlement to, family assistance; or
  - (b) CCB %;
- to the extent that the determination was based on an estimate of the amount of adjusted taxable income in a particular income year, may be reviewed under section 109A only if the applicant seeks that review after the end of that year and either:
- (c) the Commissioner of Taxation has made an assessment, in respect of that year, of the taxable income of each person:
    - (i) whose taxable income was relevant in determining the applicant's eligibility for, or rate of, that family assistance or the applicant's CCB %; and

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- (ii) who had been required to lodge an income tax return in respect of that year;  
on the basis of the return lodged by each such person before the end of the income year following that year; or
  - (d) there was no person whose taxable income in respect of that year was relevant in determining the applicant's eligibility for, or rate of, that family assistance, or the applicant's CCB %, who was required to lodge an income tax return in respect of that year.
- (4) A determination about a person's (the *applicant's*) eligibility for, or entitlement to, family tax benefit to the extent that the determination was based on an estimate of the amount of maintenance income in a particular income year, may be reviewed under section 109A only if the applicant seeks that review after the end of that year.

**109A Review of certain decisions may be initiated by applicant**

- (1) A person affected by a decision (the *original decision*):
  - (a) that is not a care percentage decision; and
  - (b) that, under section 108, must be reviewed under this section; may apply to the Secretary for review of the original decision.

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

- (1A) A person affected by a decision (the *original decision*):
  - (a) that is a care percentage decision; and
  - (b) that, under section 108, must be reviewed under this section; may apply to the Secretary, or the Child Support Registrar, for review of the original decision.
- (2) If the person makes an application under subsection (1) or (1A), the Secretary must either:

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- (a) review the original decision and decide (the *review decision*) to:
  - (i) affirm it; or
  - (ii) vary it; or
  - (iii) set it aside and substitute a new decision; or
- (b) arrange for an authorised review officer (see section 109C) to do so.

(2A) If:

- (a) the review involves (wholly or partly) a review of an original decision that is a care percentage decision; and
- (b) a consideration of an objection to a decision carried out under Part VII of the *Child Support (Registration and Collection) Act 1988* has involved (wholly or partly) the consideration of the determination to which the care percentage decision relates;

the Secretary must not vary the original decision, or set the original decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

(3) If:

- (a) the person who reviews the decision (the *decision reviewer*) makes a review decision to set aside an original decision; and
- (b) the decision reviewer is satisfied that an event that did not occur would have occurred if the original decision had not been made;

the decision reviewer may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

(4) If:

- (a) a person who may apply to the Secretary or Child Support Registrar for review of a decision under subsection (1) or (1A) has not done so; and
- (b) the person applies to the SSAT for review of the decision (despite not being entitled to do so);

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the person is taken to have applied to the Secretary or Child Support Registrar for review of the decision under that subsection on the day on which the person applied to the SSAT.

**109B Notice to be given of decisions under section 109A**

*Decision reviewer to give notice of section 109A decision*

- (1) The decision reviewer of a decision reviewed under section 109A must give notice of the review decision as set out in this section.

*Notice to be given where original decision relates to determination of conditional eligibility etc.*

- (2) If:
- (a) a review decision concerns an individual in respect of whom a determination of conditional eligibility for child care benefit by fee reduction is, or was, in force (the **applicant**); and
  - (b) the review decision is to:
    - (i) vary an original decision in respect of the applicant; or
    - (ii) set aside an original decision in respect of the applicant and substitute a new decision; and
  - (c) the review decision relates to one of the following decisions:
    - (i) a determination decision in respect of conditional eligibility (a determination of conditional eligibility is made under section 50F);
    - (ii) a determination decision in respect of a weekly limit of hours (a determination of a weekly limit of hours is made under section 50H);
    - (iii) a determination decision in respect of CCB % (a determination of CCB % is made under section 50J);
    - (iv) a determination decision in respect of schooling % (a determination of schooling % is made under section 50K);

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- (iva) a determination decision in respect of eligibility for the special grandparent rate (a determination of this eligibility is made under subsection 50T(1));
- (v) a determination decision in respect of rate under subsection 81(2) of the Family Assistance Act;
- (vi) a determination decision in respect of no entitlement hours (a determination of no entitlement is made under section 50G);

the decision reviewer must give notice of the review decision to:

- (d) in all cases mentioned in paragraph (c)—the applicant; and
  - (e) in the case mentioned in subparagraph (c)(v)—the approved child care service, or services, providing care to the child concerned.
- (2A) The Secretary may make notice of a review decision mentioned in paragraph (2)(c) (other than subparagraph (2)(c)(v)) available to the approved child care service, or services, providing care to the child concerned, including by making the notice available to the service using an electronic interface.
- (2B) The Secretary may give notice of a review decision mentioned in subparagraph (2)(c)(v) by making the notice available to the service using an electronic interface.

*Notice to be given of other review decisions*

- (3) If a review decision is in respect of any other original decision that may be reviewed under section 109A, other than an original decision referred to in subsection (2), the decision reviewer must give the applicant written notice of his or her decision:
- (a) to affirm or vary the decision reviewed; or
  - (b) to set it aside and substitute a new decision.

*Meaning of determination decision*

- (4) In this section:



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***determination decision*** means a decision that is a determination as originally made or, if varied, the variation of the determination.

**109C Authorised review officers**

- (1) The Secretary must authorise officers to be authorised review officers for the purposes of this Division.
- (2) The Secretary must not authorise an officer of the Human Services Department unless the Secretary of the Human Services Department has agreed to the authorisation.

**109D Review applications—time limits applicable to review of certain decisions**

*Certain applications to be made within 52 weeks of notification of decision*

- (1) Subject to this section, an application for review under section 109A of any decision (other than an excepted decision) must be made no later than 52 weeks after the applicant is notified of the decision concerned.

*Exception—Secretary may extend time limits in special circumstances*

- (2) The Secretary may, if he or she is satisfied that there are special circumstances that prevented the applicant from making an application under section 109A for review of a decision (other than an excepted decision) within the 52 weeks mentioned in subsection (1), permit a person to make the application after the end of that period and within such further period as the Secretary determines to be appropriate.

*Further exceptions*

- (3) An application under section 109A for review of a decision (other than an excepted decision) may also be made after the 52 weeks

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mentioned in subsection (1) if the application is for review of one or other of the following decisions:

- (a) a determination decision that a person is or is not entitled to be paid family tax benefit for a past period if the period occurs in the income year in which the application was made or in the previous income year (a determination of entitlement is made under section 17 or 19);
- (b) a determination decision that a person is or is not entitled to be paid family tax benefit by single payment/in substitution because of the death of another individual if the death occurred in the income year in which the application was made or in the previous income year (a determination of entitlement is made under section 18 or 19);
- (c) a determination decision that a weekly limit of hours applies to a person for a specified period if the end of the period occurred in the income year in which the application was made or in the previous income year (a determination of weekly limit of hours is made under section 50H);
- (d) a determination decision under section 81 of the Family Assistance Act that a rate of child care benefit applies to a person for a specified period if the end of the period occurred in the income year in which the application was made or in the previous income year;
- (e) a determination decision that a weekly limit of hours, CCB % or schooling % (these determinations are made under sections 50H, 50J and 50K respectively) applies to a person, if the decision took effect in the income year in which the application was made or in the previous income year;
- (ea) a determination decision that a person was, or was not, eligible for the special grandparent rate for a child (these determinations are made under subsection 50T(1)) if the decision took effect in the income year in which the application was made or in the previous income year;
- (f) a determination decision that a person is not entitled (a determination of no entitlement is made under section 50G) to be paid child care benefit by fee reduction if the decision

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- took effect in the income year in which the application was made or in the previous income year;
- (g) a determination decision that a person is or is not entitled to be paid child care benefit for care provided by a registered carer for a past period if the end of the period occurred in the income year in which the application was made or in the previous income year (a determination of entitlement or no entitlement is made under section 52F or 52G);
  - (h) a determination decision that a person is or is not entitled to be paid child care benefit by single payment/in substitution because of the death of another individual for care provided by a registered carer if the death occurred in the income year in which the application was made or in the previous income year (a determination of entitlement or no entitlement is made under section 53D or 53E).
- (4) An application under section 109A for review of a decision (other than an excepted decision) relating to the payment to a person of family assistance, or of one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance or ETR payment, may also be made after the 52 weeks mentioned in subsection (1), if:
- (a) the application for review is made because of an assessment, by the Commissioner of Taxation, of taxable income for a particular income year of any relevant person made on the basis of an income tax return for that person and that particular income year lodged in accordance with subsection (4A); or
  - (b) the application for review is made:
    - (i) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income for a particular income year of any relevant person made on the basis of an income tax return for that person and that particular income year lodged in accordance with subsection (4A); and
    - (ii) within 13 weeks after the relevant person was notified by the Commissioner of the outcome of the review; or

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- (c) the family assistance is family tax benefit and the application for review is made:
  - (i) because of a review, by the Child Support Registrar, of a previous decision by the Registrar about the child support entitlement of any relevant person; and
  - (ii) within 13 weeks after the relevant person was notified by the Registrar of the outcome of the review; or
- (d) the family assistance is family tax benefit and the following apply:
  - (i) under section 61A of the Family Assistance Act, the Secretary disregarded clause 38A of Schedule 1 to that Act in relation to the person, an FTB child of the person and a day;
  - (ii) the Secretary is satisfied the application for review is made because the person considers that section 61A of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day;
  - (iii) the application for review is made before the end of the first income year after the income year in which that FTB child turned 4 or of the further period (if any) allowed by the Secretary under paragraph 61A(2A)(a) of that Act; or
- (e) the family assistance is family tax benefit and the application for review is made because of subsections 61A(1), (2) and (2A) of the Family Assistance Act not applying in relation to the person because of the operation of subsection 61A(3) of that Act; or
- (f) the family assistance is family tax benefit and the following apply:
  - (i) under section 61B of the Family Assistance Act, the Secretary disregarded clause 38A of Schedule 1 to that Act in relation to the person, an FTB child of the person and a day;
  - (ii) the Secretary is satisfied the application for review is made because the person considers that section 61B of

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- that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day;
- (iii) the application for review is made before the end of the first income year after the income year in which that FTB child turned 1, 2 or 5 (as the case requires) or of the further period (if any) allowed by the Secretary under paragraph 61B(3)(a) of that Act; or
- (g) the family assistance is family tax benefit and the application for review is made because of subsections 61B(1), (2) and (3) of the Family Assistance Act not applying in relation to the person because of the operation of subsection 61B(4) of that Act.
- (4A) For the purposes of paragraph (4)(a) or subparagraph (4)(b)(i), the income tax return of a person in respect of a particular income year (the **base year**) must be lodged before the end of:
- (a) the first income year after the base year; or
- (b) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the return before the end of that first income year.
- (4B) The further period under paragraph (4A)(b) must end no later than the end of the second income year after the base year.
- (5) In subsection (4), a reference to a relevant person, in relation to the person first-mentioned in that subsection, is a reference:
- (a) so far as paragraph (4)(a) or (b) is concerned—to any person (including the first-mentioned person) whose taxable income is relevant in determining the first-mentioned person's eligibility for, or rate of, family assistance, one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance or ETR payment, or CCB %; and
- (b) so far as paragraph (4)(c) is concerned—to any person (including the first-mentioned person) whose entitlement to

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child support is relevant in determining the first-mentioned person's rate of family tax benefit.

(6) In this section:

**determination decision** means a decision that is a determination as originally made or, if varied, the variation of the determination.

**excepted decision** means a decision:

- (a) relating to the payment to a person of family tax benefit by instalment; or
- (b) relating to the raising of a debt under Division 2 of Part 4; or
- (c) a decision of a kind mentioned in subsection 144(1) (decisions in relation to child care services and registered carers).

**109DA Review applications—time limits applicable to decisions in relation to child care services and registered carers**

An application for review under subsection 109A(1) of a decision of a kind mentioned in subsection 144(1) (decisions in relation to child care services and registered carers) must be made no later than 28 days after the applicant is notified of the decision.

**109E Date of effect of certain decisions relating to payment of family tax benefit by instalment**

(1) If:

- (a) a person applies under section 109A for review of a decision (the **original decision**) relating to the payment to the person of family tax benefit by instalment; and
- (b) the application is made more than 52 weeks after the person was given notice of the original decision; and
- (c) the Secretary or an authorised review officer decides, under subsection 109A(2), to vary the original decision or to set aside the original decision and substitute a new decision; and

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- (d) the decision of the Secretary or authorised review officer (the **review decision**) will have the effect of creating or increasing an entitlement to be paid family tax benefit by instalment; the date of effect of the review decision is:
  - (e) unless paragraph (f) applies—the date that would give full effect to the review decision; or
  - (f) if the date referred to in paragraph (e) is earlier than the first day of the income year before the income year in which the application was made—that first day.
- (2) The Secretary may, if he or she is satisfied that there are special circumstances that prevented the applicant from making an application under section 109A for review of the original decision within 52 weeks, determine that subsection (1) applies as if the reference to 52 weeks were a reference to such longer period as the Secretary determines to be appropriate.
- (3) Subsection (1) does not limit the date of effect of a decision by the Secretary or by an authorised review officer on an application under section 109A for review of the original decision if:
  - (a) the application for review is made because of an assessment, by the Commissioner of Taxation, of taxable income for a particular income year of any relevant person made on the basis of an income tax return for that person and that particular income year lodged in accordance with subsection (3A); or
  - (b) the application for review is made:
    - (i) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income for a particular income year of any relevant person made on the basis of an income tax return for that person and that particular income year lodged in accordance with subsection (3A); and
    - (ii) within 13 weeks after the relevant person was notified by the Commissioner of the outcome of the review; or
  - (c) the application for review is made:

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- (i) because of a review, by the Child Support Registrar, of a previous decision by the Registrar about the child support entitlement of any relevant person; and
  - (ii) within 13 weeks after the relevant person was notified by the Registrar of the outcome of the review; or
- (d) the following apply:
  - (i) under section 61A of the Family Assistance Act, the Secretary disregarded clause 38A of Schedule 1 to that Act in relation to the person mentioned in paragraph (1)(a) of this section, an FTB child of the person and a day;
  - (ii) the Secretary is satisfied the application for review is made because the person considers that section 61A of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day;
  - (iii) the application for review is made before the end of the first income year after the income year in which that FTB child turned 4 or of the further period (if any) allowed by the Secretary under paragraph 61A(2A)(a) of that Act; or
- (e) the application for review is made because of subsections 61A(1), (2) and (2A) of the Family Assistance Act not applying in relation to the person mentioned in paragraph (1)(a) of this section because of the operation of subsection 61A(3) of that Act; or
- (f) the following apply:
  - (i) under section 61B of the Family Assistance Act, the Secretary disregarded clause 38A of Schedule 1 to that Act in relation to the person mentioned in paragraph (1)(a) of this section, an FTB child of the person and a day;
  - (ii) the Secretary is satisfied the application for review is made because the person considers that section 61B of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day;



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- (iii) the application for review is made before the end of the first income year after the income year in which that FTB child turned 1, 2 or 5 (as the case requires) or of the further period (if any) allowed by the Secretary under paragraph 61B(3)(a) of that Act; or
  - (g) the application for review is made because of subsections 61B(1), (2) and (3) of the Family Assistance Act not applying in relation to the person mentioned in paragraph (1)(a) of this section because of the operation of subsection 61B(4) of that Act.
- (3A) For the purposes of paragraph (3)(a) or subparagraph (3)(b)(i), the income tax return of a person in respect of a particular income year (the *base year*) must be lodged before the end of:
  - (a) the first income year after the base year; or
  - (b) such further period (if any) as the Secretary allows, if the Secretary is satisfied that there are special circumstances that prevented the person from lodging the return before the end of that first income year.
- (3B) The further period under paragraph (3A)(b) must end no later than the end of the second income year after the base year.
- (4) In subsection (3), a reference to a relevant person, in relation to the person first-mentioned in that subsection, is a reference:
  - (a) so far as paragraph (3)(a) or (b) is concerned—to any person (including the first-mentioned person) whose taxable income is relevant in determining the first-mentioned person's eligibility for, or rate of, family tax benefit; and
  - (b) so far as paragraph (3)(c) is concerned—to any person (including the first-mentioned person) whose entitlement to child support is relevant in determining the first-mentioned person's rate of family tax benefit.

**109F Withdrawal of review applications**

- (1) An applicant for review under section 109A may, in writing or in any other manner approved by the Secretary, withdraw the

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application at any time before the decision reviewer does any of the things in subsection 109A(2).

- (2) If an application is so withdrawn, it is taken never to have been made.

**109G Secretary may continue payment etc. pending outcome of application for review**

- (1) If:

- (a) an adverse family assistance decision referred to in paragraph (a) or (b) of the definition of *adverse family assistance decision* in subsection (5) is made; and
- (b) the adverse decision depends on the exercise of a discretion, or the holding of an opinion, by a person; and
- (c) a person applies under section 109A for review of the adverse decision;

the Secretary may declare that entitlement to the family assistance to which the adverse family assistance decision relates is to continue, pending the determination of the review, as if the adverse decision had not been made.

- (2) If:

- (a) an adverse family assistance decision referred to in paragraph (c), (d) or (e) of the definition of *adverse family assistance decision* in subsection (5) is made; and
- (b) the adverse decision depends on the exercise of a discretion, or the holding of an opinion, by a person; and
- (c) a person applies under section 109A for review of the adverse decision;

the Secretary may declare:

- (d) in the case of an *adverse family assistance decision* referred to in paragraph (c) of the definition—that the conditional eligibility to which the decision relates is to continue as if the adverse decision had not been made; and
- (e) in the case of an adverse family assistance decision referred to in paragraph (d)—that the limit or percentage to which the

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decision relates is to continue as if the adverse decision had not been made; and

- (f) in the case of an adverse family assistance decision referred to in paragraph (e) of the definition—that the eligibility for the special grandparent rate to which the decision relates is to continue as if the adverse decision had not been made.
- (3) While the declaration is in force in relation to the adverse decision, this Act (other than this Part) applies as if the adverse decision had not been made.
- (4) The declaration:
  - (a) starts to have effect on the day on which it is made or on the earlier day (if any) specified in the declaration; and
  - (b) stops having effect if:
    - (i) the application for review of the adverse decision is withdrawn; or
    - (ii) the review of the adverse decision is determined by the Secretary or an authorised review officer; or
    - (iii) the declaration is revoked by the Secretary.
- (5) In this section:

***adverse family assistance decision***, in relation to a person, means any decision having the effect that:

- (a) the person ceases to be entitled to family assistance; or
- (b) the person's entitlement to family assistance is reduced; or
- (c) the person ceases to be conditionally eligible for child care benefit by fee reduction; or
- (d) the weekly limit of hours, the CCB % or the schooling % applicable to the person is reduced; or
- (e) the person ceases to be eligible for the special grandparent rate for a child.

**109H Notification of further rights of review**

- (1) If the decision reviewer gives an applicant a notice under section 109B, the notice must include:

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- (a) a statement to the effect that the applicant may, subject to this Part, apply to the SSAT for review of the review decision mentioned in the notice; and
  - (b) a statement about the review decision that:
    - (i) sets out the reasons for the decision; and
    - (ii) sets out the findings by the decision reviewer on material questions of fact; and
    - (iii) refers to the evidence or other material on which those findings were based; and
  - (c) a statement to the effect that, if the applicant is dissatisfied with the SSAT's decision on any application for review as mentioned in paragraph (a), the applicant may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the AAT for review of the SSAT's decision.
- (2) A contravention of subsection (1) in relation to a review decision does not affect the validity of the decision.

## **Division 2—Review by the Social Security Appeals Tribunal**

### **110 SSAT objective**

- (1) In carrying out its functions under this Act, the SSAT must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.
- (2) That objective must also be pursued by the Principal Member in performing or exercising his or her functions and powers under this Act.

### **111 Application for review by SSAT**

- (1) If the decision reviewer has affirmed, varied or set aside a decision under Division 1, a person affected by the decision may apply to the Social Security Appeals Tribunal for review of the decision as affirmed or varied or, if it has been set aside and another decision substituted, the decision so substituted.

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

- (1A) If a decision has been made by:
  - (a) the Secretary personally (except a decision under Division 2 of Part 8C (infringement notices)); or
  - (b) another agency head himself or herself in the exercise of a delegated power; or
  - (c) the Chief Executive Centrelink in the exercise of a delegated power; or
  - (d) the Chief Executive Medicare in the exercise of a delegated power;a person whose interests are affected by the decision may apply to the SSAT for review of the decision.

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- (2) However, a person cannot apply for review under subsection (1) or (1A) in respect of any of the following decisions:
- (a) a decision under one of the following provisions (form and manner of claims, notices etc.):
    - (i) subsection 7(2);
    - (ia) subsection 34(1);
    - (ib) subsection 35B(2);
    - (ii) subsection 38(2);
    - (iii) subsection 49C(1);
    - (iv) paragraph 50L(7)(b);
    - (v) subparagraph 50T(2)(a)(ii);
    - (vi) paragraph 50T(3)(b);
    - (vii) subsection 50Z(4), 50ZA(4), 50ZB(4) or 50ZC(4);
    - (viii) subsection 57G(3) or 57G(5);
    - (ix) section 64F;
    - (ixa) paragraph 65EAAA(2)(a);
    - (ixb) subsection 65EAAB(3) or 65EAAE(4);
    - (ixc) subsection 65KA(2);
    - (x) paragraph 219AB(1)(a);
    - (xi) subsection 219AE(4);
    - (xii) subsection 219AF(2);
    - (xiii) subsection 219N(3);
    - (xiv) paragraph 219QB(4)(a);
    - (xiva) subsection 219QE(3);
    - (xivb) paragraph 219QE(5)(a);
    - (xv) paragraph 219R(2)(a);
    - (xva) paragraph 219RA(1A)(b), (1B)(b) or (1C)(b);
    - (xvi) subsection 219RA(4);
    - (xvia) paragraph 219RC(3)(d);
    - (xvii) subsection 57(6) or 81(5) of the Family Assistance Act;
    - (xviii) subclause 46(2), 47(2), 49(3) or 50(2) of Schedule 1 to the Family Assistance Act;

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- (c) a decision under section 108 or 112 (continuation of payment etc. pending review of adverse decision);
- (d) a decision under section 154, 155, 156, 157, 159A or 219GA (Secretary requiring or requesting information from person);
- (e) a decision relating to the Secretary's power under section 146 to settle proceedings before the AAT;
- (f) a decision under Part 8 (approval of child care services and approval of registered carers);
- (fa) a decision under section 219GB (Secretary engaging an expert to carry out an independent audit);
- (g) a decision under section 219NA (Secretary requiring service to provide information about number of child care places);
- (h) a decision to make a determination under subsection 57(1) of the Family Assistance Act (determination that an approved child care service is a sole provider);
- (i) a decision under section 57G (Secretary requiring service to provide further information about aspects of care provided to enrolled children).

(3) In this section:

*decision reviewer*, in relation to a decision that was the subject of an application under section 109A, means the person who, in accordance with subsection 109A(2), reviewed that decision.

**111A Review applications—time limits applicable to review by the SSAT of certain decisions**

- (1) Subject to subsection (2), a person affected:
  - (a) by a decision of a decision reviewer under Division 1 to affirm, vary or set aside a decision other than an excepted decision; or
  - (b) if a decision reviewer has decided, under Division 1, to set aside a decision (other than an excepted decision) and substitute another decision—by the decision so substituted;

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must apply under section 111 for review by the SSAT of the decision affecting that person no later than 13 weeks after the person is notified of the decision of the decision reviewer.

- (2) The SSAT may, if it determines that there are special circumstances that prevented the person from making an application under section 111 for review of a decision of the kind referred to in subsection (1) within the 13 weeks mentioned in subsection (1), permit a person to make the application after the end of that period and within such further period as the SSAT determines to be appropriate.

- (3) In this section:

***excepted decision*** means a decision:

- (a) relating to the payment to a person of family tax benefit by instalment; or
- (b) relating to the raising of a debt under Division 2 of Part 4.

**111B Date of effect of certain SSAT decisions relating to payment of family tax benefit by instalment**

- (1) If:

- (a) a person applies to the SSAT, under subsection 111(1), for review of a decision (the ***original decision***) relating to the payment to a person of family tax benefit by instalment; and
- (b) the application is made more than 13 weeks after the person was given notice of the original decision; and
- (c) the SSAT decides, under subsection 113(1), to vary the original decision or set aside the original decision and substitute a new decision; and
- (d) the decision of the SSAT will have the effect of creating or increasing an entitlement to be paid family tax benefit by instalment;

the date of effect of the decision of the SSAT is:

- (e) unless paragraph (f) applies—the date that would give full effect to the decision of the SSAT; or



- (f) if the date referred to in paragraph (e) is earlier than the first day of the income year before the income year in which the application to the SSAT for review was made—that first day.
- (2) The SSAT may, if it is satisfied that there are special circumstances that prevented the applicant from making an application within 13 weeks, determine that subsection (1) applies as if the reference to 13 weeks were a reference to such longer period as the SSAT determines to be appropriate.

### **112 Secretary may continue payment etc. pending outcome of application for review**

- (1) If:
  - (a) an adverse family assistance decision referred to in paragraph (a) or (b) of the definition of ***adverse family assistance decision*** in subsection (4) is made; and
  - (b) the adverse decision depends on the exercise of a discretion, or the holding of an opinion, by a person; and
  - (c) a person applies to the SSAT under section 111 for review of the adverse decision;

the Secretary may declare that entitlement to the family assistance is to continue, pending the determination of the review, as if the adverse decision had not been made.

- (1A) If:
  - (a) an adverse family assistance decision referred to in paragraph (c), (d) or (e) of the definition of ***adverse family assistance decision*** in subsection (4) is made; and
  - (b) the adverse decision depends on the exercise of a discretion, or the holding of an opinion, by a person; and
  - (c) a person applies to the SSAT under section 111 for review of the adverse decision;

the Secretary may declare:

- (d) in the case of an adverse family assistance decision referred to in paragraph (c) of the definition in subsection (4)—that

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- the conditional eligibility to which the decision relates is to continue as if the adverse decision had not been made; and
- (e) in the case of an adverse family assistance decision referred to in paragraph (d) of the definition in subsection (4)—that the limit or percentage to which the decision relates is to continue as if the adverse decision had not been made; and
  - (f) in the case of an adverse family assistance decision referred to in paragraph (e) of the definition in subsection (4)—that the eligibility for the special grandparent rate to which the decision relates is to continue as if the adverse decision had not been made.
- (2) While the declaration is in force in relation to the adverse decision, this Act (other than this Part) applies as if the adverse decision had not been made.
- (3) The declaration:
- (a) starts to have effect on the day on which it is made or on the earlier day (if any) specified in the declaration; and
  - (b) stops having effect if:
    - (i) the application to the SSAT for review of the adverse decision is dismissed; or
    - (ii) the review of the adverse decision is determined by the SSAT; or
    - (iii) the declaration is revoked by the Secretary.
- (4) In this section:
- adverse family assistance decision***, in relation to a person, means any decision having the effect that:
- (a) the person ceases to be entitled to family assistance; or
  - (b) the person's entitlement to family assistance is reduced; or
  - (c) the person ceases to be conditionally eligible for child care benefit by fee reduction; or
  - (d) the weekly limit of hours, the CCB % or the schooling % applicable to the person is reduced; or

- (e) the person ceases to be eligible for the special grandparent rate for a child.

### 113 SSAT review powers

- (1) If a person applies to the SSAT for review of a decision, the SSAT must:
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and:
    - (i) substitute a new decision; or
    - (ii) send the matter back to the Secretary, for reconsideration in accordance with any directions or recommendations of the SSAT.
- (1A) If:
  - (a) the review involves (wholly or partly) a review of a decision (the *original decision*) that is a care percentage decision; and
  - (b) a review of a decision carried out under Part VIIA of the *Child Support (Registration and Collection) Act 1988* has involved (wholly or partly) a review of the determination to which the care percentage decision relates;the SSAT must not vary the original decision, or set the original decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.
- (2) If the SSAT sets a decision aside and substitutes for it a decision that:
  - (a) a person is entitled to have a payment made under this Act; or
  - (b) a person is conditionally eligible for child care benefit by fee reduction; or
  - (c) the weekly limit of hours, the CCB % or the schooling % applicable to a person is to be increased;the SSAT must:
  - (d) in the case of paragraph (a):

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- (i) assess the amount of the payment; or
    - (ii) ask the Secretary to assess the amount; and
  - (e) in the case of paragraph (b):
    - (i) ask the Secretary to determine the weekly limit of hours, CCB % and schooling % applicable to the person; and
    - (ii) if the limit or percentage affects the amount of the entitlement of the person—assess that amount; and
  - (f) in the case of paragraph (c):
    - (i) determine what the limit or percentage is to be; or
    - (ii) ask the Secretary to assess the limit or percentage.
- (3) If:
- (a) the SSAT sets a decision aside under subsection (1); and
  - (b) the Secretary or the SSAT, as the case may be, is satisfied that an event that did not occur would have occurred if the decision had not been made;
- the Secretary or the SSAT, as the case requires, may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

### 114 Powers of the SSAT

The SSAT may, for the purpose of reviewing a decision under the family assistance law, exercise all the powers and discretions that are conferred by the family assistance law on the Secretary.

### 116 Application requirements

- (1) A person may apply to the SSAT for review of a decision by:
- (a) sending or delivering a written application to:
    - (i) an office of the SSAT; or
    - (ii) an office of the Department; or
    - (iii) an office of another agency, where the Secretary has approved the office for the purposes of this subparagraph; or

- (b) going to an office of the SSAT and making an oral application; or
  - (c) contacting an office of the SSAT by telephone and making an oral application.
- (2) If a person makes an oral application in accordance with paragraph (1)(b) or (c), the person receiving the oral application must make a written record of the details of the oral application and note on the record the day on which the application is made.
- (3) An application may include a statement of the reasons for seeking a review of the decision.

### **117 Variation of decision before review completed**

- (1) If an officer varies a decision after an application has been made to the SSAT for review of the decision but before determination of the review, the application for review is to be treated as if it were an application for review of the decision as varied.
- (2) If an officer sets a decision aside and substitutes a new decision after an application has been made to the SSAT for review of the original decision but before the determination of the review, the application for review is to be treated as if it were an application for review of the new decision.
- (3) If:
  - (a) a person applies to the SSAT for review of a decision; and
  - (b) before determination of the review, an officer varies the decision or sets it aside and substitutes a new decision;the person may:
  - (c) proceed with the application for review of the decision as varied or the new decision; or
  - (d) request the Principal Member to dismiss the application under section 135; or
  - (e) notify, under section 136, the SSAT that the application is discontinued or withdrawn.

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**118 Parties to SSAT review**

- (1) The parties to a review by the SSAT are:
  - (a) the applicant; and
  - (b) the Secretary; and
  - (c) for a review of a care percentage decision—each person who is a responsible person (within the meaning of the *Child Support (Assessment) Act 1989*) for the child to whom the decision relates; and
  - (f) any other person who has been made a party to the review under subsection (4).
- (2) If a person has applied under section 111 for review of a decision, any other person affected by the decision may apply to the Principal Member to be made a party to the review.
- (3) An application under subsection (2) must be in writing.
- (4) The Principal Member may order that a person who has applied under subsection (2) be made a party to the review.

## **Division 3—Procedures for review by the SSAT**

### **Subdivision A—Preliminary procedures**

#### **119 Procedure on receipt of application for review by SSAT**

- (1) If an application under section 111 is sent or delivered to an office of the Department or another agency, the Secretary must send the application to the Principal Member as soon as practicable and, in any case, not later than 7 days after the application is received at the office of the Department or other agency.
- (2) If:
  - (a) an application under section 111 is sent or delivered to an office of the SSAT; or
  - (b) the Secretary sends such an application to the Principal Member in accordance with subsection (1);the Principal Member must give the applicant and the Secretary written notice that the application has been received.
- (3) Within 28 days after receiving notice of the making of an application from the Principal Member, the Secretary must send to the Principal Member:
  - (a) a statement about the decision under review that:
    - (i) sets out the findings of fact made by the person who made the decision; and
    - (ii) refers to the evidence on which those findings were based; and
    - (iii) gives the reasons for the decision; and
  - (b) the original or a copy of every document or part of a document that:
    - (i) is in the possession, or under the control, of the Secretary or any other officer; and
    - (ii) relates to the applicant; and
    - (iii) is relevant to the review of the decision.

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- (4) If the Principal Member asks the Secretary to send the statement and documents referred to in subsection (3) by a day earlier than the day fixed by that subsection, the Secretary must take reasonable steps to comply with the Principal Member's request.
- (5) If:
  - (a) after the end of the period referred to in subsection (3) but before the determination of the review, the Secretary obtains possession of a document; and
  - (b) the Secretary considers that the document or a part of the document is relevant to the review; and
  - (c) a copy of the document or the part of the document has not been sent to the Principal Member in accordance with subsection (3);the Secretary must send a copy of the document or the part of the document to an office of the SSAT as soon as practicable after obtaining possession of the document.

### **120 Parties to be given a statement about the decision under review**

The Principal Member must give each party (other than the Secretary) a copy of the statement referred to in paragraph 119(3)(a).

### **121 Arrangements for hearing of application**

- (1) If an application is made to the SSAT for review of a decision, the Principal Member must fix a day, time and place for the hearing of the application.
- (2) If a declaration under section 112 is in force in relation to a decision, the Principal Member must take reasonable steps to ensure that the decision is reviewed as quickly as possible.
- (3) The Principal Member must give the applicant and any other parties to the review written notice of the day, time and place fixed for the hearing of the application.



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- (4) The notice under subsection (3) must be given a reasonable time before the day fixed for the hearing.

**122 Notice of application to person affected by decision**

- (1) If:
- (a) an application has been made to the SSAT for review of a decision; and
  - (b) the Principal Member is satisfied that the interests of a person who is not a party to the review are affected by the decision; the Principal Member must take reasonable steps to give the person written notice that an application has been made to the SSAT for review of the decision.
- (2) The notice under subsection (1):
- (a) must be in writing; and
  - (b) must include notification of the person's right under section 118 to apply to the Principal Member to be added as a party to the review; and
  - (c) may be given at any time before the determination of the review.
- (3) The Principal Member must give each party to the review a copy of the notice.

**Subdivision B—Submissions from parties other than agency representatives**

**122A Subdivision does not apply in relation to agency representatives**

This Subdivision does not apply in relation to a party to a review of a decision who is the head of an agency, the Chief Executive Centrelink or the Chief Executive Medicare.

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**123 Submissions to SSAT**

- (2) Subject to section 125, a party to a review of a decision may make oral or written submissions to the SSAT or both oral and written submissions.
- (3) The party may, with the permission of the Principal Member, have another person make submissions to the SSAT on the party's behalf.
- (3A) In deciding whether to grant permission under subsection (3), the Principal Member must have regard to the wishes of the parties and the need to protect their privacy.
- (4) The Principal Member may determine that submissions to the SSAT by the party or the party's representative are to be made by telephone or by means of other electronic communications equipment.
- (5) Without limiting subsection (4), the Principal Member may make a determination under subsection (4) in relation to an application if:
  - (a) the application is urgent; or
  - (b) the party lives in a remote area and unreasonable expense would be incurred if the party or the party's representative had to travel to the place at which the hearing is to be held; or
  - (c) the party has failed to attend the hearing and has not indicated that he or she intends to attend the hearing; or
  - (d) the applicant is unable to attend the hearing because of illness or infirmity.
- (6) If the party is not proficient in English, the Principal Member may give directions in relation to the use of an interpreter in connection with the hearing of the review.

**125 SSAT hearings on written submissions only**

- (1) The Principal Member may direct that a hearing be conducted without oral submissions from the parties if:

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- (a) the Principal Member considers that the review hearing could be determined fairly on the basis of written submissions by all the parties to the review; and
  - (b) all parties to the review consent to the hearing being conducted without oral submissions.
- (2) If the Principal Member gives a direction under subsection (1), the Principal Member must give each of the parties to the review written notice:
  - (a) informing the party of the direction; and
  - (b) inviting the party to submit written submissions; and
  - (c) specifying the address to which the written submissions are to be delivered; and
  - (d) specifying the time within which the written submissions are to be delivered.
- (3) The time specified under paragraph (2)(d) must be such as to allow a reasonable period for the parties to make written submissions.
- (4) Despite subsection (1), the SSAT, as constituted for the hearing, may, if it thinks necessary after considering the written submissions made by the parties, make an order permitting the parties to make oral submissions to the SSAT at the hearing of the review.

**126 SSAT hearings without oral submissions by party**

- (2) If a party to a review of a decision has informed the Principal Member that the party does not intend to make oral submissions to the SSAT, the SSAT may proceed to hear the application for review without oral submissions from the party.
- (3) If:
  - (a) the Principal Member has determined that oral submissions to the SSAT by the party or the party's representative are to be made by telephone or by means of other electronic communications equipment; and

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- (b) on the day fixed for the hearing the presiding member has been unable to contact the party or the party's representative, as the case may be, after taking reasonable steps to do so; the Principal Member may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party's representative, as the case may be.
- (4) If:
  - (a) the Principal Member has not determined that oral submissions to the SSAT by the party or the party's representative are to be made by telephone or by means of other electronic communications equipment; and
  - (b) the party or the party's representative, as the case may be, does not attend the hearing at the time fixed for the hearing; the Principal Member may authorise the SSAT to proceed to hear the application without oral submissions from the party or the party's representative, as the case may be.
- (5) If the Principal Member gives an authorisation under subsection (3) or (4), the SSAT may proceed to hear the application in accordance with the authorisation.
- (6) The Principal Member may revoke an authorisation under subsection (3) or (4).

**Subdivision BA—Submissions from agency representatives**

**126A Submissions from agency representatives**

- (1) The following persons (each of whom is called an ***agency representative***) may make written submissions to the SSAT:
  - (a) the head of an agency that is a party to a review of a decision;
  - (b) the Chief Executive Centrelink, if the Chief Executive Centrelink is a party to a review of a decision;
  - (c) the Chief Executive Medicare, if the Chief Executive Medicare is a party to a review of a decision.

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*Agency representative may request permission to make oral submissions etc.*

- (2) The agency representative may, by writing, request the Principal Member for permission to make:

- (a) oral submissions to the SSAT; or
- (b) both oral and written submissions to the SSAT.

The request must explain how such submissions would assist the SSAT.

- (3) The Principal Member may, by writing, grant the request if, in the opinion of the Principal Member, such submissions would assist the SSAT.

*SSAT may order agency representative to make oral submissions etc.*

- (4) The Principal Member may order the agency representative to make:

- (a) oral submissions to the SSAT; or
- (aa) written submissions to the SSAT; or
- (b) both oral and written submissions to the SSAT;

if, in the opinion of the Principal Member, such submissions would assist the SSAT.

*Oral submissions by telephone etc.*

- (5) For the purposes of subsections (3) and (4), the Principal Member may determine that oral submissions to the SSAT by the agency representative are to be made by telephone or by means of other electronic communications equipment.

- (6) Subsection (5) does not limit subsection (3) or (4).

**Subdivision BB—Other evidence provisions**

**127 Evidence on oath or affirmation**

The SSAT may take evidence on oath or affirmation for the purposes of a review of a decision.

**128 Provision of further information by Secretary**

- (1) The Principal Member may ask the Secretary to provide the SSAT with information or a document the Secretary has and that is relevant to the review of a decision.
- (2) The Secretary must comply with a request under subsection (1) as soon as practicable and, in any event, not later than 14 days after the request is made.

**128A Power to obtain information or documents**

- (1) This section applies to a person if the Principal Member believes on reasonable grounds that the person has information or a document that is relevant to a review.
- (2) The Principal Member may, by written notice given to the person, require the person:
  - (a) to give to the SSAT, within the period and in the manner specified in the notice, any such information; or
  - (b) to produce to the SSAT, within the period and in the manner specified in the notice, any such documents.
- (3) The period specified in a notice given under subsection (2) must be at least 14 days after the notice is given.

*Offence*

- (4) A person commits an offence if:
  - (a) the person is given a notice under subsection (2); and
  - (b) the person fails to comply with the notice.

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Penalty: Imprisonment for 6 months.

*Notice to set out the effect of offence provisions*

- (5) A notice under subsection (2) must set out the effect of the following provisions:
- (a) subsection (4);
  - (b) section 137.1 of the *Criminal Code* (about giving false or misleading information);
  - (c) section 137.2 of the *Criminal Code* (about producing false or misleading documents).

**128B Inspecting and copying documents**

The following may inspect a document produced under section 128A and may make and retain copies of the whole or a part of the document:

- (a) a member who constitutes, or who is one of the members who constitute, the SSAT for the purposes of the review;
- (b) a member of the staff of the SSAT.

**128C Retention of documents**

- (1) The following may take possession of a document produced under section 128A, and retain it for as long as is reasonably necessary:
  - (a) a member who constitutes, or who is one of the members who constitute, the SSAT for the purposes of the review;
  - (b) a member of the staff of the SSAT.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Principal Member to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Principal Member must provide the person otherwise entitled to possession of the

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document, or a person authorised by that person, reasonable access to the document for the purposes of inspecting and making copies of the whole or a part of the document.

**129 Exercise by Secretary of powers under section 154**

- (1) The Principal Member may ask the Secretary to exercise the Secretary's powers under section 154 if the Principal Member is satisfied that a person has information, or has custody or control of a document, that is relevant to the review of a decision.
- (2) The Secretary must comply with a request under subsection (1) as soon as practicable and, in any event, within 7 days after the request is made.

**Subdivision BC—Directions hearings**

**129A Directions hearings**

- (1) Before the hearing of a review commences, the Principal Member may convene one or more directions hearings with the parties to the review if he or she considers that it would assist in the conduct and consideration of the review to do so.
- (2) At a directions hearing, the Principal Member may:
  - (a) fix a day or days for the hearing; and
  - (b) give directions about the time within which submissions are to be made to the SSAT; and
  - (c) give directions about the time within which evidence is to be brought before the SSAT; and
  - (d) give directions about what information is to be given to the SSAT.

**129B Powers of SSAT if parties reach agreement**

- (1) If:



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- (a) at a directions hearing under section 129A with the parties to a review, the parties agree to the terms of a decision of the SSAT:
    - (i) in the review; or
    - (ii) in relation to a part of the review, or a matter arising out of the review;that would be acceptable to the parties; and
  - (b) before the hearing of the review commences, the terms of the agreement are:
    - (i) put in writing; and
    - (ii) signed by or on behalf of the parties; and
    - (iii) lodged with the SSAT; and
  - (c) before the hearing of the review commences, the SSAT is satisfied that a decision in those terms, or consistent with those terms, would be within the powers of the SSAT;
- the SSAT may act in accordance with whichever of subsection (2) or (3) is relevant.
- (2) If the agreement reached is an agreement as to the terms of a decision of the SSAT in the review, the SSAT may make a decision in accordance with those terms without holding a hearing of the review.
  - (3) If the agreement relates to a part of the review, or a matter arising out of the review, the SSAT may in its decision in the review give effect to the terms of the agreement without dealing at the hearing of the review with the part or matter to which the agreement relates.

## **Subdivision C—The hearing**

### **130 Hearing procedure**

- (1) The SSAT, in reviewing a decision:
  - (a) is not bound by legal technicalities, legal forms or rules of evidence; and

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- (b) is to act as speedily as a proper consideration of the review allows.
- (2) The SSAT may inform itself on any matter relevant to a review of a decision in any manner it considers appropriate.

**131 Hearing in private**

- (1) The hearing of a review is to be in private.
- (2) The Principal Member may give directions, in writing or otherwise, as to the persons who may be present at any hearing of a review.
- (3) In giving directions under subsection (2), the Principal Member must have regard to the wishes of the parties and the need to protect their privacy.

**Subdivision D—Other procedural matters**

**134 Adjournment of SSAT hearings**

- (1) The SSAT may adjourn the hearing of a review of a decision from time to time.
- (2) Without limiting subsection (1), the SSAT may refuse to adjourn the hearing of a review if:
  - (a) the hearing has already been adjourned on 2 or more occasions; or
  - (c) a declaration under section 112 is in force in relation to the decision under review.

**135 Dismissal of application for review by SSAT**

- (1) The Principal Member may, on the request of a party or on his or her own initiative, dismiss an application for review of a decision if:
  - (a) the decision is not reviewable under this Part; or
  - (b) the application is frivolous or vexatious; or

- (c) all of the parties consent; or
  - (d) the Principal Member is satisfied:
    - (i) after having communicated with each party; or
    - (ii) after having made reasonable attempts to communicate with each party and having failed to do so;or a combination of both, that none of the parties intend to proceed with the application; or
  - (e) all of the parties fail to attend the hearing.
- (2) The Principal Member may dismiss an application under paragraph (1)(b) only if:
- (a) one of the following applies:
    - (i) the Principal Member has received and considered submissions from the applicant for review;
    - (ii) the Principal Member has otherwise communicated with the applicant in relation to the grounds of the application;
    - (iii) the Principal Member has made reasonable attempts to communicate with the applicant in relation to the grounds of the application and has failed to do so; and
  - (b) all of the parties (other than the applicant) consent to the dismissal.
- (3) If the Principal Member dismisses an application under subsection (1) (other than under paragraph (1)(b)), a party to the review may:
- (a) within 28 days after receiving notification that the application has been dismissed; or
  - (b) within such longer period as the Principal Member, in special circumstances, allows;
- request that the Principal Member reinstate the application.
- (4) If the Principal Member considers it appropriate to do so, he or she may reinstate the application and give such directions as he or she considers appropriate in the circumstances.

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- (5) If it appears to the Principal Member that an application has been dismissed under subsection (1) in error, he or she may, on the request of a party to the review or on his or her own initiative, reinstate the application and give such directions as he or she considers appropriate in the circumstances.
- (6) This section does not apply in relation to a party if the party is the Secretary.

**136 Dismissal of application for review on request of party**

- (1) An applicant for review may notify the SSAT at any time that the application for review is discontinued or withdrawn.
- (2) If the applicant orally notifies the SSAT, the person who receives the notification must make a written record of the day on which the notification was given.
- (3) If notification is given under subsection (1), the Principal Member is taken to have dismissed the application.
- (4) If the Principal Member dismisses an application under subsection (3), a party to the review may:
  - (a) within 28 days after receiving notification that the application has been dismissed; or
  - (b) within such longer period as the Principal Member, in special circumstances, allows;request that the Principal Member reinstate the application.
- (5) If the Principal Member considers it appropriate to do so, he or she may reinstate the application and give such directions as he or she considers appropriate in the circumstances.
- (6) This section does not apply in relation to a party if the party is the Secretary.

### **137 Presiding member at SSAT hearing**

If the SSAT is constituted by 2 or more members for the purposes of the review of a decision, the Principal Member must designate one of those members as the member who is to preside at the hearing of the review.

### **138 Decision of questions before SSAT**

- (1A) This section applies if the SSAT is constituted by 2 or more members for the purposes of the review of a decision.
- (1) Subject to subsection (2), a question arising before the SSAT on a review is to be decided according to the opinion of a majority of the members constituting the SSAT for the purposes of the review.
- (2) If, on a question arising on a review, the opinions of the members of the SSAT are equally divided, the question is to be decided according to the opinion of the member presiding.

### **139 Directions as to procedure for hearings**

- (1) The Principal Member:
  - (a) may give general directions as to the procedure to be followed by the SSAT in connection with the review of decisions under the family assistance law; and
  - (b) may give directions as to the procedure to be followed by the SSAT in connection with a particular review.
- (2) A direction under subsection (1) must not be inconsistent with any provision of the family assistance law.
- (3) A direction under paragraph (1)(b) may be given before or after the hearing of the particular review has commenced.
- (4) The presiding member of the SSAT as constituted for the purposes of a particular review may give directions as to the procedure to be followed on the hearing of the review.

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- (5) A direction under subsection (4) must not be inconsistent with:
  - (a) any provision of the family assistance law; or
  - (b) a direction under subsection (1) of this section.
- (6) A direction under subsection (4) may be given before or after the hearing of the particular review has commenced.

**140 Costs of review**

- (1) Subject to subsection (4), a party to a review must bear any expenses incurred by the party in connection with the review.
- (2) The SSAT may determine that the Commonwealth is to pay the reasonable costs that are:
  - (a) incurred by a party for travel and accommodation in connection with the review; and
  - (b) specified in the determination.
- (3) If the SSAT arranges for the provision of a medical service in relation to a party to a review, the SSAT may determine that the Commonwealth is to pay the costs of the provision of the service.
- (4) If the SSAT makes a determination under subsection (2) or (3), the costs to which the determination relates are payable by the Commonwealth.

**Subdivision E—Notification of decisions**

**141 Procedure following SSAT decision**

*SSAT affirms decisions*

- (1A) If the SSAT makes a decision on a review and the decision is of a kind mentioned in paragraph 113(1)(a), the SSAT must:
  - (a) prepare a written statement (the *initial statement*) that sets out the decision of the SSAT on the review; and
  - (b) give each party to the review a copy of the initial statement within 14 days after making the decision; and

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- (c) within 14 days after making the decision, either:
    - (i) give reasons for the decision orally to each party to the review and explain that the party may make a written request for a statement under subparagraph (ii) within 14 days after the copy of the initial statement is given to the party; or
    - (ii) give each party to the review a written statement (whether or not as part of the initial statement) that sets out the reasons for the decision, sets out the findings on any material questions of fact and refers to evidence or other material on which the findings of fact are based; and
  - (d) return to the Secretary any document that the Secretary has provided to the SSAT in connection with the review; and
  - (e) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact are based.
- (1B) If the SSAT does not give a written statement to a party under subparagraph (1A)(c)(ii), the party may, within 14 days after the copy of the initial statement is given to the party, make a written request of the SSAT for such a statement.
- (1C) The SSAT must comply with a request under subsection (1B) within 14 days after the day on which it receives the request.

*SSAT varies decisions or sets decisions aside*

- (1) If the SSAT makes a decision on a review and the decision is of a kind mentioned in paragraph 113(1)(b) or (c), the SSAT must:
- (a) prepare a written statement that:
    - (i) sets out the decision of the SSAT on the review; and
    - (ii) sets out the reasons for the decision; and
    - (iii) sets out the findings on any material questions of fact; and
    - (iv) refers to evidence or other material on which the findings of fact are based; and

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- (b) give each party to the review a copy of the statement referred to in paragraph (a) within 14 days after the making of the decision in relation to the review; and
- (c) return to the Secretary any document that the Secretary has provided to the SSAT in connection with the review; and
- (d) give the Secretary a copy of any document that contains evidence or material on which the findings of fact are based.

*Notice of further review right*

- (2) When the SSAT determines a review, the Principal Member must give each party to the review (other than a head of an agency, the Chief Executive Centrelink or the Chief Executive Medicare) a written notice that includes a statement to the effect that, if the party is dissatisfied with the decision of the SSAT, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the AAT for review of the decision.
- (3) A failure to comply with subsection (2) in relation to a decision of the SSAT does not affect the validity of the decision.

**141A Notice by Secretary of SSAT decision relating to a determination of conditional eligibility for child care benefit by fee reduction etc.**

- (1) This section applies if:
  - (a) the SSAT makes a decision on a review in respect of an individual claiming child care benefit by fee reduction for care provided by an approved child care service to a child; and
  - (b) the decision on review is to vary, or set aside and substitute a new decision for one of the following decisions:
    - (i) a determination of conditional eligibility;
    - (ii) a weekly limit of hours, CCB % or schooling % applicable to the individual;
    - (ia) a determination whether the individual is eligible for the special grandparent rate for the child;



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- (iii) a determination of rate under subsection 81(2) or (3) of the Family Assistance Act; and
- (c) on the day that the SSAT decision is made:
  - (i) the service is still providing care to the child; and
  - (ii) a determination of conditional eligibility is still in force in respect of the individual with effect that the individual is conditionally eligible.
- (2) The Secretary:
  - (a) must give notice of an SSAT decision mentioned in subparagraph (1)(b)(iii) to the service; and
  - (b) must state in the notice the effect of the decision; and
  - (c) may give the notice by making it available to the service using an electronic interface.
- (3) The Secretary may make notice of an SSAT decision mentioned in paragraph (1)(b) (other than subparagraph (1)(b)(iii)) available to the service, including by making the notice available to the service using an electronic interface.

**Subdivision F—Correction of errors in decisions or statements of reasons**

**141B Correction of errors in decisions or statements of reasons**

*Correction of errors*

- (1) If:
  - (a) the SSAT makes a decision on a review; and
  - (b) the presiding member of the SSAT as constituted for the purposes of the review, or the Principal Member, is satisfied that there is an obvious error in:
    - (i) the text of the decision; or
    - (ii) a written statement of reasons for the decision;the presiding member or the Principal Member may alter the text of the decision or statement.

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- (2) If the text of a decision or statement is altered under subsection (1), the altered text is taken to be the decision of the SSAT or the statement of reasons for the decision, as the case may be.

*Examples of obvious errors*

- (3) Examples of obvious errors in the text of a decision or statement of reasons are:
- (a) an obvious clerical or typographical error in the text of the decision or statement; and
  - (b) an inconsistency between the decision and the statement.

**Subdivision G—Restrictions on disclosure of information**

**141C Orders restricting disclosure of information**

- (1) The Principal Member may make an order directing a person:
- (a) not to disclose information specified in the order; or
  - (b) not to disclose information specified in the order except in the circumstances, or for the purposes, specified in the order; or
  - (c) not to disclose information specified in the order, except to a specified person or class of persons.
- (2) An order may only specify information that has been disclosed to the person for purposes relating to a review under this Part.
- (3) A person commits an offence if:
- (a) the Principal Member makes an order under subsection (1) in relation to the person; and
  - (b) the person contravenes the order.

Penalty: Imprisonment for 2 years.

- (4) An order made under subsection (1) in relation to a person does not apply to information which the person knew before the disclosure referred to in subsection (2) was made.

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Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

**141D Varying an order to permit certain disclosures**

- (1) A person in relation to whom an order has been made under subsection 141C(1) may request the Principal Member to vary the order to allow the person to disclose particular information specified in the order:
  - (a) in particular circumstances or for particular purposes; or
  - (b) to a particular person or class of persons.
- (2) The Principal Member may vary the order in accordance with the request.
- (3) This section does not limit the Principal Member's power to vary or revoke an order.

Note: For variation and revocation apart from under this section, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**141E Orders restricting secondary disclosures of information**

- (1) If an order (the *primary order*) under subsection 141C(1) directs a person not to disclose information specified in the order, except to any of the following (an *authorised recipient*):
  - (a) a specified person;
  - (b) a member of a specified class of persons;the Principal Member may make another order, directing an authorised recipient not to disclose the information specified in the primary order.
- (2) A person commits an offence if:
  - (a) the Principal Member makes an order under subsection (1) in relation to the person; and
  - (b) the person contravenes the order.

Penalty: Imprisonment for 2 years.

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- (3) An order made under subsection (1) in relation to a person does not apply to information which the person knew before the disclosure of the information in accordance with the primary order was made.

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

## **Division 4—Review by the Administrative Appeals Tribunal**

### **Subdivision A—Right to review by AAT**

#### **142 Review of decisions by AAT**

- (1) If:
- (a) a decision has been reviewed by the SSAT; and
  - (b) the decision has been affirmed, varied or set aside by the SSAT;
- the Secretary or a person affected by the decision made by the SSAT may apply to the AAT for review of that decision.
- Note: If an application is made under this section for review of a decision about a person's entitlement to child care benefit, and a decision has also been made about the person's entitlement to child care rebate, that decision about rebate may be automatically reviewed: see Division 5.
- (2) For the purposes of subsection (1), the decision made by the SSAT is taken to be:
- (a) where the SSAT affirms a decision—that decision as affirmed; and
  - (b) where the SSAT varies a decision—that decision as varied; and
  - (c) where the SSAT sets a decision aside and substitutes a new decision—the new decision; and
  - (d) where the SSAT sets a decision aside and sends the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the SSAT—the directions or recommendations of the SSAT.
- (3) Subsection (1) has effect subject to section 29 of the *Administrative Appeals Tribunal Act 1975*.
- (4) If:

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- (a) the AAT sets aside a decision of the SSAT that it reviews under this section; and
  - (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;
- the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.
- (5) If:
- (a) the decision reviewed by the SSAT is a care percentage decision; and
  - (b) a review of a decision carried out by the AAT under the *Administrative Appeals Tribunal Act 1975* has involved (wholly or partly) a review of the determination to which the care percentage decision relates;
- then, despite section 43 of that Act, the AAT must not vary the decision made by the SSAT, or set that decision aside and substitute a new decision, in a way that has the effect of varying the determination or substituting a new determination.

**143 Variation of decision under section 142 before AAT review completed**

- (1) If an officer varies a decision after an application has been made under section 142 to the AAT for review of that decision but before the determination of the application, the application is to be treated as if:
  - (a) the decision as varied had been affirmed by the SSAT; and
  - (b) the application were an application for review of the decision as varied.
- (2) If an officer sets a decision aside and substitutes a new decision after an application has been made under section 142 to the AAT for review of the original decision but before the determination of the application, the application is to be treated as if:
  - (a) the SSAT had set aside the original decision and substituted the new decision; and

- (b) the application were an application for review of the new decision.
- (3) If:
  - (a) a person applies to the AAT for review of a decision under section 142; and
  - (b) before determination of the review, an officer varies the decision or sets the decision aside and substitutes a new decision;the applicant may, instead of proceeding with the application under subsection (1) or (2), withdraw the application.

#### **144 Review by AAT of other decisions**

- (1A) If:
  - (a) a decision of a kind mentioned in subsection (1) (decisions in relation to child care services and registered carers) has been reviewed under section 109A; and
  - (b) the decision has been affirmed, varied or set aside and substituted by the Secretary or an authorised review officer under subsection 109A(2);application may also be made to the AAT for the review of the decision.
- (1B) For the purposes of subsection (1A), the decision made by the Secretary or authorised review officer is taken to be:
  - (a) where the Secretary or authorised review officer affirms a decision—that decision as affirmed; and
  - (b) where the Secretary or authorised review officer varies a decision—that decision as varied; and
  - (c) where the Secretary or authorised review officer sets a decision aside and substitutes a new decision—the new decision.
- (1C) If a decision of a kind mentioned in subsection (1) (decisions in relation to child care services and registered carers) has been made by:

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- (a) the Secretary personally; or
- (b) another agency head himself or herself in the exercise of a delegated power; or
- (c) the Chief Executive Centrelink in the exercise of a delegated power; or
- (d) the Chief Executive Medicare in the exercise of a delegated power;

application may also be made to the AAT for the review of the decision.

- (1) Each of the following is a decision in relation to which an application may be made under subsection (1A) or (1C):
  - (a) a decision under section 195 not to approve a child care service for the purposes of the family assistance law or to approve the service from a particular day;
  - (b) a decision under subsection 199(2) to impose another condition for the continued approval of an approved child care service;
  - (c) a decision under subsection 200(1) to do one or more of the things mentioned in paragraphs (a) to (h) of that subsection in relation to an approved child care service;
  - (d) a decision under subsection 200(3) to revoke the suspension of the approval of an approved child care service from a particular day;
  - (da) a decision under subsection 201A(1) to suspend the approval of an approved child care service from a particular day;
  - (db) a decision under subsection 201A(3) to revoke the suspension of the approval of an approved child care service from a particular day;
  - (e) a decision under subsection 202(2) not to cancel an approved child care service's approval;
  - (f) a decision under subsection 202(3) to cancel an approved child care service's approval;
  - (g) a decision under subsection 202(4) to cancel an approved child care service's approval, but only if the service made



submissions under paragraph 203(1)(e) in relation to the cancellation;

- (h) a decision under paragraph 205(3)(a) not to exempt a specified child care service from a specified eligibility rule;
- (i) a decision under section 207 to:
  - (i) refuse to allocate any child care places to an approved child care service; or
  - (ii) refuse to allocate the number of child care places an approved child care service has applied for under that section;unless the decision is based on guidelines of the Minister of the kind mentioned in paragraph 206(c);
- (ia) a decision under section 207A to reduce the number of child care places allocated to an approved child care service;
- (j) a decision under subsection 210(1) not to approve an individual as a registered carer for the purposes of the family assistance law;
- (k) a decision under subsection 212(1) as to when the approval of an applicant as a registered carer is taken to have come into force;
- (l) a decision under subsection 212(3) as to when the approval of an applicant as a registered carer is taken not to have been in force;
- (m) a decision under subsection 213(2) to impose another condition for the continued approval of an individual as a registered carer;
- (n) a decision under subsection 214(1) to do one or more of the things mentioned in paragraphs (a) to (d) of that subsection in relation to a registered carer;
- (o) a decision under subsection 216(3) to cancel a registered carer's approval;
- (oa) a decision under subsection 219TSQ(1) to suspend an approved child care service's approval;
- (ob) a decision under subsection 219TSQ(3) to revoke the suspension of the approval of an approved child care service from a particular day;

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- (p) a decision under subsection 57(1) of the Family Assistance Act.
- (2) Subsection (1) has effect subject to section 29 of the *Administrative Appeals Tribunal Act 1975*.
- (3) If:
  - (a) the AAT sets aside a decision that it reviews under this section; and
  - (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of the family assistance law.

**145 Variation of decision under section 144 before AAT review completed**

- (1) If an officer varies a decision after an application has been made under section 144 to the AAT for review of that decision but before the determination of the application, the application is to be treated as if the application were an application for review of the decision as varied.
- (2) If an officer sets a decision aside and substitutes a new decision after an application has been made under section 144 to the AAT for review of the original decision but before the determination of the application, the application is to be treated as if the application were an application for review of the new decision.
- (3) If:
  - (a) a person applies to the AAT for review of a decision under section 144; and
  - (b) before determination of the review, an officer varies the decision or sets the decision aside and substitutes a new decision;the applicant may, instead of proceeding with the application under subsection (1) or (2), withdraw the application.

## **146 Settlement of proceedings before the AAT**

- (1) The Secretary may agree with other parties to proceedings before the AAT that relate to the recovery of a debt that the proceedings be settled. The agreement must be in writing.
- (2) If proceedings are settled and the Secretary gives the AAT a copy of the agreement to settle the proceedings, the application for review of the decision the subject of the proceedings is taken to have been dismissed.

## **Subdivision B—Modification of Administrative Appeals Tribunal Act in relation to section 142 review applications**

### **147 Notice of application for review**

The AAT Act applies to an application under section 142 for review of a decision as if the reference in subsection 29(11) of the AAT Act to the person who made the decision were a reference to each person who was a party to the review of the decision by the SSAT (other than the party who made the application under section 142).

### **148 Parties to a review by the AAT**

The AAT Act applies to an application under section 142 for review as if the reference in paragraph 30(1)(b) of the AAT Act to the person who made the decision were a reference to each party to the review of the decision by the SSAT.

### **149 Lodgment of documents with the AAT**

- (1) The AAT Act applies to an application under section 142 for review as if references in section 37 of the AAT Act to the person who made the decision the subject of the application were references to the officer who made the decision that was reviewed by the SSAT.

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- (2) If a person applies to the AAT under section 142 of this Act for review of a decision, the Secretary is taken to have complied with the Secretary's obligations under paragraph 37(1)(a) of the AAT Act in relation to the decision if the Secretary gives the AAT 2 copies of the statement prepared by the SSAT under subparagraph 141(1A)(c)(ii) or paragraph 141(1)(a) of this Act.
- (3) Subsection (2) does not limit the powers of the AAT under section 38 of the AAT Act.

**150 Power of AAT to obtain additional information**

The AAT Act applies to an application under section 142 for review as if references in section 38 of the AAT Act to the person who lodges a statement referred to in paragraph 37(1)(a) of that Act with the AAT were references to the Principal Member.

**151 Operation and implementation of the decision under review**

- (1) The AAT Act applies to an application under section 142 for review of a decision as if references in subsection 41(4) of the AAT Act to the person who made the decision were references to each party to the review by the SSAT.
- (2) The AAT Act applies to an application under section 142 for review of a decision as if references in section 41 of the AAT Act to the decision to which the relevant proceeding relates were references to:
  - (a) if the SSAT affirmed the original decision—the original decision; or
  - (b) if the SSAT varied the original decision:
    - (i) the original decision as varied by the SSAT; and
    - (ii) the original decision; or
  - (c) if the SSAT set aside the original decision and substituted a new decision:
    - (i) the new decision; and
    - (ii) the original decision; or

- (d) if the SSAT set aside the original decision and sent the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the SSAT:
  - (i) any decision made as a result of that reconsideration;  
and
  - (ii) the original decision.
- (3) For the purposes of subsection (2), the original decision is the decision that was reviewed by the SSAT.

## **152 Failure of party to appear**

The AAT Act applies to the review of a decision on an application under section 142 as if the reference in subsection 42A(2) of the AAT Act to the person who made the decision were a reference to the Secretary.

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

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

If:

- (a) an application (the *original application*) has been made under section 109A, 111 or 142 for review of a decision (the *CCB decision*) relating to an individual's entitlement to child care benefit; and
- (b) the CCB decision was in respect of one or more sessions of care provided by an approved child care service to a child during a period in an income year; and
- (c) a decision (the *CCR decision*) has been made under section 65EA, 65EB or 65EC in relation to the individual's entitlement to child care rebate in respect of the child and the period; and
- (d) the result of the review varies or sets aside the CCB decision (whether or not it also substitutes a new decision);

this Act has effect as if the original application included an application for review of the CCR decision.

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

If:

- (a) an application (the *original application*) has been made under section 109A, 111 or 142 for review of a decision (the *CCB decision*) relating to an individual's entitlement to child care benefit by single payment/in substitution; and
- (b) the CCB decision was in respect of one or more sessions of care provided by an approved child care service to a child during a period; and

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- (c) a decision (the **CCR decision**) has been made under section 65ECA in relation to the individual's entitlement to child care rebate in respect of the child and the period; and
  - (d) the result of the review varies or sets aside the CCB decision (whether or not it also substitutes a new decision);
- this Act has effect as if the original application included an application for review of the CCR decision.

## **Division 6—Date of effect of reviews under the child support law**

### **152C Date of effect of decisions on objections under the child support law that apply for family assistance purposes**

- (1) This section applies if:
  - (a) a person lodges, under section 80A of the *Child Support (Registration and Collection) Act 1988*, an objection to a care percentage decision (within the meaning of that Act); and
  - (b) the consideration of the objection under that Act involves (wholly or partly) a consideration of a determination that:
    - (i) was made under a provision of Subdivision B of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*; or
    - (ii) has effect, under section 54K of the *Child Support (Assessment) Act 1989*, as if it were a determination made under such a provision; and
  - (c) the objection was lodged more than 52 weeks after notice of the care percentage decision referred to in paragraph (a) of this subsection was given; and
  - (d) the decision (the **review decision**) on the objection has the effect of varying the determination or substituting a new determination; and
  - (e) the determination as varied or substituted has effect, under sections 35T and 35U of the Family Assistance Act, as if it were a determination made under Subdivision D of Division 1 of Part 3 of that Act.
- (2) The date of effect of the review decision, to the extent that it has the effect referred to in paragraph (1)(d), is:
  - (a) unless paragraph (b) of this subsection applies—the date that would give full effect to the review decision; or



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- (b) if the date referred to in paragraph (a) of this subsection is earlier than the first day of the income year before the income year in which the objection was lodged—that first day.
- (3) If the Secretary is satisfied that there are special circumstances that prevented the objection from being lodged within the period referred to in paragraph (1)(c), the Secretary may determine that subsection (1) applies as if the reference to 52 weeks in that paragraph were a reference to such longer period as the Secretary determines to be appropriate.

**152D Date of effect of SSAT reviews under the child support law that apply for family assistance purposes**

- (1) This section applies if:
  - (a) a person applies to the SSAT, under section 89 of the *Child Support (Registration and Collection) Act 1988*, for review of a decision (the **original decision**); and
  - (b) the review of the original decision involves (wholly or partly) a review of a determination that:
    - (i) was made under a provision of Subdivision B of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*; or
    - (ii) has effect, under section 54K of the *Child Support (Assessment) Act 1989*, as if it were a determination made under such a provision; and
  - (c) the application for review of the original decision was made more than 13 weeks after notice of the original decision was given; and
  - (d) the decision (the **review decision**) on the review has the effect of varying the determination or substituting a new determination; and
  - (e) the determination as varied or substituted has effect, under sections 35T and 35U of the Family Assistance Act, as if it were a determination made under Subdivision D of Division 1 of Part 3 of that Act.

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- (2) The date of effect of the review decision, to the extent that it has the effect referred to in paragraph (1)(d), is:
  - (a) unless paragraph (b) of this subsection applies—the date that would give full effect to the review decision; or
  - (b) if the date referred to in paragraph (a) of this subsection is earlier than the first day of the income year before the income year in which the application for review was made—that first day.
- (3) If the Secretary is satisfied that there are special circumstances that prevented the application for review from being made within the period referred to in paragraph (1)(c), the Secretary may determine that subsection (1) applies as if the reference to 13 weeks in that paragraph were a reference to such longer period as the Secretary determines to be appropriate.

## **Part 6—Provisions relating to information**

### **Division 1—Information gathering**

#### **153 Application of Division**

- (1) This Division:
  - (a) binds the Crown in all its capacities; and
  - (b) extends to:
    - (i) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and
    - (ii) all persons, irrespective of their nationality or citizenship.
- (2) This Division does not require a person to give information or produce a document or records to the extent that in doing so the person would contravene a law of the Commonwealth (other than a law of a Territory).
- (3) This Division does not make the Crown liable to be prosecuted for an offence.

#### **154 General power to obtain information**

- (1) The Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to a specified agency if the Secretary considers that the information or document may be relevant to either or both of the following matters:
  - (a) whether the person, or any other person, whom the Secretary has determined to be entitled to be paid family assistance is or was eligible for the family assistance, or for family assistance of the amount determined;
  - (b) whether the person or any other person to whom a payment of family assistance has been made was entitled to the payment.

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- (2) The Secretary may require a person to:
- (a) give information; or
  - (b) produce a document that is in the person's custody or under the person's control;
- to a specified agency if the Secretary considers that the information or document may be relevant to either or both of the following matters:
- (c) whether a person who has claimed family assistance (other than an individual who has claimed child care benefit by fee reduction), but who has not had the claim determined, is eligible for family assistance;
  - (d) the amount of child care benefit that a person is eligible for.
- (3) The Secretary may require a person to:
- (a) give information; or
  - (b) produce a document that is in the person's custody or under the person's control;
- to a specified agency if the Secretary considers that the information or document may be relevant to either or both of the following matters:
- (c) whether an individual who has claimed payment of child care benefit by fee reduction is conditionally eligible;
  - (d) if a determination were to be, or has been, made that the individual is so conditionally eligible:
    - (i) what weekly limit of hours, CCB % or schooling % would be, or is, applicable to the individual; or
    - (ii) whether the individual would be, or is, eligible for the special grandparent rate for a child.
- (4) The Secretary may require a person to:
- (a) give information; or
  - (b) produce a document that is in the person's custody or under the person's control;
- to a specified agency if the Secretary considers that the information or document may be relevant to either or both of the following matters:

- (c) what rate of child care benefit;
  - (d) what weekly limit of hours;
- is applicable under determinations made by the Secretary in respect of an approved child care service that is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for care provided to a child at risk.
- (4A) The Secretary may require a person to:
- (a) give information; or
  - (b) produce a document that is in the person's custody or under the person's control;
- to a specified agency if the Secretary considers that the information or document may be relevant to either or both of the following matters:
- (c) whether an individual is eligible under subsection 57EAA(1), 57EA(1), 57F(1) or 57F(1A) of the Family Assistance Act for child care rebate;
  - (d) the amount of child care rebate:
    - (i) applicable to an individual under Subdivision AAB or Subdivision AA of Division 4AA of Part 3; or
    - (ii) to which an individual is entitled.
- (5) The Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to a specified agency if the Secretary considers that the information or document may be relevant to:
- (a) an application by the person, or any other person, for approval of a child care service for the purposes of the family assistance law; or
  - (b) the question whether an approved child care service operated by the person, or by any other person, should continue to be approved; or
  - (c) an application by the person, or any other person, for approval as a registered carer; or
  - (d) the question whether the person, or any other person, should continue to be approved as a registered carer; or

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- (e) the records that a person is required to keep under section 219G.
- (5A) The Secretary may require a person who is required to keep records under section 219G to produce to a specified agency such of those records as are specified in the notice given to the person under section 158.
- (6) The Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to a specified agency if the Secretary considers that the information or document may be relevant to the question whether, for the purposes of an application for a determination under subsection 57(1) of the Family Assistance Act, the service is the sole provider in an area of the kind of care the service provides.

**155 Power to obtain information from a person who owes a debt to the Commonwealth**

The Secretary may require a person who owes a debt to the Commonwealth under or as a result of this Act:

- (a) to give to a specified agency information that is relevant to the person's financial situation; or
- (b) to produce to a specified agency a document that is in the person's custody or under the person's control and is relevant to the person's financial situation; or
- (c) if the person's address changes—to inform a specified agency of the new address within 14 days after the change.

**156 Obtaining information about a person who owes a debt to the Commonwealth**

If the Secretary believes that a person may have information or a document:

- (a) that would help the Secretary locate another person (the **debtor**) who owes a debt to the Commonwealth under or as a result of this Act; or
- (b) that is relevant to the debtor's financial situation;

the Secretary may require the person to give the information, or produce the document, to a specified agency.

**157 Obtaining information to verify claims etc.**

- (1) The Secretary may require a person to give information about a class of persons, to a specified agency for either or both of the following purposes:
  - (a) to detect cases in which amounts of family assistance have been paid to persons not entitled to them;
  - (b) to verify the eligibility, conditional eligibility or the applicable weekly limit of hours of persons who have made claims for family assistance.
- (2) The information that the Secretary may require about each person in the class of persons is all or any of the following information (but no other information):
  - (a) full name and any previous name;
  - (b) address;
  - (c) sex;
  - (d) marital status;
  - (e) date of birth;
  - (f) date of death;
  - (g) dates of entries into and departures from Australia;
  - (h) any payments received by the person from the person given the notice, within the period of 52 weeks before the giving of the notice, and the account number of the account into which any of those payments was paid;
  - (i) in relation to a course of study being undertaken by the person:
    - (i) the name of the educational institution that the person is attending;
    - (ii) the name of any educational institution previously attended by the person;
    - (iii) the person's enrolment status;
    - (iv) the person's student identification number;

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- (v) the name of the course;
- (vi) the course code;
- (vii) the date on which the course started or starts;
- (viii) the date on which the course ends;
- (ix) the subject or unit code;
- (x) the normal full-time study workload for the course;
- (xi) indicators of the person's workload, including (but not limited to) effective full-time student units, credit points, contact hours, number of subjects undertaken and number of assignments completed;
- (xii) the number of semesters required to complete the course;
- (xiii) the date on which the person first attended, or will first attend, the course;
- (xiv) the date on which the person last attended, or will last attend, the course;
- (xv) whether the person has discontinued the course and, if the person has discontinued the course, the date on which it happened;
- (xvi) details of any unapproved absences from the course;
- (xvii) the results or grade obtained by the person;
- (j) in relation to any employment of the person by the person given the notice:
  - (i) the date on which the person's employment started; and
  - (ii) the date on which the person's employment ended; and
  - (iii) the number of hours each week for which the person is employed;
- (k) in relation to any other work (other than as an employee) that the person does for the person given the notice and that is a recognised work or work related commitment for the purposes of the work/training/study test:
  - (i) the date on which the person's work started;
  - (ii) the date on which the person's work ended;
  - (iii) the number of hours each week for which the person does the work;



- (l) in relation to any training of the person by the person given the notice:
  - (i) the name of the entity providing the training;
  - (ii) if the person is undertaking a training course—the name of the training course;
  - (iii) the period required to complete the training;
  - (iv) the date on which the person's training started;
  - (v) the date on which the person's training ended;
  - (vi) the number of hours each week for which the person engages in the training.
- (3) The Secretary may require information about a particular class of persons, whether or not the Secretary is able to identify any of the persons in that class as being persons:
  - (a) who have been paid family assistance; or
  - (b) who are entitled to family assistance; or
  - (c) who have made claims for family assistance; or
  - (d) in respect of whom determinations of conditional eligibility for child care benefit by fee reduction are in force.
- (4) Within 13 weeks after information is given in response to a requirement under subsection (1), the Secretary must decide which (if any) of the information is, or is likely to be, relevant to a matter referred to in subsection (1).
- (5) If the Secretary decides, within the 13 week period, that some or all of the information given in response to the requirement is not, or is not likely to be, relevant to a matter referred to in subsection (1), the Secretary must ensure that any record of the irrelevant information is destroyed.
- (6) If the Secretary has not made a decision under subsection (4) at the end of the 13 week period, the Secretary must ensure that any record of all or any part of the information is destroyed.

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**158 Written notice of requirement**

- (1) A requirement under this Division must be made by written notice given to the person of whom the requirement is made.
- (2) The notice:
  - (a) may be given personally or by post or in any other manner approved by the Secretary; and
  - (b) must specify:
    - (i) how the person is to give the information or produce the document or records to which the requirement relates; and
    - (ii) the period within which the person is to give the information or produce the document or records; and
    - (iii) the officer (if any) to whom the information is to be given, the document is to be produced or the records are to be produced; and
    - (iv) that the notice is given under this section.
- (3) The period specified under paragraph (2)(b) must not end earlier than 14 days after the notice is given.
- (4) The notice may require the person to give the information by appearing before a specified officer to answer questions.
- (5) If the notice requires the person so to appear, the notice must specify a time and place at which the person is to appear. The time must be at least 14 days after the notice is given.

**159 Offence: failure to comply with requirement**

- (1) A person must not refuse or fail to comply with a requirement under this Division to give information or produce a document or records.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) applies only to the extent to which the person is capable of complying with the requirement.

- (3) Subsection (1) does not apply if the person has a reasonable excuse.
- (4) Strict liability applies to the element of an offence against subsection (1) that a requirement is a requirement under this Division.

**159A Requesting information for the purposes of a care percentage determination under the child support law**

The Secretary may request a person:

- (a) to give information; or
- (b) to produce a document that is in the person's custody or under the person's control;

to a specified agency if the Secretary considers that the information or document may be relevant to the making or revoking of a determination under Subdivision B or C of Division 4 of Part 5 of the *Child Support (Assessment) Act 1989*.

**160 Obligations not affected by State or Territory laws**

Nothing contained in a law of a State or a Territory operates to prevent a person from:

- (a) giving information; or
- (b) producing a document or records; or
- (c) giving evidence;

that the person is required to give or produce to an agency for the purposes of the family assistance law.

## **Division 1A—Use of tax file numbers**

### **160A Use of tax file numbers**

- (1) This section applies in relation to the tax file number of an individual that is provided to the Secretary under this Act for the purposes of this Act.

*Assistance to the Secretary*

- (2) The Secretary may:
- (a) provide the tax file number referred to in subsection (1) to the Commissioner of Taxation; and
  - (b) require the Commissioner of Taxation to provide the Secretary with information about the individual (including the number the Commissioner of Taxation considers to be the individual's tax file number) that is requested by the Secretary.
- (3) Information provided to the Secretary under a requirement made under subsection (2) may be used only for the following purposes:
- (a) to detect cases in which amounts of family assistance under the family assistance law have been paid when they should not have been paid;
  - (b) to verify, in respect of individuals who have made claims for family assistance under the family assistance law, the eligibility or entitlement of those individuals for family assistance;
  - (c) to establish whether the rates at which family assistance under the family assistance law are being, or have been, paid are, or were, correct;
  - (d) to assist in the recovery of a debt due to the Commonwealth under this Act.

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*Assistance to the Commissioner of Taxation*

- (4) The Secretary may provide the tax file number referred to in subsection (1) to the Commissioner of Taxation for the following purposes:
- (a) to assist the Commissioner act under section 87 (applying tax refund to family assistance debt) in relation to a debt owed by an individual;
  - (b) to assist the Commissioner act under section 93 (applying tax refund to another person's family assistance debt) in relation to a debt owed by an individual;
  - (c) to assist the payment of deductions to the Commissioner under section 225;
  - (d) to assist the Commissioner set off amounts under section 226.

## Division 2—Confidentiality

### 161 Operation of Division

#### *Commonwealth laws*

- (1) Nothing in this Division prevents a person from disclosing information to another person if the information is disclosed for the purposes of:
- (a) the *Child Support (Assessment) Act 1989*; or
  - (b) the *Child Support (Registration and Collection) Act 1988*.

#### *State and Territory laws*

- (1A) Nothing in this Division prevents a person from disclosing information to another person if the information is disclosed for the purposes of:
- (a) the Education and Care Services National Law applying as a law of a State or Territory; or
  - (b) a law of a State or Territory that applies the Education and Care Services National Law as a law of that State or Territory (whether or not that law has commenced); or
  - (c) regulations made under the Education and Care Services National Law; or
  - (d) a law of a State or Territory that substantially corresponds to the provisions of the Education and Care Services National Law (whether or not that law has commenced); or
  - (e) regulations made under a law referred to in paragraph (d).
- (1B) In subsection (1A):

***Education and Care Services National Law*** means the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria.

*No effect on operation of the Freedom of Information Act 1982*

- (2) The provisions of this Division that relate to the disclosure of information do not affect the operation of the *Freedom of Information Act 1982*.

## **162 Protection of personal information**

- (1) A person may obtain protected information if the information is obtained for the purposes of:
- (a) the family assistance law; or
  - (aa) the *Dental Benefits Act 2008*; or
  - (b) the Family Homelessness Prevention and Early Intervention Pilot; or
  - (c) the Child Care Management System Pilot.
- (2) A person may:
- (a) make a record of protected information; or
  - (b) disclose such information to any person; or
  - (c) otherwise use such information;
- if the record, disclosure or use made of the information by the person is made:
- (d) for the purposes of the family assistance law; or
  - (daa) for the purposes of the *Dental Benefits Act 2008*; or
  - (dab) for the purposes of the social security law; or
  - (dac) for the purposes of the *Paid Parental Leave Act 2010*; or
  - (dad) for the purposes of the *Student Assistance Act 1973*; or
  - (da) for the purpose of the Family Homelessness Prevention and Early Intervention Pilot; or
  - (db) for the purpose of the Child Care Management System Pilot; or
  - (e) for the purpose for which the information was disclosed to the person under section 167 or 168; or
  - (f) with the express or implied authorisation of the person to whom the information relates.

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- (3) The Minister may, by legislative instrument, specify additional purposes relating to other programs administered by the Department for which protected information may be obtained under subsection (1), or recorded, disclosed or otherwise used under subsection (2).
- (5) An instrument under subsection (3) does not take effect until the end of the period in which it could be disallowed in either House of the Parliament.

**163 Offence: unauthorised access to protected information**

- (1) If:
  - (a) a person intentionally obtains information; and
  - (b) the person is not authorised under the family assistance law to obtain the information; and
  - (c) the person knows or ought reasonably to know that the information is protected information;the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.
- (2) Strict liability applies to the element of an offence against subsection (1) that a person not authorised to do something is not authorised under the family assistance law to do that thing.

**164 Offence: unauthorised use of protected information**

- (1) If:
  - (a) a person intentionally:
    - (i) makes a record of; or
    - (ii) discloses to any other person; or
    - (iii) otherwise makes use of;information; and
  - (b) the person is not authorised or required under:
    - (i) the family assistance law; or
    - (ii) the *Social Security Act 1991*; or
    - (iii) the *Social Security (Administration) Act 1999*;



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to make the record, disclosure or use of the information that is made by the person; and

- (c) the person knows or ought reasonably to know that the information is protected information;

the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

- (2) Strict liability applies to the element of an offence against subsection (1) that a person not authorised or required to do something is not authorised or required to do that thing under:
  - (a) the family assistance law; or
  - (b) the *Social Security Act 1991*; or
  - (c) the *Social Security (Administration) Act 1999*.

**165 Offence: soliciting disclosure of protected information**

- (1) If:
  - (a) a person (the ***first person***) solicits the disclosure of protected information from an officer or another person; and
  - (b) the disclosure would be in contravention of this Division; and
  - (c) the first person knows or ought reasonably to know that the information is protected information;the first person is guilty of an offence (whether or not any protected information is actually disclosed) punishable on conviction by imprisonment for a term not exceeding 2 years.
- (2) Strict liability applies to paragraph (1)(b).

**166 Offence: offering to supply protected information**

- (1) A person must not offer to supply (whether to a particular person or otherwise) information about another person, knowing the information to be protected information.

Penalty: Imprisonment for 2 years.

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- (2) A person must not hold himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person, knowing the information to be protected information.

Penalty: Imprisonment for 2 years.

- (3) Nothing in subsection (1) or (2) makes an officer acting in the performance or exercise of his or her powers, duties or functions under the family assistance law guilty of an offence.

**167 Protection of certain documents etc. from production to court etc.**

An officer must not, except for the purposes of the family assistance law, be required:

- (a) to produce any document in his or her possession; or
  - (b) to disclose any matter or thing of which he or she had notice; because of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law, to:
    - (c) a court; or
    - (d) a tribunal; or
    - (e) an authority; or
    - (f) a person;
- having power to require the production of documents or the answering of questions.

**168 Disclosure of information by Secretary**

- (1) Despite sections 164 and 167, the Secretary may:
- (a) if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases—disclose information acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law to such persons and for such purposes as the Secretary determines; or
  - (b) disclose any such information:

- (i) to the Secretary of a Department of State of the Commonwealth or to the head of an authority of the Commonwealth for the purposes of that Department or authority; or
  - (ii) to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it; or
  - (iii) to the Chief Executive Centrelink for the purposes of a centrelink program; or
  - (iv) to the Chief Executive Medicare for the purposes of a medicare program.
- (2) In giving certificates for the purposes of paragraph (1)(a), the Secretary must act in accordance with guidelines (if any) from time to time in force under section 169.
- (3) In disclosing information under paragraph (1)(b), the Secretary must act in accordance with guidelines (if any) from time to time in force under section 169.
- (4) In spite of any other provision of this Part, the Secretary may disclose information of a kind referred to in paragraph (a) or (b) of the definition of ***protected information*** in subsection 3(1) to a person who is the payment nominee or correspondence nominee, within the meaning of Part 8B, of the person to whom the information relates (the ***principal***) as if the nominee were the principal.

### **169 Guidelines for exercise of Secretary's disclosure powers**

The Minister may, by legislative instrument, make guidelines for the exercise of either or both of the following:

- (a) the Secretary's power to give certificates for the purposes of paragraph 168(1)(a);
- (b) the Secretary's power under paragraph 168(1)(b).

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**169A Disclosure of information—child care tax offset**

- (1) The Secretary may, for the purposes of the administration of the child care tax offset provided by Subdivision 61-IA of the *Income Tax Assessment Act 1997*, give the Commissioner of Taxation information about people, including their tax file numbers, acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law.
- (2) Information (including tax file numbers) given to the Commissioner of Taxation under subsection (1) may be used only for the purposes of the administration of the child care tax offset provided by Subdivision 61-IA of the *Income Tax Assessment Act 1997*.
- (3) This section does not limit the powers of the Secretary under section 168.

**170 Officer's declaration**

An officer must make a declaration in a form approved by the Minister or the Secretary if required to do so by the Minister or the Secretary for the purposes of the family assistance law.

## **Division 3—False statements etc.**

### **Subdivision A—Preliminary**

#### **171 Application of Division**

This Division extends to:

- (a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and
- (b) all persons, irrespective of their nationality, who are making, or have made, a claim for family assistance; and
- (c) all persons, irrespective of their nationality, who have become entitled to, or been paid, family assistance; and
- (d) all persons, irrespective of their nationality, in respect of whom determinations of conditional eligibility for child care benefit by fee reduction are in force; and
- (e) all persons, irrespective of their nationality, who are eligible for child care benefit by fee reduction under section 47 of the Family Assistance Act.

### **Subdivision B—Offences**

#### **172 False statement in connection with claim**

A person contravenes this section if:

- (a) the person makes a statement; and
- (b) the statement is false or misleading; and
- (c) the person is reckless as to whether the statement is false or misleading; and
- (d) the statement is made in connection with, or in support of, the person's or any other person's claim for family assistance.

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**173 False statement to deceive**

- (1) A person contravenes this section if:
- (a) the person makes a statement; and
  - (b) the statement is false or misleading; and
  - (c) the person is reckless as to whether the statement is false or misleading; and
  - (d) the person is reckless as to whether the statement:
    - (i) deceives, or might deceive, an officer or an approved child care service exercising powers, or performing duties or functions, under the family assistance law; or
    - (ii) affects, or might affect, an entitlement to a payment of family assistance under the family assistance law; or
    - (iii) affects, or might affect, the rate of a payment of family assistance under the family assistance law; or
    - (iv) affects, or might affect, conditional eligibility for child care benefit by fee reduction, a weekly limit of hours, a CCB % or a schooling % applicable to a person, or the rate at which or amount in which fee reduction is applicable; or
    - (v) affects, or might affect, a person's eligibility for the special grandparent rate for a child; or
  - (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
  - (vi) affects, or might affect, eligibility for child care rebate under subsection 57EA(1) of the Family Assistance Act, or the amount of child care rebate applicable under Subdivision AA of Division 4AA of Part 3.
- (2) For the purposes of an offence against section 177 that relates to a contravention of subsection (1) of this section, strict liability applies to the following elements of the offence:
- (a) the element that a power, duty or function is a power, duty or function under the family assistance law;

- (b) the element that a payment is a payment under the family assistance law.

#### **174 False statement or document**

- (1) A person contravenes this subsection if:
  - (a) the person makes a statement or presents a document to an officer or an approved child care service exercising powers, or performing duties or functions, under the family assistance law; and
  - (b) the statement or document is false in any particular; and
  - (c) the person is reckless as to whether the statement or document is false in any particular.
- (2) For the purposes of an offence against section 177 that relates to a contravention of subsection (1) of this section, strict liability applies to the element of the offence that a power, duty or function is a power, duty or function under the family assistance law.

#### **175 Obtaining payment where no entitlement**

- A person contravenes this section if:
- (a) the person obtains a payment of family assistance (other than child care rebate for a week under Subdivision AAB or for a quarter under Subdivision AA of Division 4AA of Part 3); and
  - (b) the person does so knowing that he or she is:
    - (i) not entitled to the payment; or
    - (ii) only entitled to part of the payment.

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

- A person contravenes this section if:
- (a) the person obtains a payment of child care rebate for a week under Subdivision AAB or for a quarter under Subdivision AA of Division 4AA of Part 3; and
  - (b) the person does so knowing that he or she is:

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- (i) ineligible for the payment; or
- (ii) only eligible for part of the payment.

**175A Obtaining fee reductions where no conditional eligibility or eligibility**

- (1) An individual must not obtain fee reductions if the individual has not been determined to be conditionally eligible for child care benefit by fee reduction.
- (2) An individual must not obtain an incorrect amount of fee reductions.
- (3) If an approved child care service is not eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for care provided by the service to a child at risk, the service must not, in respect of the child, obtain a payment under section 219Q or subsection 219QA(2) in respect of fee reduction.
- (3A) For the purposes of an offence against section 177 that relates to a contravention of subsection (3) of this section, strict liability applies to the following elements of the offence:
  - (a) the element that a child care service's lack of eligibility for a child care benefit is a lack of eligibility under section 47 of the Family Assistance Act;
  - (b) the element that a payment in respect of fee reduction is paid to the service under section 219Q or subsection 219QA(2).
- (4) If an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for care provided by the service to a child at risk, the service must not obtain an incorrect amount of a payment under section 219Q or section 219QA in respect of fee reduction.
- (4A) For the purposes of an offence against section 177 that relates to a contravention of subsection (4) of this section, strict liability applies to the following elements of the offence:



- (a) the element that a child care service's eligibility for a child care benefit is an eligibility under section 47 of the Family Assistance Act;
- (b) the element that an incorrect amount of a payment is an incorrect amount of a payment under section 219Q or subsection 219QA(2).

### **176 Payment or fee reductions obtained by fraud**

- (1) A person contravenes this subsection if:
  - (a) the person obtains:
    - (i) a payment of family assistance; or
    - (ii) fee reductions; or
    - (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
    - (iv) in the case of an approved child care service—a payment under section 219RD (business continuity payments); and
  - (b) the person does so:
    - (i) by means of impersonation; or
    - (ii) by fraudulent means.
- (2) For the purposes of an offence against section 177 that relates to a contravention of subsection (1) of this section, strict liability applies to:
  - (a) the element of the offence that a payment in respect of fee reduction is paid to the service under section 219Q or subsection 219QA(2); and
  - (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
  - (b) the element of the offence that an enrolment advance is paid under section 219RA; and

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- (c) the element of the offence that a payment is made under section 219RD.
- (3) A person contravenes this subsection if:
  - (a) the person makes a statement; and
  - (b) the statement is false or misleading; and
  - (c) the person is reckless as to whether the statement is false or misleading; and
  - (d) as a result the person obtains:
    - (i) a payment of family assistance; or
    - (ii) fee reductions; or
    - (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
    - (iv) in the case of an approved child care service—a payment under section 219RD (business continuity payments).
- (4) For the purposes of an offence against section 177 that relates to a contravention of subsection (3) of this section, strict liability applies to:
  - (a) the element of the offence that a payment in respect of fee reduction is paid to the service under section 219Q or subsection 219QA(2); and
  - (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
  - (b) the element of the offence that an enrolment advance is paid under section 219RA; and
  - (c) the element of the offence that a payment is made under section 219RD.

## **Subdivision C—Penalties**

### **177 Penalty for contravention of Subdivision B**

A person who contravenes a provision of Subdivision B is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

### **178 Repayment of family assistance**

- (1) If a person is convicted of an offence against section 177, the court may:
  - (a) impose a penalty in respect of the offence; and
  - (b) order the person to pay the Commonwealth an amount equal to any amount paid by way of family assistance, fee reductions, payments in respect of fee reduction, payments in respect of weekly child care rebate, enrolment advances or payments under section 219RD because of the act, failure or omission that constituted the offence.
- (2) In spite of anything in this Act or any other law, a person is not to be imprisoned for failing to pay an amount payable to the Commonwealth under paragraph (1)(b).
- (3) For the purposes of this section, an amount of family assistance is taken to be paid to a person if that amount is applied against a liability of that person or another person for:
  - (a) a primary tax; or
  - (b) a debt under this Act or the *Social Security Act 1991*.

### **179 Penalty where person convicted of more than one offence**

- (1) Subject to subsection (2), if a person is convicted of more than one offence against section 177, the court may, if it thinks fit, impose one penalty for all the offences.

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- (2) A single penalty imposed under subsection (1) must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed for each offence.

**Subdivision D—Procedural matters**

**180 Joining of charges**

Charges against the same person for a number of offences against section 177 may be joined in one complaint, information or declaration if those charges:

- (a) are founded on the same facts; or
- (b) form a series of offences of the same or a similar character; or
- (c) are part of a series of offences of the same or a similar character.

**181 Particulars of each offence**

If 2 or more charges are included in the same complaint, information or declaration, particulars of each offence charged are to be set out in a separate paragraph.

**182 Trial of joined charges**

If charges are joined, the charges are to be tried together unless:

- (a) the court considers it just that any charge should be tried separately; and
- (b) the court makes an order to that effect.

**183 Evidentiary effect of Secretary's certificate**

- (1) For the purposes of paragraph 178(1)(b), a certificate signed by the Secretary is evidence of the matters specified in the certificate.
- (2) The certificate may specify:
  - (a) the person to whom an amount of family assistance has been paid because of an act, a failure or an omission for which the

person or another person has been convicted of an offence  
against section 177; and

- (b) the amount paid; and
- (c) the act, failure or omission that caused the amount to be paid.

#### **184 Enforcement of court certificate as judgment**

If:

- (a) a court makes an order under paragraph 178(1)(b); and
- (b) the clerk or other appropriate officer of the court gives a certificate specifying:
  - (i) the amount ordered to be paid to the Commonwealth;  
and
  - (ii) the person by whom the amount is to be paid; and
- (c) the certificate is filed in a court (which may be the court that made the order) that has civil jurisdiction to the extent of the amount to be paid;

the certificate is enforceable in all respects as a final judgment of the court in which the certificate is filed.

## **Part 7—Liability of certain employers and principals for offences**

### **Division 1—Interpretation**

#### **185 State of mind of a person**

A reference in this Part to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

#### **188 Offence**

A reference in this Part to an offence against this Act includes a reference to:

- (a) an offence against this Act that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or
- (b) an offence created by:
  - (i) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
  - (ii) section 6 of the *Crimes Act 1914*;that relates to this Act.

## **Division 3—Proceedings against non-corporations**

### **191 State of mind of individual**

If, in proceedings for an offence against this Act in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:

- (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
- (b) the employee or agent had that state of mind.

### **192 Conduct of employee or agent**

If:

- (a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and
- (b) the conduct is within the scope of the employee's actual or apparent authority;

the conduct is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions, and exercised due diligence, to avoid the conduct.

### **193 Exclusion of imprisonment as penalty for certain offences**

Despite any other provision of this Act, if:

- (a) a person is convicted of an offence; and
- (b) the person would not have been convicted if sections 191 and 192 had not been in force;

the person is not liable to be punished by imprisonment for that offence.

## **Part 8—Approval of child care services and registered carers**

### **Division 1—Approval of child care services**

#### **194 Application for approval**

*Who may apply*

- (1) A person who operates, or proposes to operate, any of the following kinds of child care service:
  - (a) a centre based long day care service;
  - (b) a family day care service;
  - (ba) an in-home care service;
  - (c) an occasional care service;
  - (d) an outside school hours care service;may apply to the Secretary to have the service approved for the purposes of the family assistance law.

*Exception—person is a registered carer*

- (2) However, a person cannot make an application under subsection (1) if the person is a registered carer.

*Form of application*

- (3) An application under subsection (1) must:
  - (a) be made in a form and manner required by the Secretary; and
  - (b) state which of the kinds of service mentioned in subsection (1) the service is; and
  - (c) contain any information required by the Secretary; and
  - (d) be accompanied by any documents required by the Secretary; and
  - (e) in the case where a determination under section 206 is in force—be accompanied by the fee (if any) prescribed by the



regulations for the making of applications under subsection (1).

## **195 Approval of child care services**

### *Approval*

- (1) The Secretary must approve a child care service for the purposes of the family assistance law if the Secretary is satisfied that:
  - (a) an application has been made in accordance with section 194 to have the service approved; and
  - (b) the service is of the kind stated in the application; and
  - (ba) if the operator of the service is a large long day care centre operator—the operator is financially viable and is likely to remain so; and
  - (c) the service satisfies any eligibility rules applicable to the service under paragraph 205(1)(a); and
  - (d) in the case where the service is covered by a determination in force under section 206—if the service were to be approved, child care places would be allocated to the service under section 207.
- (1A) For the purpose of paragraph (1)(ba), in determining whether the operator of the child care service is financially viable, and likely to remain so, the Secretary must have regard to any financial information provided under section 219GA in relation to the operator. The Secretary may take into account any other matters he or she considers relevant.
- (3) If the Secretary approves the service, the Secretary must give the applicant a certificate of approval, stating:
  - (a) the kind of approved child care service; and
  - (b) the day from which the approval operates.
- (4) For the purposes of paragraph (3)(b), the day from which the approval is expressed to operate:
  - (a) may be a day before the day the Secretary approves the service; but

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- (b) must not be a day that is earlier than 6 months before the day on which the application for the approval was made.

*Refusal*

- (5) The Secretary must refuse to approve a child care service for the purposes of the family assistance law if the Secretary is not satisfied of one or more of the matters referred to in subsection (1).
- (6) If the Secretary refuses to approve a child care service for the purposes of the family assistance law, the Secretary must give the applicant notice of:
  - (a) the refusal; and
  - (b) the reasons for the refusal; and
  - (c) the applicant's rights under this Act to seek a review of the refusal decision.

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

For the purposes of the family assistance law:

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

**196 Conditions for continued approval—compliance with rules and laws**

*Eligibility requirements*

- (1) It is a condition for the continued approval of an approved child care service that the service satisfies any eligibility rules that are from time to time applicable to the service under paragraph 205(1)(b).

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*Compliance with family assistance law*

- (2) It is a condition for the continued approval of an approved child care service that the service not contravene an obligation imposed on the service by the family assistance law (whether or not such a contravention constitutes an offence or is of a civil penalty provision).

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

- (2A) It is a condition for the continued approval of an approved child care service that the service cooperate with a person exercising powers under sections 219K, 219KA, 219L and 219LA.
- (2B) It is a condition for the continued approval of an approved child care service that the operator of the service cooperate with a person exercising powers under section 219KA.

*Compliance with Commonwealth, State and Territory laws*

- (3) It is a condition for the continued approval of an approved child care service that:
- (a) the operation of the service; and
  - (b) the provision of care by the service; and
  - (c) the construction of the premises of the service; and
  - (d) the equipment at the premises of the service;
- comply with all applicable requirements imposed by a law of the Commonwealth or a law of the State or Territory in which the service operates.

**196A Conditions for continued approval—financial viability**

It is a condition for the continued approval of an approved child care service that the operator of the service, if a large long day care centre operator, be likely to remain financially viable.

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**197 Conditions for continued approval—child care places limit not to be exceeded**

It is a condition for the continued approval of an approved child care service that, if the service is covered by a determination in force under section 206:

- (a) child care places are allocated to the service under section 207; and
- (b) the service does not provide child care places in excess of the number of any child care places allocated to the service under section 207.

**198 Conditions for continued approval—compliance with conditions imposed by Minister**

- (1) It is a condition for the continued approval of an approved child care service that the service complies with any instrument in force under this section.

*Imposition of other conditions*

- (2) The Minister may, by legislative instrument, impose conditions for the continued approval of a class of approved child care services.

**199 Conditions for continued approval—compliance with conditions imposed by Secretary**

- (1) It is a condition for the continued approval of an approved child care service that the service complies with any conditions imposed under subsection (2).
- (2) The Secretary may, by notice to a particular approved child care service, impose conditions for the continued approval of the service.

**200 Consequences of breach of conditions for continued approval***Sanctions*

- (1) If the Secretary is satisfied that an approved child care service has not complied, or is not complying, with a condition for the continued approval of the service, the Secretary may do one or more of the following:
- (a) vary the conditions for the continued approval of the service imposed under subsection 199(2);
  - (b) impose additional conditions for the continued approval of the service under subsection 199(2);
  - (c) reduce the number of any child care places allocated to the service under section 207;
  - (d) suspend the service's approval;
  - (e) cancel the service's approval;
  - (f) withhold the payment of enrolment advances to the service under section 219RA;
  - (g) require the remittal to the Secretary of enrolment advances paid to the service under section 219RA;
  - (h) suspend, for a maximum of 3 weeks, payment under section 219Q or subsection 219QA(2) in respect of fee reduction;
  - (i) suspend, for a maximum of 3 weeks, payment under section 219QC or subsection 219QD(2) in respect of child care rebate.

*Notice of sanction*

- (2) If the Secretary does one or more of the things mentioned in paragraphs (1)(a) to (h), the Secretary must give notice to the service that the Secretary has done so. The notice must specify the day, no earlier than the day on which the notice is given, on which the sanction takes effect.

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*Revocation of suspension*

- (3) If the Secretary suspends the approval of an approved child service, the Secretary may at any time, by notice to the service, revoke the suspension with effect from the day specified in the notice.

*Revocation of enrolment advance withholding*

- (3A) If the Secretary withholds the payment of enrolment advances to the service, the Secretary may at any time, by notice to the service, revoke the withholding with effect from the day specified in the notice.

*Revocation of suspension of payment in respect of fee reduction*

- (3B) If the Secretary suspends payment in respect of fee reduction, the Secretary may at any time, by notice to the service revoke the suspension. If the suspension is revoked, all payments under section 219Q or subsection 219QA(2) that would have been paid but for the suspension must be paid.

*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.

*Secretary to have regard to any Ministerial determination*

- (4) The Secretary must have regard to any determination under subsection (5) in exercising a power under subsection (1) or (3).

*Ministerial determination*

- (5) The Minister may, by legislative instrument, determine:

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- (a) factors to be taken into account by the Secretary in applying subsection (1) to approved child care services; or
- (b) factors to be taken into account by the Secretary in specifying the date of effect of a revocation of a suspension under subsection (3).

**201 Procedure for imposing a sanction**

- (1) Before doing a thing mentioned in paragraphs 200(1)(a) to (i), the Secretary must give a notice to the service concerned that:
  - (a) states that the Secretary is considering doing the thing; and
  - (b) sets out the grounds for doing the thing; and
  - (c) summarises the evidence and other material on which those grounds are based; and
  - (d) summarises the effect of the doing of the thing (including the review process provided for under this Act) on a person's entitlement to child care benefit in respect of child care provided by the service; and
  - (e) invites the service to make written submissions to the Secretary, within 28 days, stating why the thing should not be done.
- (2) The Secretary must have regard to any submissions made by the service as mentioned in paragraph (1)(e) in deciding whether to do the thing.

**201A Immediate suspension for certain breaches**

- (1) The Secretary may, by notice given to an approved child care service, suspend the approval of the service if the Secretary reasonably believes that:
  - (a) the service is not complying with all applicable requirements imposed by a law of the Commonwealth, or of the State or Territory in which the service is situated, relating to child care; or

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- (b) there is an imminent threat to the health or safety of a child, or children, because of the care provided by the service to the child or children; or
  - (c) due to urgent circumstances, it is no longer appropriate for the service to provide child care.
- (2) The Secretary must, in the notice:
  - (a) specify a day, not earlier than the day on which the notice is given, on which the suspension is to take effect; and
  - (b) specify the grounds upon which the Secretary has suspended the service's approval; and
  - (c) inform the service of its rights under this Act to seek a review of the decision to suspend the service's approval.
- (3) If the Secretary suspends the approval of an approved child care service, the Secretary may at any time, by notice to the service, revoke the suspension with effect from the day specified in the notice.

**201B Publicising sanctions or suspensions**

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



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

**202 Cancellation***Scope of section*

- (1) This section sets out circumstances, in addition to those in section 200, in which the Secretary may, or must, cancel the approval of an approved child care service.

*Cancellation on request*

- (2) The Secretary may cancel an approved child care service's approval if the service requests the Secretary in writing to do so.

*Cancellation if service should not have been approved*

- (3) The Secretary must cancel an approved child care service's approval if the Secretary is satisfied that the service should not have been approved.

*Cancellation if service fails to provide child care for 3 continuous months*

- (4) The Secretary must cancel an approved child care service's approval if the service fails to provide child care for a continuous period of 3 months, unless the Secretary is satisfied that, because

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of special circumstances affecting the service, the approval should not be cancelled.

- (4A) The Secretary must cancel an approved child care service's approval if the service ceases to be operated by the person on whose application the approval was granted.

*Notice to service*

- (5) If the Secretary cancels an approved child care service's approval under this section, the Secretary must give notice to the service that the Secretary has done so.

*Secretary to have regard to any Ministerial determination*

- (6) The Secretary must have regard to any determination under subsection (7) in exercising a power under subsection (2).

*Ministerial determination*

- (7) The Minister may, by legislative instrument, determine factors to be taken into account by the Secretary in deciding whether to grant a request under subsection (2).

**203 Procedure for cancellation**

- (1) Before cancelling an approved child care service's approval under subsection 202(3) or (4), the Secretary must give a notice to the service that:
- (a) states that the Secretary is considering cancelling the service's approval; and
  - (b) sets out the grounds on which the cancellation is being considered; and
  - (c) summarises the evidence and other material on which those grounds are based; and
  - (d) summarises the effect of the notice (including the review processes provided for under this Act) on a person's entitlement to child care benefit in respect of child care provided by the service; and

- (e) invites the service to make written submissions to the Secretary, within 28 days, stating why the approval should not be cancelled.
- (2) The Secretary must have regard to any submissions made by the service as mentioned in paragraph (1)(e) in deciding whether to cancel the approval.

**204 Notification of matters affecting eligibility for approval**

- (1) If an approved child care service has:
  - (a) after the service was approved, become aware of any matter existing when the service was approved as a result of which the service should not have been approved; or
  - (b) become aware of any matter occurring after the service was approved as a result of which a condition for the continued approval of the service has not been complied with;the service must notify the Secretary in writing of the matter as soon as practicable after becoming aware of it.

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

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

Penalty: 20 penalty units.

**204A Notifying individuals about effect on entitlement to child care benefit of actions by approved child care services***Breach of conditions by approved child care service*

- (1) If the Secretary is satisfied that an approved child care service:
  - (a) has not complied with a condition for the continued approval of the service; or
  - (b) is not complying with a condition for the continued approval of the service;

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the Secretary may give a notice to an individual whose entitlement to be paid child care benefit may be affected if the Secretary were to suspend or cancel the service's approval because of the Secretary being so satisfied.

- (2) A notice under subsection (1) must:
- (a) state that the Secretary is satisfied that the service has not complied, or is not complying, with a condition for the continued approval of the service; and
  - (b) set out the effect on that entitlement if the Secretary were to suspend or cancel the service's approval because of the Secretary being so satisfied.

A notice under subsection (1) may set out any other information that the Secretary thinks relevant.

*Suspension or cancellation of approved child care service's approval*

- (3) If the Secretary suspends or cancels an approved child care service's approval, the Secretary may give a notice to an individual whose entitlement to be paid child care benefit may be affected because of the suspension or cancellation.
- (4) A notice under subsection (3) must:
- (a) state that the Secretary has suspended or cancelled the service's approval; and
  - (b) set out the effect on that entitlement because of the suspension or cancellation.

A notice under subsection (3) may set out any other information that the Secretary thinks relevant.

*Form and manner or way of notice*

- (5) A notice under this section must be in the form, and in the manner or way, approved by the Secretary.

## **205 Eligibility rules for child care services**

### *Eligibility rules*

- (1) The Minister may, by legislative instrument, determine:
  - (a) rules relating to the eligibility of child care services to become approved for the purposes of the family assistance law; and
  - (b) rules relating to the eligibility of those services to continue to be so approved.

### *Eligibility rules may deal with who may operate a service and change of operator of a service*

- (2) Without limiting subsection (1), rules made under that subsection may specify requirements:
  - (a) to be met by the operators and staff of services, including requirements relating to individual suitability to provide child care; and
  - (b) to be met by the operator of a service if the operation of the service is proposed to be transferred from one operator to another.

### *Exemption from eligibility rules*

- (3) The Secretary may also determine that one or more of the rules do not apply to:
  - (a) specified child care services; or
  - (b) child care services of a specified class or of specified classes.
- (4) A determination under paragraph (3)(b) is a legislative instrument.

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**206 Guidelines for allocation of child care places to approved child care services**

The Minister may, by legislative instrument, determine guidelines about the following:

- (a) procedures relating to the allocation of child care places to approved child care services;
- (b) matters to be taken into account in working out the number (if any) of child care places to be allocated to approved child care services;
- (c) the maximum number of places that can be allocated to approved child care services in a specified class;
- (d) any other matters to be taken into account in making such an allocation;
- (e) procedures relating to the reduction under section 207A of the number of child care places allocated to approved child care services;
- (f) matters to be taken into account in working out the number of child care places by which the number of child care places allocated to approved child care services may be reduced under section 207A;
- (g) any other matters to be taken into account in reducing, or deciding whether to reduce, under section 207A the number of child care places allocated to approved child care services.

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

**207 Secretary to allocate child care places**

*Initial allocation of child care places*

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

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*Additional allocation of child care places*

- (2) If an approved child care service is allocated child care places under subsection (1), the service may apply to the Secretary for an additional allocation of child care places.
- (3) The application must:
  - (a) be made in a form and manner required by the Secretary; and
  - (b) contain any information required by the Secretary; and
  - (c) be accompanied by any documents required by the Secretary; and
  - (d) be accompanied by the fee (if any) prescribed by the regulations for the making of applications under subsection (2).
- (4) The Secretary must, in accordance with the determination under section 206, decide whether or not to grant the application.
- (5) The Secretary must give the applicant notice of the decision under subsection (4). If the Secretary decides to grant the application, the Secretary must allocate the additional child care places to the applicant.

**207A Reduction of allocation of child care places by unused or unusable places**

- (1) The Secretary may, in accordance with a determination under section 206, reduce the number of child care places allocated to an approved child care service if:
  - (a) that number exceeds the number of child care places provided by the service; or
  - (b) that number exceeds the number of child care places that the service is, under a law of a State or Territory, licensed to provide.

The reduction must not be greater than the excess.

- (2) Before the reduction, the Secretary must (unless subsection (3) applies) give a notice to the service that:

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- (a) states that the Secretary proposes to make the reduction; and
  - (b) states the number of places by which the Secretary proposes to reduce the number of places allocated to the service; and
  - (c) invites the service to make written submissions to the Secretary about the proposed reduction; and
  - (d) is not inconsistent with a determination under section 206.
- (3) If the service has informed the Secretary in writing that the number of child care places allocated to the service may be reduced, the Secretary may give the service a notice under subsection (2) before making the reduction.
- (4) The Secretary must have regard to any submissions made by the service in deciding whether to make the reduction.
- (5) If the Secretary reduces under this section the number of child care places allocated to an approved child care service, the Secretary must give the service a notice that states:
  - (a) the number of places by which the number of places allocated to the service is reduced; and
  - (b) the day on which the reduction takes effect, which must not be earlier than the day on which the notice is given; and
  - (c) the number of places allocated to the service, taking account of the reduction.

**207B Effect of reduction in allocation of child care places**

- (1) This section explains the effect of a reduction under this Division of the number of child care places allocated to an approved child care service.

Note: A reduction may be made under section 200 or section 207A.

- (2) This Division has effect after the reduction as if there had not been allocated to the service the number of places by which the number of places allocated to the service was reduced.

Note: This affects the operation of paragraph 197(b) for the service. It could also affect the making of allocations of child care places to other approved child care services after the reduction.



**Division 2—Approval as registered carers****209 Application for approval as registered carer***Who may apply*

- (1) An individual who provides care, or proposes to provide care, for a child or children may apply to the Secretary to be approved as a registered carer for the purposes of the family assistance law.

*Exception—individual operates child care service etc.*

- (2) However, an individual cannot make an application under subsection (1) if the individual:
- (a) operates an approved child care service; or
  - (b) operates a child care service that is receiving financial assistance from the Commonwealth in connection with its operational costs, where the provision of that assistance is administered by the Department; or
  - (c) provides child care under a contract with an approved family day care service; or
  - (d) provides child care under a contract with an approved in-home care service.

*Form of application*

- (3) An application under subsection (1) must:
- (a) be made in a form and manner; and
  - (b) contain any information; and
  - (c) be accompanied by any documents;
- required by the Secretary.

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**210 Approval of registered carers**

*Registration*

- (1) The Secretary must approve an individual as a registered carer for the purposes of the family assistance law if:
  - (a) the individual has made an application in accordance with section 209; and
  - (b) the individual either:
    - (i) meets the age requirement in subsection (2); or
    - (ii) has a qualification of a kind specified in a determination under subsection (4); and
  - (c) the Secretary is satisfied that the applicant meets the requirements of section 211.

*Age requirement*

- (2) For the purposes of subparagraph (1)(b)(i), an individual meets the age requirement if:
  - (a) in the case where a determination under subsection (3) is in force—the individual has turned the age specified in the determination; or
  - (b) in any other case—the individual has turned 18.
- (3) The Minister may, by legislative instrument, determine that an individual must have turned the age specified in the determination for the individual to be eligible to be approved as a registered carer.

*Qualification requirement*

- (4) The Minister may, by legislative instrument, determine that an individual who does not meet the age requirement in subsection (2) must have a qualification of a kind specified in the determination for the individual to be eligible to be approved as a registered carer.

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*Certificate of approval of registration*

- (5) If the Secretary approves an applicant as a registered carer, the Secretary must give the applicant a certificate of approval.

**211 Statement that applicant has tax file number**

- (1) An applicant meets the requirements of this section if:
- (a) the applicant has a tax file number; and
  - (b) the application contains a statement to that effect.
- (2) The Secretary must accept a statement made under paragraph (1)(b) unless the Commissioner of Taxation has informed the Secretary that the applicant does not have a tax file number.
- (3) This section does not authorise the Secretary:
- (a) to require or request a person to quote the person's tax file number; or
  - (b) to seek or obtain, in any way, a person's tax file number; or
  - (c) to record a person's tax file number.
- (4) The Secretary may ask the Commissioner of Taxation to provide information on whether an applicant has a tax file number.

**212 When approval comes into force**

- (1) An approval of an applicant as a registered carer is taken to have come into force on the later of the following days:
- (a) the day on which, in the Secretary's opinion, the applicant was first eligible to be approved;
  - (b) the day occurring 12 months before the day on which the application for approval was made.
- (2) Subject to this Division, an approval remains in force at all times after it came into force.
- (3) If the Secretary is satisfied that the applicant was not eligible to be approved during a period occurring after the day the applicant's

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approval came into force but before the day on which the application was made, the Secretary may determine that the approval is taken not to have been in force during that period.

### **213 Conditions of continued approval**

#### *Compliance with child care laws*

- (1) It is a condition for the continued approval of an individual as a registered carer that the provision of care by the individual complies with all applicable requirements imposed by a law of the Commonwealth, or of the State or Territory in which the care is provided, relating to child care.

#### *Conditions imposed by notice on individual*

- (2) The Secretary may, by notice to a particular registered carer, impose other conditions for the continued approval of the carer.

#### *Conditions imposed by Minister*

- (3) The Minister may, by legislative instrument, impose other conditions for the continued approval of individuals as registered carers.

### **214 Consequences of breach of conditions for continued approval**

#### *Sanctions*

- (1) If the Secretary is satisfied that a registered carer has not complied, or is not complying, with a condition for the continued approval of the carer, the Secretary may do one or more of the following:
  - (a) vary the conditions for the continued approval of the carer imposed under subsection 213(2);
  - (b) impose additional conditions for the continued approval of the carer under subsection 213(2);
  - (c) suspend the carer's approval;
  - (d) cancel the carer's approval.

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*Notice of sanction*

- (2) If the Secretary does one or more of the things mentioned in paragraphs (1)(a) to (d), the Secretary must give notice to the registered carer that the Secretary has done so.

*Revocation of suspension*

- (3) If the Secretary suspends the approval of a registered carer, the Secretary may at any time, by notice to the carer, revoke the suspension with effect from the day specified in the notice.

*Secretary to have regard to any Ministerial determination*

- (4) The Secretary must have regard to any determination under subsection (5) in exercising a power under subsection (1) or (3).

*Ministerial determination*

- (5) The Minister may, by legislative instrument, determine:
- (a) factors to be taken into account by the Secretary in applying subsection (1) to registered carers; or
  - (b) factors to be taken into account by the Secretary in specifying the date of effect of a revocation of a suspension under subsection (3).

**215 Procedure for imposing a sanction**

- (1) Before doing a thing mentioned in paragraphs 214(1)(a) to (d), the Secretary must give a notice to the registered carer concerned that:
- (a) states that the Secretary is considering doing the thing; and
  - (b) sets out the grounds for doing the thing; and
  - (c) summarises the evidence and other material on which those grounds are based; and
  - (d) summarises the effect of the doing of the thing (including the review process provided for under this Act) on a person's entitlement to child care benefit in respect of child care provided by the carer; and

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- (e) invites the carer to make written submissions to the Secretary, within 28 days, stating why the thing should not be done.
- (2) The Secretary must have regard to any submissions made by the carer as mentioned in paragraph (1)(e) in deciding whether to do the thing.

**216 Cancellation**

*Scope of section*

- (1) This section sets out circumstances, in addition to those in section 214, in which the Secretary must cancel the approval of a registered carer.

*Cancellation on request*

- (2) The Secretary must cancel a registered carer's approval if the carer requests the Secretary in writing to do so.

*Cancellation if carer should not have been approved*

- (3) The Secretary must cancel a registered carer's approval if the Secretary is satisfied that the carer should not have been approved.

*Notice to service*

- (4) If the Secretary cancels a registered carer's approval under this section, the Secretary must give notice to the carer that the Secretary has done so.

**217 Procedure for cancellation under subsection 216(3)**

- (1) Before cancelling a registered carer's approval under subsection 216(3), the Secretary must give a notice to the carer that:
  - (a) states that the Secretary is considering cancelling the carer's approval; and

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- (b) sets out the grounds on which the cancellation is being considered; and
  - (c) summarises the evidence and other material on which those grounds are based; and
  - (d) summarises the effect of the notice (including the review processes provided for under this Act) on a person's entitlement to child care benefit in respect of child care provided by the carer; and
  - (e) invites the carer to make written submissions to the Secretary, within 28 days, stating why the approval should not be cancelled.
- (2) The Secretary must have regard to any submissions made by the carer as mentioned in paragraph (1)(e) in deciding whether to cancel the approval.

**218 Notification of matters affecting eligibility for approval**

If a registered carer has:

- (a) after the carer was approved, become aware of any matter existing when the carer was approved as a result of which the carer should not have been approved; or
- (b) become aware of any matter occurring after the carer was approved as a result of which a condition for the continued approval of the carer has not been complied with;

the carer must notify the Secretary in writing of the matter as soon as practicable after becoming aware of it.

Penalty: 20 penalty units.

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

### **Division 1—Obligations relating to approved child care services**

#### **Subdivision A—Obligations relating to enrolment**

##### **219A Obligation to notify Secretary of enrolment of a child by an individual**

- (1) An approved child care service must notify the Secretary of the enrolment of a child by an individual for care by the service.
- (2) A child is *enrolled* by an individual for care by an approved child care service if the individual enters into an arrangement with the service for the provision of care to the child by the service.

Note: If 2 individuals each enter into an arrangement for the provision of care to the child by the service, each enrolment will need to be notified to the Secretary.

- (3) If:
  - (a) an individual enters into an arrangement for the care of a child by an approved child care service (the *original arrangement*); and
  - (b) the enrolment of the child by the individual for care by the service ceases under section 219AD; and
  - (c) a session of care is, or sessions of care are, later provided to the child by the service under the original arrangement;the individual is taken to enter into a new arrangement for the provision of care to the child by the service at the time the session, or the first of the sessions, of care is provided.

Note: As a result, there will be a new enrolment which will need to be notified to the Secretary.



**219AA Obligation to notify Secretary of enrolment where approved child care service eligible**

- (1) If an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session or sessions of care provided by the service to a child at risk during a period:
  - (a) for which the service has given a certificate under subsection 76(2) of that Act; or
  - (b) during which a determination by the Secretary under subsection 81(4) of that Act in circumstances mentioned in subparagraph 81(4)(b)(ii) of that Act is in effect;the service must notify the Secretary of the enrolment of the child for care by the service.
- (2) The child is taken to be *enrolled* for care by the service when the session, or the first of the sessions, of care begins.

**219AB When and how notice to be given**

- (1) A notice under section 219A or 219AA must:
  - (a) be given in the form, and in the manner or way, approved by the Secretary; and
  - (b) contain any information required by the Secretary.
- (2) Subject to subsections (3) and (4), the notice must be given no later than:
  - (a) if the child is enrolled after the day on which the Secretary approves the service—the last day of the week immediately following the first week in which care is provided as a result of the enrolment; or
  - (b) if the child is enrolled before that day, but after the day from which the approval is expressed to operate—7 days after the day on which the approval is given.
- (3) If:
  - (a) a child care service's approval is suspended at the time a child is enrolled by an individual for care by the service; and

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(b) that suspension is later revoked;  
the service must give notice of the enrolment under subsection (1) within 7 days after the suspension is revoked.

(4) If:

- (a) a payment is made to the service under section 219RD in relation to a period (the **initial period**) notified to the service under subsection 219RD(4); and
- (b) the payment is made because of the service's failure to give a report under subsection 219N(1) or (2) for a week (the **applicable week**) in respect of one or more enrolments; and
- (c) for another enrolment referred to in subsection 219A(1) or 219AA(1), the last day of the period referred to in subsection (2) of this section:
  - (i) is the last day of the period applicable under subsection 219N(5) in relation to the applicable week; or
  - (ii) occurs during the initial period;

the notice of the other enrolment must be given no later than:

- (d) 7 days after the end of the initial period; or
- (e) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—7 days after the end of the last of those periods.

**Example:** A payment is made under section 219RD to an approved child care service for a week starting on the 22nd day of a month. This week is the initial period. Assume no other payments under that section are made to the service.

The payment is made because of the service failing to give a report under subsection 219N(1) (in respect of one or more enrolments) for the week starting on the first day of the month. This is the applicable week. Assume the last day for giving the report is the 21st day of the month.

For another enrolment, assume the last day for giving notice of the enrolment under subsection (2) of this section is the 21st day of the month or a day occurring in the initial period.

The notice in relation to the other enrolment must be given by the end of the week commencing on the 29th day of that month.

## **219AC Failure to notify**

### *Civil penalties*

- (1A) An approved child care service contravenes this subsection if:
- (a) the service is required to give notice under section 219A; and
  - (b) the service does not give the notice in accordance with that section and section 219AB.

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

- (1B) An approved child care service contravenes this subsection if:
- (a) the service is required to give notice under section 219AA; and
  - (b) the service does not give the notice in accordance with that section and section 219AB.

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

### *Offences*

- (1) An approved child care service commits an offence if:
- (a) the service is required to give notice under section 219A; and
  - (b) the service does not give the notice in accordance with that section and section 219AB.

Penalty: 60 penalty units.

- (2) An approved child care service commits an offence if:
- (a) the service is required to give notice under section 219AA; and
  - (b) the service does not give the notice in accordance with that section and section 219AB.

Penalty: 60 penalty units.

- (3) Subsections (1) and (2) are offences of strict liability.

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**219AD When enrolment ceases**

- (1) An enrolment of a child by an individual for care by an approved child care service ***ceases*** if:
  - (a) the arrangement under which care is provided ceases; or
  - (b) the service becomes eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session of care provided by the service to the child.
- (2) If a child is taken to be enrolled for care by an approved child care service under subsection 219AA(2), the enrolment is taken to have ***ceased***:
  - (a) if a certificate has been given in respect of the child under subsection 76(2) of the Family Assistance Act, either:
    - (i) when the period for which a certificate was given ends; or
    - (ii) if the Secretary makes a determination in circumstances mentioned in subparagraph 81(4)(b)(i) of that Act at the end of the 13 week period mentioned in that subparagraph—when that determination ceases to have effect; or
  - (b) if the Secretary makes a determination in circumstances mentioned in subparagraph 81(4)(b)(ii) of that Act—when that determination ceases to have effect.
- (3) The enrolment of a child for care by an approved child care service (whether by an individual or otherwise) is taken to have ***ceased*** if no session of care to the child, over a number of weeks specified by the Secretary by legislative instrument, is reported to the Secretary under section 219N.
- (4) Different periods may be specified in relation to different kinds of service or types of care.

**219AE Secretary to confirm receipt of notice**

- (1) Subject to subsection (2), the Secretary must provide confirmation to the approved child care service of the receipt of a notice given under section 219A or section 219AA.
- (2) The Secretary need not provide that confirmation if:
  - (a) the notice is given under section 219A in relation to the enrolment of a child by an individual; and
  - (b) the information contained in the notice is inconsistent with information contained in a claim, or in a document that accompanies a claim, made by an individual in relation to care provided by the service to the child.
- (3) The Secretary must include in the confirmation details of the record maintained by the Secretary in relation to the enrolment.
- (4) The confirmation must be given in the form, and in the manner or way, approved by the Secretary.

**219AF Obligation to update enrolment information**

- (1) If:
  - (a) an approved child care service gives notice of enrolment in accordance with sections 219A and 219AB, or sections 219AA and 219AB; and
  - (b) after the notice is given:
    - (i) information provided in the notice becomes incorrect; or
    - (ii) information becomes available that, had it been available at the time the notice was given, should have been included in the notice; or
    - (iii) information becomes available that, had it been available at the time the notice was given, would have required the notice to have been given in a different form;the service must notify the Secretary of the correction or available information.

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(1A) Subject to subsection (1B), the notice must be given within 7 days after the information becomes incorrect or becomes available.

(1B) If:

- (a) a payment is made to the service under section 219RD in relation to a period (the ***initial period***) notified to the service under subsection 219RD(4); and
- (b) the payment is made because of the service's failure to give a report under subsection 219N(1) or (2) for a week (the ***applicable week***); and
- (c) for any enrolment, the last day of the period referred to in subsection (1A) of this section:
  - (i) is the last day of the period applicable under subsection 219N(5) in relation to the applicable week; or
  - (ii) occurs during the initial period;

the notice must be given no later than:

- (d) 7 days after the end of the initial period; or
- (e) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—7 days after the end of the last of those periods.

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

**219AG Failure to update enrolment information**

*Civil penalty*

- (1A) An approved child care service contravenes this subsection if:
- (a) the service is required to notify the Secretary of a correction or available information under section 219AF; and
  - (b) the service does not notify the Secretary in accordance with that section.

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

*Offence*

- (1) An approved child care service commits an offence if:
  - (a) the service is required to notify the Secretary of a correction or available information under section 219AF; and
  - (b) the service does not notify the Secretary in accordance with that section.

Penalty: 60 penalty units.

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

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

**219B Obligation to pass on fee reductions where individual conditionally eligible**

- (1) This section applies if:
  - (a) a determination of conditional eligibility for child care benefit by fee reduction under section 50F is in force in respect of an individual (the *claimant*) and a child for a session of care provided by an approved child care service to the child in a week; and
  - (b) the Secretary calculates under section 50Z, or recalculates under section 50ZA, the amount of fee reduction applicable in respect of the session of care; and
  - (c) the Secretary has notified the service of the amount in accordance with subsection 50Z(3), or the recalculated amount in accordance with subsection 50ZA(2).
- (2) The service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to the claimant, except to the extent that the service is required to remit the amount to the Secretary under section 219QB.

Note 1: This amount must be passed on, even if the payment of amounts to the service in respect of fee reduction has been suspended under paragraph 200(1)(h).

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

**Division 1** Obligations relating to approved child care services

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

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

Penalty: 60 penalty units.

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

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

- (4) If:

- (a) the service reduces the amount by which it charges the claimant in respect of the session of care in anticipation of the Secretary's calculation of the amount applicable in respect of fee reduction for that session (the *anticipated fee reduction*); and
- (b) the service was an approved child care service at the time the session of care was provided;

the service is taken to have passed on to the claimant an amount equal to the anticipated fee reduction.

- (5) The amount is taken to have been passed on to the claimant on the day on which the Secretary notified the service of the amount in accordance with subsection 50Z(3) or 50ZA(2).

**219BA Obligation to pass on fee reductions where approved child care service eligible**

- (1) This section applies if:

- (a) an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session of care provided by the service to a child at risk; and
- (b) the Secretary calculates under section 50ZB, or recalculates under section 50ZC, the amount of child care benefit by fee reduction applicable in respect of the session of care; and



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- (c) the Secretary has notified the service of the amount in accordance with subsection 50ZB(3), or the recalculated amount in accordance with subsection 50ZC(2).
- (2) The service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to itself, except to the extent that the service is required to remit the amount to the Secretary under section 219QB.
- (4) If:
  - (a) the service reduces the amount it charges in respect of the session of care in anticipation of the Secretary's calculation of the amount applicable in respect of child care benefit by fee reduction for that session (the *anticipated fee reduction*); and
  - (b) the service was an approved child care service at the time the session of care was provided;the service is taken to have passed on to itself an amount equal to the anticipated fee reduction.
- (5) The amount is taken to have been passed on on the day on which the Secretary notified the service of the amount in accordance with subsection 50ZB(3) or 50ZC(2).

**219BB Obligation to charge no more than usual fee—rate determined by child care service or Secretary**

- (1) If:
  - (a) an approved child care service certifies under subsection 76(1) or (2) of the Family Assistance Act the hourly rate of fee reductions or child care benefit applicable for sessions of care provided by the service to a child during a period; or
  - (b) the Secretary determines under subsection 81(2), (3) or (4) of the Family Assistance Act the hourly rate of fee reductions or child care benefit for sessions of care an approved child care service provides to a child during a period;

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the service must ensure that the fees set for each of those sessions do not exceed the amount of the fees that the service would charge for the same session for the same child if that rate did not apply.

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

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

Penalty: 60 penalty units.

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

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

**219BC Obligation to charge no more than usual fee—special grandparent rate**

- (1) If a determination is in force under subsection 50T(1) with the effect that an individual is eligible for the special grandparent rate for a child in respect of a session of care provided to the child by an approved child care service, the service must ensure that the fees set for the session do not exceed the amount of the fees that the service would charge for the same session for the same child if that rate did not apply.

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

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

Penalty: 60 penalty units.

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

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

**219BD Obligation to charge no more than usual fee—Jobs Education and Training (JET) Child Care fee assistance**

- (1) If:

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- (a) a determination of conditional eligibility for child care benefit by fee reduction under section 50F is in force in respect of an individual and a child for a session of care provided by an approved child care service to the child; and
- (b) the service becomes aware that the individual is eligible to receive Jobs Education and Training (JET) Child Care fee assistance in relation to the session of care;

the service must ensure that the fees set for the session do not exceed the amount of the fees that the service would charge an individual who was not eligible for that assistance for the same session for the same child.

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

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

Penalty: 60 penalty units.

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

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

- (2) In subsection (1):

***Jobs Education and Training (JET) Child Care fee assistance*** means the payment of that name that is paid by the Commonwealth.

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

- (1) If:

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

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

the service must, before the end of one month starting on the day after the end of the statement period, give to the individual or some other person applicable under rules made under subsection (6) a statement setting out the matters specified in subsection (5) in relation to the session or sessions.

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

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

Penalty: 60 penalty units.

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

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

- (4) The statement periods for the service are as follows:
  - (a) the first statement period is the period of 3 months starting on the day (the *initial day*) that is:
    - (i) the day Schedule 2 to the *Family Assistance Legislation Amendment (Child Care) Act 2010* commences; or

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- (ii) if the Secretary approves the service under section 195 of this Act on a day later than the one described in subparagraph (i)—that later day;  
or, if before or during that 3-month period the service chooses a shorter period starting on the initial day, the shorter period;
  - (b) each of the later statement periods is:
    - (i) the period of 3 months starting on the day after the end of the immediately preceding statement period; or
    - (ii) if before or during that 3-month period the service chooses a shorter period starting on that day—the shorter period.
- (5) The matters required to be set out in a statement for a statement period are:
- (a) the start and end of the statement period; and
  - (b) the amount that would have been the fees payable for the session or sessions of care provided by the service to the child during the statement period if no amount had been passed on under section 219B for the session or sessions; and
  - (c) the amount of fee reductions required to be passed on under section 219B for the session or sessions; and
  - (d) any other information the Secretary specifies in the rules (if any) made under subsection (6).
- Note: The amount of fee reductions required to be set out in the statement may be a nil amount (see section 4A).
- (6) The Secretary may, by legislative instrument, make rules dealing with any of the following matters:
- (a) how statements should be given;
  - (b) to whom the statements should be given;
  - (c) for particular approved child care services or classes of approved child care services—different statement periods;
  - (d) other information that must be given in the statements.

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*Correcting or reissuing statements*

(7) If:

- (a) an approved child care service has, under subsection (1), given an individual or other person a statement (the ***earlier statement***) relating to a session or sessions of care provided by the service to a child in the statement period; and
- (b) under section 50ZA, the service is notified on a day (the ***notification day***) of a recalculated rate or amount in respect of any of those sessions;

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 matters specified in subsection (5) 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.

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

- (a) the service has, under subsection (1), given an individual or other person a statement (the ***earlier statement***) relating to a session or sessions of care provided by the service to a child in the statement period; and
- (b) under section 50ZA, the service is notified on a day (the ***notification day***) of a recalculated rate or amount in respect of any of those sessions; 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 matters specified in subsection (5) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

Penalty: 60 penalty units.

(9) Subsection (8) is an offence of strict liability.

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

## **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) 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*.

- (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

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- (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.



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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

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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**

**219F Obligation to keep records**

*Records must be kept*

- (1) An approved child care service must keep records as provided for in rules made under subsection (3) of information and events relating to the following matters:
- (a) an individual's eligibility for payment of child care benefit under this Act;
  - (b) the service's eligibility for payment of child care benefit under this Act in respect of a child at risk;
  - (c) the service's compliance with the conditions for the continued approval of approved child care services;
  - (d) any other matter the Secretary specifies in the record keeping rules made under paragraph (3)(b).

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

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

Penalty: 60 penalty units.

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

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

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

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

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

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

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

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- (ii) proceedings relevant to a previous application of this paragraph.

Penalty: 60 penalty units.

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

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

*Secretary must make rules*

- (3) The Secretary must, by legislative instrument, make rules relating to the keeping of records specifying:
- (a) the kinds of records an approved child care service must keep in relation to a matter listed in subsection (1); and
  - (b) other matters (if any) in respect of which an approved child care service must keep records.

*Meaning of offence against this Act*

- (4) In this section:

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

**219G Former approved child care service to keep records**

*Obligation to keep records*

- (1) A person who operates an approved child care service, immediately before the service ceases to be an approved child care service, must keep a record referred to in subsection (2) for the period for which the service would have been required, under section 219F, to keep the record if the service had not ceased to be an approved child care service.

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

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

Penalty: 60 penalty units.

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

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

*Type of records to be kept*

- (2) The records the person is required to keep are the records that the service was required to keep under section 219F immediately before the service ceased to be an approved child care service.

*Notification of premises at which records are kept*

- (3) The person must notify the Secretary in writing, within the period of 14 days beginning on the day after the cessation day, of the premises at which the records are kept on the day after the cessation day.

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

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

Penalty: 60 penalty units.

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

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

*Notification if premises changes*

- (4) If the premises at which the records are kept changes during the period:  
(a) beginning on the day after the cessation day; and

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(b) ending on the last day the person is required to keep the records under subsection (1);

the person must notify the Secretary in writing of the new premises within the period of 14 days beginning on the day the records begin to be kept at the new premises.

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

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

Penalty: 60 penalty units.

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

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

(5) In subsections (3) and (4):

**cessation day** means the day the service ceased to be an approved child care service.

**219GA Secretary may require financial information relating to large long day care centre operators**

(1) For the purposes of determining whether a large long day care centre operator is financially viable, and likely to remain so, the Secretary may, by notice in writing, require a person mentioned in subsection (2) to provide financial information in relation to a financial year if the Secretary has reason to believe that the person is capable of giving the information.

(2) For the purposes of subsection (1), the Secretary may give a notice to the following persons:

(a) the operator;

(b) a person who, at any time during the financial year, owns 15% or more of:

(i) the operator; or

(ii) if the operator consists of more than one person—any of those persons;

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- (c) a person who, at any time during the financial year, is entitled to receive 15% or more of the dividends paid by:
  - (i) the operator; or
  - (ii) if the operator consists of more than one person—any of those persons;
- (d) a person who, at any time during the financial year, is owed a debt by the operator;
- (e) a person who:
  - (i) acts, or is accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;in accordance with the directions, instructions or wishes of, or in concert with:
  - (iii) the operator; or
  - (iv) if the operator consists of more than one person—any of those persons;
- (f) a person who directs or instructs:
  - (i) the operator; or
  - (ii) if the operator consists of more than one person—any of those persons;to act in accordance with those directions or instructions;
- (g) a person, if:
  - (i) the operator; or
  - (ii) if the operator consists of more than one person—any of those persons;acts, or is accustomed to act, so as to give effect to the first-mentioned person's wishes;
- (h) a person with whom:
  - (i) the operator; or
  - (ii) if the operator consists of more than one person—any of those persons;acts, or is accustomed to act, in concert;

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- (i) a person, if:
    - (i) the operator; or
    - (ii) if the operator consists of more than one person—any of those persons;  
is intended or expected to act under a contract or an arrangement or understanding (whether formal or informal) so as to give effect to the first-mentioned person's directions, instructions or wishes;
  - (j) a person with whom:
    - (i) the operator; or
    - (ii) if the operator consists of more than one person—any of those persons;  
is intended or expected to act in concert under a contract or an arrangement or understanding (whether formal or informal).
- (3) The Secretary's notice must specify:
- (a) the financial information required; and
  - (b) the period within which, and the manner in which, the person must comply with the notice.
- (4) The Secretary may only require financial information that relates to any of the 5 financial years immediately preceding the date of the notice.
- (5) The period specified under paragraph (3)(b) must be reasonable in all the circumstances.
- (6) A person who is given a notice under this section must comply with the notice.

Note 1: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.



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- (6A) However, a person that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* need not comply with a notice given to the person under this section to the extent that:
- (a) the notice requires the person to provide particular financial information to the Secretary; and
  - (b) the person has provided, or provides, that particular financial information to the Commissioner of the ACNC under that Act before the end of the period specified under paragraph (3)(b).
- (7) For the purposes of:
- (a) paragraph 6.2(b) of Australian Privacy Principle 6; and
  - (c) 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 by a person in response to a notice given under this section is taken to be a disclosure that is authorised by this Act.

**219GB Audit of operator of approved child care service**

- (1) If, on the basis of information received under section 219GA, the Secretary has concerns about the financial viability of an operator of an approved child care service, the Secretary may engage an appropriately qualified and experienced expert to carry out an independent audit of the operator.
- (2) The expert may be assisted by members of an audit team.

**219H Appointment of authorised officers**

The Secretary may, in writing, appoint an appropriately qualified officer to be an authorised officer for the purposes of the exercise of the powers referred to in section 219K and/or section 219KA.

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**219J Identity cards**

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

*Form of identity card*

- (2) The identity card must:
- (a) be in the form approved by the Secretary; and
  - (b) contain a recent photograph of the authorised officer.

*Offence*

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

Penalty: 1 penalty unit.

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

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

*Defence: card lost or destroyed*

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

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

*Authorised officer must carry card*

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

## **219K Power to enter premises to inspect records**

### *Access to inspect records*

- (1) For the purposes of inspecting records referred to in section 219F or 219G, an authorised officer may enter:
  - (a) in the case of records referred to in subsection 219F(1)—the premises of the approved child care service in respect of which the records are kept at any time during the service's hours of operation; or
  - (b) in the case of records referred to in subsection 219G(2)—the premises last notified under section 219G in respect of the records at any reasonable time of a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

### *Access to monitor compliance*

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

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

## **219KA Power to enter premises to carry out an audit**

- (1) For the purposes of carrying out an audit of an operator of an approved child care service, a member of an audit team may enter:
  - (a) the premises of the approved child care service at any time during the service's hours of operation; or
  - (b) any premises of the operator at any reasonable time of a day that is not a Saturday, a Sunday or a public holiday in the place concerned.
- (2) A member of an audit team must be accompanied by an authorised officer.

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**219KB Report relating to an audit**

- (1) An expert who audits an operator of an approved child care service must prepare and give to the Secretary a report about the affairs of the operator.
- (2) The expert's report must deal with the following:
  - (a) whether the operator's financial statements are based on proper accounts and records;
  - (b) whether the statements are in agreement with the accounts and records and show fairly the financial transactions and the state of the operator;
  - (c) any matter specified by the expert's terms of engagement;
  - (d) such other matters arising out of the statements as the expert considers should be reported;
  - (e) any recommendations relating to maintaining or improving the financial viability of the operator that the expert considers desirable.

**219KC Responsibilities of authorised officers**

- (1) Entering premises under subsection 219K(1) or (1A) or section 219KA is not authorised unless:
  - (a) the occupier of the premises, or another person who apparently represents the occupier, has consented to the entry; and
  - (b) the authorised officer concerned has shown his or her identity card to the occupier or person.
- (2) An authorised officer must, before obtaining the consent of the occupier or another person in accordance with subsection (1), inform that occupier or person that he or she may refuse consent.
- (3) A consent has no effect unless the consent is voluntary.
- (4) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.

- (5) A consent that is not limited as mentioned in subsection (4) has effect until the consent is withdrawn.
- (6) The authorised officer must leave the premises if the consent ceases to have effect.

*Cooperation*

- (7) Approved child care services have a responsibility under subsection 196(2A) to cooperate with a person exercising powers under section 219K or 219KA. An approved child care service that:
  - (a) refuses to consent to the entry of a person (after the person shows his or her identity card in the case of an authorised officer); or
  - (b) withdraws consent for the person to enter the premises;is not complying with the responsibility.
- (8) Operators of approved child care services have a responsibility under subsection 196(2B) to cooperate with a person exercising powers under section 219KA. An operator of an approved child care service that:
  - (a) refuses to consent to the entry of a person (after the person shows his or her identity card in the case of an authorised officer); or
  - (b) withdraws consent for the person to enter the premises;is not complying with the responsibility.
- (9) Failure to comply with the responsibility mentioned in subsection (7) or (8) can result in a sanction being imposed under section 200.

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**219L Occupier to provide authorised officer with access to records and assistance**

*Obligation to produce records referred to in subsection 219F(1)*

- (1) The occupier of premises referred to in paragraph 219K(1)(a), or another person who apparently represents the occupier, must produce to an authorised officer, or any other person assisting the officer, who has entered premises under section 219K, the records referred to in subsection 219F(1).

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

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

Penalty: 60 penalty units.

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

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

*Obligation to produce records referred to in subsection 219G(2)*

- (2) The occupier of premises referred to in paragraph 219K(1)(b), or another person who apparently represents the occupier, must produce to an authorised officer, or any other person assisting the officer, who has entered premises under section 219K, the records referred to in subsection 219G(2).

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

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

Penalty: 60 penalty units.

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

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

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*Obligation to provide reasonable facilities and assistance*

- (3) The occupier, or another person who apparently represents the occupier, must assist the officer with all reasonable facilities and assistance for the effective exercise of the officer's powers under section 219K.

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

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

Penalty: 10 penalty units.

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

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

- (4) Approved child care services have a responsibility under subsection 196(2A) to cooperate with a person exercising powers under subsection (1) or (3). An approved child care service that does not produce records or assist as provided for in those subsections is not complying with the responsibility. Failure to comply with the responsibility can result in a sanction being imposed under section 200.

**219LA Occupier to provide audit team with access to records and assistance**

- (1) This section applies if a member of an audit team enters premises to carry out an audit.
- (2) The occupier of premises referred to in section 219KA, or another person who apparently represents the occupier, must produce to a member of the audit team, or an authorised officer accompanying the member, any documents, records or things required by the expert of the audit team for the purposes of the audit.

Note 1: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

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Note 2: Section 137.2 of the *Criminal Code* creates an offence for providing false or misleading documents.

- (3) A person commits an offence if the person 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) The occupier of premises referred to in section 219KA, or another person who apparently represents the occupier, must provide a member of the audit team, and an authorised officer accompanying the member, with all reasonable facilities and assistance for the effective exercise of powers under section 219KA.

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

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

Penalty: 10 penalty units.

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

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

- (8) Approved child care services have a responsibility under subsection 196(2A) to cooperate with a member of an audit team and an authorised officer accompanying a member. An approved child care service that does not produce documents, records or things, or provide facilities and assistance, as provided for in subsections (2) and (5) is not complying with the responsibility.

- (9) Operators of approved child care services have a responsibility under subsection 196(2B) to cooperate with a member of an audit team and an authorised officer accompanying a member. An operator of an approved child care service that does not produce documents, records or things, or provide facilities and assistance,



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as provided for in subsections (2) and (5) is not complying with the responsibility.

- (10) Failure to comply with the responsibility mentioned in subsection (8) or (9) can result in a sanction being imposed under section 200.

**Subdivision E—Obligations to provide information and reports**

**219M Obligations if operator decides to stop operating an approved child care service**

*Obligation to notify Secretary*

- (1) If a person who operates an approved child care service decides to cease operating the service, the operator must, in the manner provided for in subsection (2), notify the Secretary of that decision:
- (a) unless paragraph (b) applies—at least 42 days before the operator ceases to operate the service; or
  - (b) if the operator decides to cease operating the service:
    - (i) to avoid being in breach of a law of the Commonwealth, a State or a Territory; or
    - (ii) due to circumstances beyond the operator's control; as soon as possible after that decision.

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

- (2) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Obligation to give further information on request*

- (4) An operator of an approved child care service contravenes this subsection if:

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- (a) the operator notifies the Secretary under subsection (1) of the operator's decision to cease operating the service; and
- (b) the Secretary requests the operator, in writing, to give the Secretary specified information about the decision; and
- (c) the operator fails to comply with the request in accordance with subsection (6).

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

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

Penalty: 60 penalty units.

- (6) Information requested under subsection (4) must be given:
  - (a) in the form, and in the manner or way, approved by the Secretary; and
  - (b) within:
    - (i) if paragraph (1)(a) applies—7 days after the day on which the request was given; or
    - (ii) otherwise—the period specified in the request.

**219N Obligation to give reports to Secretary**

- (1) For each week in which a session of care is provided by an approved child care service to a child in relation to whom an enrolment has been:
  - (a) notified to the Secretary in accordance with sections 219A and 219AB; and
  - (b) confirmed by the Secretary in accordance with section 219AE;the service must give the Secretary a report in accordance with this section.
- (2) For each week in which a session of care is provided by an approved child care service to a child in relation to whom an enrolment has been:

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- (a) notified to the Secretary in accordance with sections 219AA and 219AB; and
  - (b) confirmed by the Secretary in accordance with section 219AE;
- the service must give the Secretary a report in accordance with this section.
- (3) The report must be made in the form, and in the manner or way, approved by the Secretary.
- (4) The report must include:
  - (a) any information required by the Secretary that is relevant to:
    - (i) determining whether a fee reduction is applicable in relation to the care and, if so, the rate and amount of that fee reduction; or
    - (ii) making a determination of entitlement, or no entitlement, in relation to the care under Division 4 of Part 3; and
  - (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
  - (b) any other information required by the Secretary.
- (5) Subject to subsection (5AA), the report must be given no later than:
  - (a) if the week in which the session of care was provided fell wholly before the day on which the enrolment was confirmed—the period of 7 days after the day on which the enrolment was confirmed; and

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- (b) otherwise—the end of the second week immediately following the week.

(5AA) If:

- (a) a payment is made to the service under section 219RD in relation to a period (the *initial period*) notified to the service under subsection 219RD(4); and
- (b) the payment is made because of the service's failure to give a report under subsection (1) or (2) of this section within the period applicable under subsection (5) of this section;

the report must be given no later than:

- (c) 7 days after the end of the initial period; or
- (d) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—7 days after the end of the last of those periods.

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

- (a) the service is required to give a report under subsection (1) or (2); and
- (b) the service does not give the report in accordance with this section.

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

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

- (a) the service is required to give a report under subsection (1) or (2); and
- (b) the service does not give the report in accordance with this section.

Penalty: 60 penalty units.

(7) An approved child care service may:

- (a) substitute the report with an updated report at any time; or
- (b) if the report was given in circumstances where it was not required to be given—withdraw the report.

- (8) Subsection (7) does not prevent rules under paragraph 205(1)(b) making provision for, and in relation to, child care services doing either or both of the following:
- (a) substituting reports given by the services under this section;
  - (b) withdrawing reports given by the services under this section.

**219NA Obligation to provide information to Secretary about number of child care places**

- (1) The Secretary may give an approved child care service a written notice requiring the service to provide information required in order for the Secretary to determine whether to reduce the number of child care places allocated to the service.
- (2) The notice must specify all of these:
- (a) the information required by the Secretary;
  - (b) the period, or each of the periods, in relation to which the information is required;
  - (c) when the information in relation to the period, or each of the periods, is required.
- (3) The notice may specify either or both of these:
- (a) the form and manner in which the information is to be provided to the Secretary;
  - (b) the length of time for which the service must continue to comply with the notice.
- (4) The service must provide the required information to the Secretary, in relation to the period, or each of the periods, specified in the notice, at the time specified in the notice and in the form and manner (if any) specified in the notice.
- Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.
- (5) The Secretary may give the service a written notice terminating the effect of the notice under subsection (1).

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**219NB Obligation to provide further information to Secretary about enrolled children**

- (1) If the Secretary, by notice under section 57G, requires an approved child care service to provide further information to the Secretary (further information in relation to aspects of the care provided to children enrolled for care by the service), the service must comply with the notice.

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

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

Penalty: 60 penalty units.

**219P Obligations of operators of former approved child care services**

- (1) 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 sessions of care that occurred before the approval was suspended or cancelled as if it had not been:

- (a) section 219A;
- (b) section 219AA;
- (c) section 219AF;
- (d) section 219B;
- (e) section 219BA;
- (f) section 219BB;
- (g) section 219BC;
- (h) section 219BD;
- (i) section 219E;
- (j) section 219N;
- (k) section 219QB.

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

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

Penalty: 60 penalty units.

**Subdivision F—Miscellaneous**

**219PA Collection, use or disclosure of personal information for financial viability purposes—the *Privacy Act 1988***

The collection, use or disclosure of personal information about an individual is taken to be authorised by this Act for the purposes of the *Privacy Act 1988* if the collection, use or disclosure is reasonably necessary for the purposes of determining whether a large long day care centre operator is financially viable, and likely to remain so.

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**Division 2—Weekly payments in respect of fee reduction to approved child care services**

**219Q Weekly payments in respect of fee reduction**

- (1) If the Secretary, under section 50Z or 50ZB, calculates the amount in which the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by an approved child care service to a child in a week, the Secretary must pay the amount calculated to the credit of a bank account nominated and maintained by the service.
- (2) If the Secretary, on recalculating under section 50ZA or 50ZC the amount in which the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by an approved child care service to a child in a week, increases the amount, the Secretary must pay to the credit of a bank account nominated and maintained by the service an amount equal to the increase.
- (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
  - (ba) section 219QD (set off where amount of applicable child care rebate reduced on recalculation); and
  - (c) section 219RC (set off where enrolment ceases or where notification of decision to cease operating service); and
  - (ca) section 219RE (set off where a payment under section 219RD is made); and
  - (d) paragraph 200(1)(h) (suspending payment in respect of fee reduction).



**219QA Payments and set offs where recalculation results in reduced fee reduction**

- (1) This section applies if the Secretary, on recalculating under section 50ZA or 50ZC the amount in which the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by an approved child care service to a child in a week, reduces the amount (including to nil).
- (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).

**219QB Remitting amounts that cannot be passed on**

- (1) If:
    - (a) either:
      - (i) an amount is paid to an approved child care service under section 219Q or subsection 219QA(2) in relation to a session of care provided by an approved child care service to a child in a week; or
      - (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
    - (b) it is not reasonably practicable for the service to pass on to the claimant or the service itself within the time required under subsection 219B(2) or 219BA(2) the fee reduction 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.

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

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

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

Penalty: 60 penalty units.

- (2) The amount must be remitted in the manner or way approved by the Secretary.
- (3) The service must notify the Secretary of the remittal of the amount.
- (4) 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.

**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

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

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

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- (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.
- (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.

## **Division 3—Enrolment advances**

### **219R Election to receive enrolment advance**

- (1) An approved child care service, other than an approved occasional care service, may, when giving notice in accordance with section 219A, elect to receive the payment of an enrolment advance in relation to the enrolment.
- (2) The election 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.

### **219RA Payment of enrolment advance**

- (1) If an approved child care service, other than an approved occasional care service:
  - (a) makes an election in accordance with section 219R in respect of an enrolment; and
  - (b) the Secretary confirms the enrolment under section 219AE; the Secretary must pay the amount of the advance to the credit of a bank account nominated and maintained by the service.

#### *Effect of notification of decision to cease operating service*

- (1A) However, the Secretary may decide not to pay the advance to the service under subsection (1) if:
  - (a) before the day the Secretary proposes to pay the advance, the operator of the service notified the Secretary under subsection 219M(1) of the operator's decision to cease operating the service; and
  - (b) before that day, the operator has not notified the Secretary (in the form, and in the manner or way, approved by the Secretary) of a decision by the operator to continue operating the service.

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(1B) If:

- (a) the Secretary does not pay the advance to the service because of subsection (1A); and
- (b) the operator of the service notifies the Secretary (in the form, and in the manner or way, approved by the Secretary) of a decision by the operator to continue operating the service; and
- (c) the enrolment concerned has not ceased before that notification;

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

(1C) If:

- (a) in respect of an enrolment, the Secretary sets off an amount under subsection 219RC(3) against a payment to an approved child care service; and
- (b) after the set off, the operator of the applicable service (within the meaning of that subsection) notifies the Secretary (in the form, and in the manner or way, approved by the Secretary) of a decision by the operator to continue operating the service; and
- (c) the enrolment has not ceased before that notification;

then the Secretary may pay an enrolment advance (in respect of the enrolment) equal to the amount worked out in accordance with section 219RB to the credit of a bank account nominated and maintained by that applicable service.

*Interpretation*

(2) 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
- (ba) section 219QD (set off where amount of applicable child care rebate reduced on recalculation); and
- (c) section 219RC (set off where enrolment ceases or where notification of decision to cease operating service); and

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- (ca) section 219RE (set off where a payment under section 219RD is made); and
- (d) paragraph 200(1)(f) (withholding enrolment advances).

*Notice of payment*

- (3) The Secretary must give the service notice of a payment under this section.
- (4) Notice of the payment must be given in the form, and in the manner or way, approved by the Secretary.

**219RB Amount of enrolment advances**

- (1) The Secretary may, by legislative instrument, determine the amount of the enrolment advance that may be paid in respect of enrolments of a specified class.
- (2) Without limiting subsection (1), the Secretary may provide for the indexation of enrolment advances.

**219RC Setting off enrolment advance when enrolment ceases or decision to cease operating service is notified**

*Enrolment ceases*

- (1) If an enrolment of a child for care by an approved child care service (the *first service*) ceases in respect of which:
  - (a) an enrolment advance was paid; or
  - (b) an enrolment advance would have been paid but for a set off under subsection 82(2), section 219QA or section 219QD, this section or section 219RE or the imposition of a sanction under paragraph 200(1)(f);

the Secretary must set off an amount equal to the amount of the enrolment advance against one or more child care service payments that are to be made to the first service or to another approved child care service operated by the person who operates the first service.



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

- (2) Subsection (1) does not apply in relation to an enrolment advance if subsection (3) has applied in relation to the advance.

*Notification of decision to cease operating service*

- (3) If:
- (a) an operator of an approved child care service (the *applicable service*) notifies the Secretary under subsection 219M(1) of the operator's decision to cease operating the applicable service; and
  - (b) either:
    - (i) an enrolment advance was paid to the applicable service in respect of an enrolment; or
    - (ii) an enrolment advance would have been so paid but for a set off under subsection 82(2), section 219QA section 219QD, this section or section 219RE or the imposition of a sanction under paragraph 200(1)(f); and
  - (c) subsection (1) has not applied in relation to the advance; and
  - (d) the operator has not notified the Secretary (in the form, and in the manner or way, approved by the Secretary) of a decision by the operator to continue operating the applicable service;

the Secretary must set off an amount equal to the amount of the advance against one or more child care service payments that are to be made to the applicable service or to another approved child care service operated by the person who operates the applicable service.

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

## **Division 4—Business continuity payments**

### **219RD Business continuity payments**

- (1) The Secretary may determine that a payment is to be made to an approved child care service in relation to a period if:
- (a) the service is required to give a report under subsection 219N(1) or (2) for a week in respect of one or more enrolments; and
  - (b) the service does not give the report for the week within the period applicable under subsection 219N(5); and
  - (c) the Secretary is satisfied that the failure to give the report is due to circumstances specified in a determination under subsection (2).

Note: Section 219RE deals with the setting off of payments made under this section.

- (2) The Minister must, by legislative instrument, make a determination:
- (a) specifying circumstances for the purposes of paragraph (1)(c); and
  - (b) setting out the method of determining the amounts of payments under this section.
- The determination may set out any other matters relating to the making of payments under this section that the Minister thinks appropriate.
- (3) 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 child care service.
- (4) The Secretary must give the approved child care service notice of the payment and of the period to which the payment relates.
- (5) Notice of the payment must be given in the form, and in the manner or way, approved by the Secretary.

### **219RE Setting off business continuity payments**

If a payment is made to an approved child care service (the *first service*) under section 219RD, the Secretary must set off an amount equal to the payment against one or more child care service payments that are to be made to 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).

## **Part 8B—Nominees**

### **Division 1—Preliminary**

#### **219TA Definitions**

In this Part:

***correspondence nominee*** means a person who, by virtue of an appointment in force under section 219TC, is the correspondence nominee of another person.

***nominee*** means a correspondence nominee or a payment nominee.

***payment nominee*** means a person who, by virtue of an appointment in force under section 219TB, is the payment nominee of another person.

***principal***, in relation to a nominee, means the person in relation to whom the nominee was appointed.

***relevant benefit*** means:

- (a) family tax benefit by instalment; or
- (b) family tax benefit for a past period; or
- (c) family tax benefit by single payment/in substitution because of the death of another individual; or
- (caa) family tax benefit under section 58AA of the Family Assistance Act; or
- (ca) schoolkids bonus; or
- (d) stillborn baby payment; or
- (f) child care benefit by fee reduction; or
- (g) child care benefit for a past period; or
- (h) child care benefit by single payment/in substitution; or
- (ha) child care rebate; or
- (hb) single income family supplement; or
- (i) one-off payment to families; or

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- (j) economic security strategy payment to families; or
- (k) back to school bonus or single income family bonus; or
- (l) clean energy advance; or
- (m) ETR payment.

## **Division 2—Appointment of nominees**

### **219TB Appointment of payment nominee**

Subject to section 219TD, the Secretary may, in writing:

- (a) appoint a person (including a body corporate) to be the payment nominee of another person for the purposes of the family assistance law; and
- (b) direct that the whole or a specified part of a specified relevant benefit payable to the nominee's principal be paid to the nominee.

### **219TC Appointment of correspondence nominee**

Subject to section 219TD, the Secretary may, in writing, appoint a person (including a body corporate) to be the correspondence nominee of another person for the purposes of the family assistance law.

### **219TD Provisions relating to appointments**

- (1) A person may be appointed as the payment nominee and the correspondence nominee of the same person.
- (2) The Secretary must not appoint a nominee for a person (the *proposed principal*) under section 219TB or 219TC except:
  - (a) with the written consent of the person to be appointed; and
  - (b) after taking into consideration the wishes (if any) of the proposed principal regarding the making of such an appointment.
- (3) The Secretary must cause a copy of an appointment under section 219TB or 219TC to be given to:
  - (a) the nominee; and
  - (b) the principal.

- (4) The Secretary must not appoint a payment nominee or correspondence nominee for an approved child care service or for the operator of such a service.

**219TE Suspension and cancellation of nominee appointments**

- (1) If a person who is a nominee by virtue of an appointment under section 219TB or 219TC informs the Secretary in writing that the person no longer wishes to be a nominee under that appointment, the Secretary must, as soon as practicable, cancel the appointment.
- (2) If:
- (a) the Secretary gives a person who is a nominee a notice under section 219TJ; and
  - (b) the person informs the Department that:
    - (i) an event or change of circumstances has occurred or is likely to occur; and
    - (ii) the event or change of circumstances is likely to have an effect referred to in paragraph 219TJ(1)(b);
- the Secretary may suspend or cancel the appointment by virtue of which the person is a nominee.
- (3) If:
- (a) the Secretary gives a person who is a nominee a notice under section 219TJ or 219TK; and
  - (b) the nominee does not comply with the requirement of the notice;
- the Secretary may suspend or cancel the appointment, or each appointment, by virtue of which the person is a nominee.
- (4) While an appointment is suspended, the appointment has no effect for the purposes of the family assistance law.
- (5) The Secretary may, at any time, cancel the suspension of an appointment under subsection (2) or (3).
- (6) The suspension or cancellation of an appointment, and the cancellation of such a suspension, must be in writing.

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- (7) The cancellation of an appointment has effect on and from such day, being later than the day of the cancellation, as is specified in the cancellation.
- (8) The Secretary must cause a copy of:
  - (a) a suspension of an appointment; or
  - (b) a cancellation of an appointment; or
  - (c) a cancellation of a suspension of an appointment;to be given to:
  - (d) the nominee; and
  - (e) the principal.



## **Division 3—Payments to payment nominee**

### **219TF Payment of amounts to payment nominee**

- (1) If:
  - (a) a person has a payment nominee; and
  - (b) the whole or a part of a relevant benefit is payable to the person; and
  - (c) the Secretary has given a direction in relation to the relevant benefit under section 219TB;the relevant benefit is to be paid in accordance with the direction.
- (2) An amount paid to the payment nominee of a person:
  - (a) is paid to the payment nominee on behalf of the person; and
  - (b) is taken, for the purposes of the family assistance law (other than this Part), to have been paid to the person and to have been so paid when it was paid to the nominee.
- (3) An amount that is to be paid to the payment nominee of a person must be paid to the credit of a bank account nominated and maintained by the nominee.
- (4) The Secretary may direct that the whole or a part of an amount that is to be paid to a payment nominee be paid to the payment nominee in a different way from that provided for by subsection (3). If the Secretary gives such a direction, an amount to which the direction relates is to be paid in accordance with the direction.

## **Division 4—Functions and responsibilities of nominees**

### **219TG Actions of correspondence nominee on behalf of principal**

- (1) Subject to section 219TR and subsection (4), any act that may be done by a person under, or for the purposes of, the family assistance law (other than an act for the purposes of Division 2 or 3) may be done by the person's correspondence nominee.
- (2) Without limiting subsection (1), an application or claim that may be made under the family assistance law by a person may be made by the person's correspondence nominee on behalf of the person, and an application or claim so made is taken to be made by the person.
- (3) An act done by a person's correspondence nominee under this section has effect, for the purposes of the family assistance law (other than this Part), as if it had been done by the person.
- (4) If, under a provision of the family assistance law, the Secretary gives a notice to a person who has a correspondence nominee, subsection (1) does not extend to an act that is required by the notice to be done by the person.

### **219TH Giving of notices to correspondence nominee**

- (1) Any notice that the Secretary is authorised or required by the family assistance law to give to a person may be given by the Secretary to the person's correspondence nominee.
- (2) The notice:
  - (a) must, in every respect, be in the same form, and in the same terms, as if it were being given to the person; and
  - (b) may be given to the correspondence nominee personally or by post or in any other manner approved by the Secretary.
- (3) If:

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- (a) under subsection (1), the Secretary gives a notice (the ***nominee notice***) to a person's correspondence nominee; and
  - (b) the Secretary afterwards gives the person a notice that:
    - (i) is expressed to be given under the same provision of the family assistance law as the nominee notice; and
    - (ii) makes the same requirement of the person as the nominee notice;
- section 219TI ceases to have effect in relation to the nominee notice.
- (4) If:
- (a) under subsection (1), the Secretary gives a notice (the ***nominee notice***) to a person's correspondence nominee; and
  - (b) the Secretary has already given to the person a notice that:
    - (i) is expressed to be given under the same provision of the family assistance law as the nominee notice; and
    - (ii) makes the same requirement of the person as the nominee notice;
- section 219TI does not have effect in relation to the nominee notice.

**219TI Compliance by correspondence nominee**

- (1) In this section:
- requirement*** means a requirement, made by the Secretary under this Act, to:
- (a) inform the Secretary of a matter; or
  - (b) give information, or produce a document, to an officer; or
  - (c) give a statement to the Secretary.
- (2) If, under section 219TH, a notice making a requirement of a person is given to the person's correspondence nominee, the following paragraphs have effect:
- (a) for the purposes of the family assistance law, other than this Part, the notice is taken:
    - (i) to have been given to the person; and

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- (ii) to have been so given on the day on which the notice was given to the correspondence nominee;
  - (b) any requirement made of the person may be satisfied by the correspondence nominee;
  - (c) any act done by the correspondence nominee for the purpose of satisfying a requirement of the notice has effect, for the purposes of the family assistance law (other than Division 3 of Part 6 of this Act), as if it had been done by the person;
  - (d) if the correspondence nominee fails to satisfy a requirement of the notice, the person is taken, for the purposes of the family assistance law, to have failed to comply with the requirement.
- (3) In order to avoid doubt, it is declared as follows:
- (a) if the requirement imposes an obligation on the person to inform the Secretary of a matter, or give the Secretary a statement, within a specified period and the correspondence nominee informs the Secretary of the matter, or gives the Secretary the statement, as the case may be, within that period, the person is taken, for the purposes of the family assistance law, to have complied with the requirement set out in the notice;
  - (b) if the requirement imposes an obligation on the person to give information, or produce a document, to an officer within a specified period and the correspondence nominee gives the information, or produces the document, as the case may be, to the officer within that period, the person is taken, for the purposes of the family assistance law, to have complied with the requirement set out in the notice;
  - (c) if the requirement imposes on the person an obligation to inform the Secretary of a matter, or give the Secretary a statement, within a specified period and the correspondence nominee does not inform the Secretary of the matter, or give the Secretary the statement, as the case may be, within that period, the person is taken, for the purposes of the family assistance law, to have failed to comply with the requirement set out in the notice;

- (d) if the requirement imposes an obligation on the person to give information, or produce a document, to an officer within a specified period and the correspondence nominee does not give the information, or produce the document, as the case may be, to the officer within that period, the person is taken, for the purposes of the family assistance law, to have failed to comply with the requirement set out in the notice.

**219TJ Notification by nominee of matters affecting ability to act as nominee**

- (1) The Secretary may give a nominee of a person a notice that requires the nominee to inform the Department if:
  - (a) either:
    - (i) an event or change of circumstances occurs; or
    - (ii) the nominee becomes aware that an event or change of circumstances is likely to occur; and
  - (b) the event or change of circumstances is likely to affect:
    - (i) the ability of the nominee to act as the payment nominee or correspondence nominee of the person, as the case may be; or
    - (ii) the ability of the Secretary to give notices to the nominee under this Act; or
    - (iii) the ability of the nominee to comply with notices given to the nominee by the Secretary under this Act.
- (2) Subject to subsection (3), a notice under subsection (1):
  - (a) must be in writing; and
  - (b) may be given personally or by post or by any other means approved by the Secretary; and
  - (c) must specify how the nominee is to give the information to the Department; and
  - (d) must specify the period within which the nominee is to give the information to the Department.
- (3) A notice under subsection (1) is not ineffective merely because it fails to comply with paragraph (2)(c).

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- (4) Subject to subsection (5), the period specified under paragraph (2)(d) must not end earlier than 14 days after:
  - (a) the day on which the event or change of circumstances occurs; or
  - (b) the day on which the nominee becomes aware that the event or change of circumstances is likely to occur.
- (5) If a notice requires the nominee to inform the Department of any proposal by the nominee to leave Australia, subsection (4) does not apply to that requirement.
- (6) This section extends to:
  - (a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and
  - (b) all persons, irrespective of their nationality or citizenship.

**219TK Statement by payment nominee regarding disposal of money**

- (1) The Secretary may give the payment nominee of a person a notice that requires the nominee to give the Department a statement about a matter relating to the disposal by the nominee of an amount paid to the nominee on behalf of the person.
- (2) Subject to subsection (3), a notice under subsection (1):
  - (a) must be in writing; and
  - (b) may be given personally or by post or by any other means approved by the Secretary; and
  - (c) must specify how the nominee is to give the statement to the Department; and
  - (d) must specify the period within which the nominee is to give the statement to the Department.
- (3) A notice under subsection (1) is not ineffective merely because it fails to comply with paragraph (2)(c).
- (4) The period specified under paragraph (2)(d) must not end earlier than 14 days after the day on which the notice is given.

- (5) A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
- (6) A nominee must not refuse or fail to comply with a notice under subsection (1).  
  
Penalty: 60 penalty units.
- (7) Subsection (6) applies only to the extent to which the person is capable of complying with the notice.
- (8) Subsection (6) does not apply if the person has a reasonable excuse.
- (9) An offence against subsection (6) is an offence of strict liability.
- (10) This section extends to:
  - (a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and
  - (b) all persons, irrespective of their nationality or citizenship.

## **Division 5—Other matters**

### **219TL Protection of person against liability for actions of nominee**

Nothing in this Part has the effect of rendering a person guilty of an offence against this Act in respect of any act or omission of the person's correspondence nominee.

### **219TM Protection of nominee against criminal liability**

- (1) A nominee of a person is not subject to any criminal liability under the family assistance law in respect of:
  - (a) any act or omission of the person; or
  - (b) anything done, in good faith, by the nominee in his or her capacity as nominee.
- (2) This section has effect subject to section 219TK.

### **219TN Duty of nominee to principal**

- (1) It is the duty of a person who is the payment or correspondence nominee of another person at all times to act in the best interests of the principal.
- (2) A nominee does not commit a breach of the duty imposed by subsection (1) by doing an act if, when the act is done, there are reasonable grounds for believing that it is in the best interests of the principal that the act be done.
- (3) A nominee does not commit a breach of the duty imposed by subsection (1) by refraining from doing an act if, at the relevant time, there are reasonable grounds for believing that it is in the best interests of the principal that the act be not done.



**219TO Saving of Secretary's powers of revocation**

Nothing in this Part is to be taken to be an expression of a contrary intention for the purposes of subsection 33(3) of the *Acts Interpretation Act 1901*.

**219TP Saving of Secretary's powers to give notices to principal**

Nothing in this Part is intended in any way to limit or affect the Secretary's powers under other provisions of the family assistance law to give notices to, or make requirements of, a person who has a nominee.

**219TQ Notification of nominee where notice given to principal**

If, under a provision of the family assistance law (other than a provision of this Part), the Secretary gives a notice to a person who has a correspondence nominee, the Secretary may inform the correspondence nominee of the giving of the notice and of the terms of the notice.

**219TR Right of nominee to attend with principal**

- (1) If:
- (a) under a provision of the family assistance law (other than a provision of this Part), the Secretary gives a notice to a person who has a correspondence nominee; and
  - (b) the notice requires the person:
    - (i) to attend the Department; or
    - (ii) to attend a particular place; and
  - (c) the Secretary informs the person's correspondence nominee of the giving of the notice;
- the correspondence nominee may attend the Department or place, as the case may be, with the person if the person so wishes.

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- (2) If a person's correspondence nominee is a body corporate, the last reference in subsection (1) to the correspondence nominee is to be read as a reference to an officer or employee of the correspondence nominee.

## **Part 8C—Civil penalties**

### **Division 1—Civil penalty orders**

#### **219TSB Ancillary contravention of civil penalty provision**

A person must not:

- (a) attempt to contravene a civil penalty provision (other than this subsection); or
- (b) aid, abet, counsel or procure a contravention of a civil penalty provision (other than this subsection); or
- (c) induce, whether by threats or promises or otherwise, a contravention of a civil penalty provision (other than this subsection); or
- (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision (other than this subsection); or
- (e) conspire with others to effect a contravention of a civil penalty provision (other than this subsection).

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

#### **219TSC Civil penalty orders**

- (1) If the Federal Court of Australia or the Federal Circuit Court of Australia is satisfied that a person has contravened a civil penalty provision, the court may, on the application of the Minister, order the person to pay to the Commonwealth such pecuniary penalty, in respect of each contravention, as the court determines to be appropriate.

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

- (2) An order under subsection (1) is to be known as a ***civil penalty order***.

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*Determining pecuniary penalty*

- (3) In determining the pecuniary penalty, the court must have regard to all relevant matters, including:
- (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct; and
  - (e) the likely impact of the penalty on:
    - (i) the person; and
    - (ii) if the person is an approved child care service—the continued operation of the service.

*Civil enforcement of penalty*

- (4) The pecuniary penalty is a civil debt payable to the Commonwealth.
- (5) The Commonwealth may enforce the order under subsection (1) as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

Note: If a civil penalty order is made in relation to a person who operates an approved child care service, the Secretary may be able to take further action against the service under section 200.

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

*General rule*

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

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*Exception for certain civil penalty provisions*

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

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

**219TSE Proceedings may be heard together**

The Federal Court of Australia or the Federal Circuit Court of Australia may direct that 2 or more proceedings for civil penalty orders are to be heard together.

**219TSF Time limit for application for an order**

Proceedings for a civil penalty order may be started no later than 4 years after the contravention.

**219TSG Civil evidence and procedure rules for civil penalty orders**

The Federal Court of Australia or the Federal Circuit Court of Australia must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

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

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions.

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- (2) However, the person is not liable to more than one pecuniary penalty under this Act in respect of the same conduct.

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

**219TSGB Civil proceedings after criminal proceedings**

Neither the Federal Court of Australia nor the Federal Circuit Court of Australia may make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

**219TSGC Criminal proceedings during civil proceedings**

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

**219TSGD Criminal proceedings after civil proceedings**

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

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

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

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

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

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

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

Penalty: 10 penalty units.

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

- (2) A request under subsection (1) is not a legislative instrument.
- (3) The Minister can request a person to assist under subsection (1) if, and only if:
  - (a) it appears to the Minister that the person is unlikely to have:
    - (i) contravened the civil penalty provision to which the application relates; or

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



## **Division 2—Infringement notices**

### **219TSH Definitions**

In this Division:

***authorised person*** means:

- (a) the Secretary; or
- (b) an officer appointed under section 219TSO.

***civil contravention*** means a contravention of a civil penalty provision.

***infringement notice*** means an infringement notice under section 219TSI.

### **219TSI When an infringement notice can be given**

- (1) If an authorised person has reasonable grounds to believe that a person has, on a particular day, committed one or more contraventions of a particular civil penalty provision, the authorised person may give to the person an infringement notice relating to those contraventions.
- (2) An infringement notice must be given within 12 months after the day on which the civil contraventions are alleged to have taken place.

### **219TSJ Matters to be included in an infringement notice**

- (1) An infringement notice must:
  - (a) set out the name of the person to whom the notice is given; and
  - (b) set out the name of the approved child care service concerned; and
  - (c) set out the name of the authorised person who gave the notice; and

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- (d) set out brief details of each of the alleged civil contraventions; and
  - (e) contain a statement to the effect that the matter or matters will not be dealt with by the Federal Court of Australia or the Federal Circuit Court of Australia if the penalty specified in the notice is paid to the Commonwealth, within:
    - (i) 28 days after the notice is given; or
    - (ii) if the Secretary allows a longer period—that longer period; and
  - (f) give an explanation of how payment of the penalty is to be made; and
  - (g) set out such other matters (if any) as are specified by the regulations.
- (2) For the purposes of paragraph (1)(d), the brief details must include the following information in relation to each alleged civil contravention:
- (a) the date of the alleged contravention;
  - (b) the civil penalty provision that was allegedly contravened.

**219TSK Amount of penalty**

*Infringement notice given to a body corporate*

- (1) The penalty to be specified in an infringement notice given to a body corporate must be a pecuniary penalty equal to the number of penalty units worked out using the table:

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<b>Number of penalty units</b>		
<b>Item</b>	<b>In this case ...</b>	<b>the number of penalty units is ...</b>
1	The notice relates to a single alleged contravention of a civil penalty provision (other than a provision mentioned in item 3, 5 or 7)	30.

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<b>Number of penalty units</b>		
<b>Item</b>	<b>In this case ...</b>	<b>the number of penalty units is ...</b>
2	The notice relates to more than 1 alleged contravention of a civil penalty provision (other than a provision mentioned in item 3, 5 or 7)	the number obtained by multiplying 30 by: (a) if the number of alleged contraventions is less than 8—that number; or (b) otherwise—8.
3	The notice relates to a single alleged contravention of subsection 219L(3)	4.
4	The notice relates to more than 1 alleged contravention of subsection 219L(3)	the number obtained by multiplying 4 by: (a) if the number of alleged contraventions is less than 8—that number; or (b) otherwise—8.
5	The notice relates to a single alleged contravention of subsection 219M(1) or (4)	80.
6	The notice relates to more than 1 alleged contravention of subsection 219M(1) or (4)	the number obtained by multiplying 80 by: (a) if the number of alleged contraventions is less than 8—that number; or (b) otherwise—8.
7	The notice relates to a single alleged contravention of a civil penalty provision that is a provision of the regulations	24.
8	The notice relates to more than 1 alleged contravention of a civil penalty provision that is a provision of the regulations	the number obtained by multiplying 24 by: (a) if the number of alleged contraventions is less than 8—that number; or (b) otherwise—8.

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*Infringement notice given to a person other than a body corporate*

- (2) The penalty to be specified in an infringement notice given to a person other than a body corporate must be a pecuniary penalty equal to the number of penalty units worked out using the table:

<b>Number of penalty units</b>		
<b>Item</b>	<b>In this case ...</b>	<b>the number of penalty units is ...</b>
1	The notice relates to a single alleged contravention of a civil penalty provision (other than a provision mentioned in item 3, 5 or 7)	15.
2	The notice relates to more than 1 alleged contravention of a civil penalty provision (other than a provision mentioned in item 3, 5 or 7)	the number obtained by multiplying 15 by: (a) if the number of alleged contraventions is less than 8—that number; or (b) otherwise—8.
3	The notice relates to a single alleged contravention of subsection 219L(3)	2.
4	The notice relates to more than 1 alleged contravention of subsection 219L(3)	the number obtained by multiplying 2 by: (a) if the number of alleged contraventions is less than 8—that number; or (b) otherwise—8.
5	The notice relates to a single alleged contravention of subsection 219M(1) or (4)	40.
6	The notice relates to more than 1 alleged contravention of subsection 219M(1) or (4)	the number obtained by multiplying 40 by: (a) if the number of alleged contraventions is less than 8—that number; or (b) otherwise—8.

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Number of penalty units		
Item	In this case ...	the number of penalty units is ...
7	The notice relates to a single alleged contravention of a civil penalty provision that is a provision of the regulations	12.
8	The notice relates to more than 1 alleged contravention of a civil penalty provision that is a provision of the regulations	the number obtained by multiplying 12 by: (a) if the number of alleged contraventions is less than 8— that number; or (b) otherwise—8.

**219TSL Withdrawal of an infringement notice**

- (1) This section applies if an infringement notice is given to a person.
- (2) An authorised person may, by written notice (the ***withdrawal notice***) given to the person, withdraw the infringement notice.
- (3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

*Refund of penalty if infringement notice withdrawn*

- (4) If:
  - (a) the penalty specified in the infringement notice is paid; and
  - (b) the infringement notice is withdrawn after the penalty is paid;the Commonwealth is liable to refund the penalty.

**219TSM What happens if the penalty is paid**

- (1) This section applies if:
  - (a) an infringement notice relating to one or more alleged civil contraventions is given to a person; and
  - (b) the penalty is paid in accordance with the infringement notice; and

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- (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the alleged civil contraventions is discharged.
- (3) Proceedings under Division 1 must not be brought against the person for the alleged civil contraventions.

**219TSN Effect of this Division on civil proceedings**

This Division does not:

- (a) require an infringement notice to be given in relation to an alleged civil contravention; or
- (b) affect the liability of a person to have proceedings under Division 1 brought against the person for an alleged civil contravention if:
  - (i) the person does not comply with an infringement notice relating to the contravention; or
  - (ii) an infringement notice relating to the contravention is not given to the person; or
  - (iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
- (c) limit the discretion of the Federal Court of Australia or the Federal Circuit Court of Australia to determine the amount of a penalty to be imposed on a person who is found in proceedings under Division 1 to have contravened a civil penalty provision.

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

**219TSO Appointment of authorised person**

The Secretary may, by writing, appoint an officer of the Department as an authorised person for the purposes of this Division.

### **219TSP Regulations**

The regulations may make further provision in relation to infringement notices.

### **Division 3—Suspension of approved child care service's approval**

#### **219TSQ Suspension of approved child care service's approval**

- (1) The Secretary may, by notice given to a person who operates an approved child care service, suspend the service's approval if:
  - (a) 10 infringement notices under section 219TSI are given to the person in relation to the service within a period (the ***infringement period***) of 12 months; and
  - (b) in relation to each notice, the time for paying the penalty specified in the notice has ended before the end of the infringement period.
- (2) The notice must:
  - (a) specify a day, not earlier than the day on which the notice is given, on which the suspension takes effect; and
  - (b) specify the grounds upon which the Secretary has suspended the service's approval.
- (3) The Secretary may, by notice given to a person who operates the service, revoke the suspension with effect from the day specified in the notice.



## **Part 9—Other matters**

### **220 General administration of family assistance law**

The Secretary is, subject to any direction of the Minister, to have the general administration of the family assistance law.

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

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

Penalty: 10 penalty units.

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

- (2) A request under subsection (1) is not a legislative instrument.
- (3) The Minister can request a person to assist under subsection (1) if, and only if:
- (a) it appears to the Minister that the person is unlikely:
    - (i) to be a defendant in the proceedings; or
    - (ii) to have contravened a civil penalty provision constituted by the same, or substantially the same, conduct as the conduct to which the proceedings relates; and
  - (b) the Minister suspects or believes that the person can give information relevant to the proceedings.
- (4) The Minister cannot request a person to assist under subsection (1) if the person is or has been a lawyer for a defendant or likely defendant in the proceedings.

## Section 221

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- (5) A court may order a person to comply with a request under subsection (1) in a specified way. Only the Minister may apply to the court for an order under this subsection.
- (6) For the purposes of this section, it does not matter whether criminal proceedings for the offence have actually begun.
- (7) In this section:

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

### 221 Delegation

- (1) Subject to this section, the Secretary may delegate to an officer all or any of the powers of the Secretary under the family assistance law, other than the power to engage an expert to carry out an independent audit as mentioned in section 219GB.
- (2) The Secretary must not delegate such a power to an officer of the Human Services Department, unless the Secretary of the Human Services Department has agreed to the delegation.
- (3) The Secretary must not delegate the Secretary's power under subparagraph 168(1)(b)(i) (disclosure of information) except to the Secretary of the Human Services Department, the Chief Executive Centrelink or the Chief Executive Medicare.
- (4) The Secretary must not delegate to an officer, other than an SES employee or acting SES employee, the Secretary's powers under either of the following:
  - (a) section 219GA (Secretary requiring information from person);
  - (b) Division 2 of Part 8C (infringement notices).
- (5) The Secretary may delegate to an APS employee in the Department administered by the Minister administering the *Veterans' Entitlements Act 1986* all or any of the powers of the Secretary under the family assistance law that relate to the schoolkids bonus,

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to the extent that eligibility for that bonus is because of a payment of an education allowance under:

- (a) the Veterans' Children Education Scheme; or
- (b) the Military Rehabilitation and Compensation Act Education and Training Scheme.

Note: The expression *APS employee* is defined in section 2B of the *Acts Interpretation Act 1901*.

**221A Committees**

- (1) The Minister may in writing establish committees for the purposes of the family assistance law.

*Functions*

- (2) A committee has the functions determined in writing by the Minister.
- (3) A committee must, in performing its functions, comply with any directions given to the committee by the Minister.

*Appointments*

- (4) A committee consists of the members appointed in writing by the Minister.
- (5) A member of a committee holds office on a part-time basis.

*Chair*

- (6) The Minister may designate a member of a committee as the Chair of the committee.

*Remuneration and allowances*

- (7) A member of a committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.

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- (8) A member of a committee is to be paid the allowances that are prescribed by the regulations.
- (9) Subsections (7) and (8) have effect subject to the *Remuneration Tribunal Act 1973*.

### *Disclosure of interests*

- (10) A member of a committee must give written notice to the Minister of any direct or indirect pecuniary interest that the member has or acquires and that conflicts or could conflict with the proper performance of the member's functions.

### *Resignation*

- (11) A member of a committee may resign his or her appointment by giving the Minister a written resignation.

### *Termination*

- (12) The Minister may at any time terminate the appointment of a member of a committee.

## **222 Decisions to be in writing**

- (1) A decision of the Minister or of an officer under the family assistance law must be in writing.
- (2) Such a decision is taken to be in writing if it is made, or recorded, by means of a computer.

## **223 Secretary may arrange for use of computer programs to make decisions**

- (1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Secretary may make decisions under the family assistance law.

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- (2) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary.

**224 Notice of decisions**

- (1) If a notice of a decision of an officer:
- (a) affecting a person's entitlement to be paid family assistance under the family assistance law; or
  - (b) affecting a person's conditional eligibility for child care benefit by fee reduction; or
  - (c) affecting a weekly limit of hours, a CCB %, a schooling %, eligibility for the special grandparent rate or a rate under section 81 of the Family Assistance Act applicable to a person; or
  - (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
  - (ca) about the amount of child care rebate applicable in respect of a person and a child for a quarter under Subdivision AA of Division 4AA of Part 3;
- is:
- (d) delivered to a person personally; or
  - (e) left at the address of the place of residence or business of the person last known to the Secretary; or
  - (f) sent by prepaid post to the address of the person last known to the Secretary;
- notice of the decision is taken, for the purposes of the family assistance law, to have been given to the person.
- (2) Notice of a decision of an officer affecting or about a matter referred to in paragraph (1)(a), (b), (c) or (ca) may be given to a person by properly addressing, prepaying and posting the document as a letter.
- (3) If notice of a decision is given in accordance with subsection (2), notice of the decision is taken to have been given to the person at

## Section 224A

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the time at which the notice would be delivered in the ordinary course of the post, unless the contrary is proved.

### 224A Notice of decisions under Part 8 or 8C

- (1) If a notice of a decision of an officer under Part 8 or 8C is:
  - (a) left at the address of the place of business of a child care service last known to the Secretary; or
  - (b) sent by prepaid post to the address of a child care service last known to the Secretary; or
  - (c) sent by email to the last known email address of the child care service;notice of the decision is taken, for the purposes of the family assistance law, to have been given to the service.
- (2) Notice of a decision of an officer under Part 8 or 8C may be given to a service by properly addressing, prepaying and posting the document as a letter.
- (3) If notice of a decision is given in accordance with subsection (2), notice of the decision is taken to have been given to the service at the time at which the notice would be delivered in the ordinary course of the post, unless the contrary is proved.
- (4) For the purposes of this section, a notice of a decision of an officer under Part 8C is:
  - (a) an infringement notice under section 219TSI; or
  - (b) a notice of suspension under section 219TSQ.

### 225 Payment of deductions to Commissioner of Taxation

The Secretary must, in accordance with section 218 of the *Income Tax Assessment Act 1936*, or Subdivision 260-A in Schedule 1 to the *Taxation Administration Act 1953*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of a payment under this Act:

- (a) make deductions from the instalments of, or make a deduction from, the payment; and

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- (b) pay the amount deducted to the Commissioner of Taxation.
- This section does not apply to a payment of child care benefit.

**226 Setting off family assistance entitlement against tax liability**

- (1) If:
  - (a) a person is entitled to an amount of family assistance (other than child care benefit); and
  - (b) the person is liable for an amount of primary tax;the Commissioner of Taxation may determine that the whole or a part of the entitlement is to be set off against the liability.
- (2) If the Commissioner of Taxation does so:
  - (a) the amount of the entitlement and the amount of the liability are reduced accordingly; and
  - (b) the person is taken to have paid so much of the amount of the tax as is equal to the amount set off against the tax liability at the time when the Commissioner sets off the amount or at any earlier time that the Commissioner determines.
- (3) This section has effect in spite of anything in any other Act or any other law of the Commonwealth.

**227 Payment of deductions to Child Support Registrar**

- (1) The Secretary must, in accordance with a notice given to the Secretary under subsection 72AB(3) of the *Child Support (Registration and Collection) Act 1988* in relation to a person:
  - (a) make deductions from instalment amounts of family tax benefit that the person is entitled to be paid under section 23; or
  - (b) make a deduction from an amount of family tax benefit that the person is entitled to be paid under section 24;and pay amounts so deducted to the Child Support Registrar.
- (2) However, the Secretary must not deduct an amount under subsection (1) in contravention of section 228.

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- (3) If the Secretary deducts an amount under subsection (1), then:
  - (a) on the day the amount is deducted, the total amount of the child support debts of the person (being debts referred to in subsection 72AB(2) of the *Child Support (Registration and Collection) Act 1988*) is taken to be reduced by an amount equal to the amount deducted; and
  - (b) on the day the amount is deducted, the person is taken to have been paid an amount of family tax benefit equal to the amount deducted.
- (4) A deduction under subsection (1) may result in the family tax benefit that the person is entitled to be paid being reduced to nil.

### 228 Maximum deduction

- (1) This section applies if a notice is given under subsection 72AB(3) of the *Child Support (Registration and Collection) Act 1988* to a person that specifies:
  - (a) an amount to be deducted from family tax benefit that the person is entitled to be paid on a day or days specified in the notice; or
  - (b) a method of working out such an amount.
- (2) The amount deducted on a particular day must not exceed the total amount of the child support debts of the person on that day, being debts referred to in subsection 72AB(2) of the *Child Support (Registration and Collection) Act 1988*.
- (3) If, on a day specified in the notice, the person has at least one FTB child, or one regular care child who is also a rent assistance child, for whom the person is eligible for family tax benefit who is not a designated child support child of the person, the amount deducted on that day must not exceed the difference between:
  - (a) the amount of family tax benefit that the person is entitled to be paid on that day; and
  - (b) the amount of family tax benefit that the person would be entitled to be paid on that day, assuming that each designated



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child support child of the person was neither an FTB child, nor a regular care child, of the person on that day.

- (4) If, on a day specified in the notice:
- (a) each FTB child, and each regular care child who is also a rent assistance child, for whom the person is eligible for family tax benefit is a designated child support child of the person; and
  - (b) an income support payment or an income support supplement is payable to the person;
- the amount deducted on that day must not exceed the difference between:
- (c) the amount of family tax benefit that the person is entitled to be paid on that day; and
  - (d) the forgone amount in respect of the person's income support payment or income support supplement.
- (5) For the purposes of subsection (4), the ***forgone amount***, in respect of a person's income support payment or income support supplement, is the amount that represents the difference between:
- (a) the amount of the income support payment or the income support supplement that would have been payable to the person if the person had not been entitled to be paid family tax benefit on that day; and
  - (b) the amount of the income support payment or the income support supplement payable to the person on that day.
- (6) In this section:

***designated child support child of a person*** has the same meaning as in section 72AB of the *Child Support (Registration and Collection) Act 1988*.

***income support payment*** has the same meaning as in the *Social Security Act 1991*.

***income support supplement*** has the same meaning as in Part IIIA of the *Veterans' Entitlements Act 1986*.

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**229 Judicial notice of certain matters**

- (1) All courts are to take judicial notice of a signature that purports to be attached or appended to any official document produced under the family assistance law, if the signature is of a person who is or has been an officer.
- (2) If the signature of a person referred to in subsection (1) purports to be attached or appended to any official document produced under the family assistance law, all courts are to take judicial notice of the fact that the person is, or has been, an officer.

**230 Documentary evidence**

- (1) If the signature of any person who is or has been an officer purports to be attached or appended to any official document, the document is to be received in all courts as prima facie evidence of the facts and statements contained in it.
- (2) A statement in writing signed by a person referred to in subsection (1) that another person is or was entitled to, or had received, a payment under this Act on a certain date and of a certain amount is to be received in all courts as prima facie evidence that the person is or was entitled to, or had received, the payment on the date, and of the amount, stated.

**231 Application of family assistance law to unincorporated bodies**

- (1) The family assistance law applies to an unincorporated body or association (the *body*) as if it were a person other than an individual, but it applies with the following 3 changes.

*Imposition of obligations*

- (2) Subject to subsection (2A), the first change is that obligations that would be imposed on the body are imposed instead on:
  - (a) if the body is a partnership—each partner; or

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(b) in any other case—each member of the committee of management of the body;  
but they may be discharged by any of the partners or any of those members.

(2A) If:

- (a) an unincorporated body or association is operating an approved child care service; and
- (b) a debt becomes due to the Commonwealth by the service under Part 4;

then subsection (2) does not apply in relation to the debt and the debt is taken to be a debt owed by the service.

Note: One of the effects of this subsection is that subsection 82(2) rather than subsection 82(1) will apply to the debt. Subsection 82(2) provides more ways of recovering debts than subsection 82(1) (for example, setting off debts against advances is permissible).

*Commission of offences*

- (3) The second change is that any offence against this Act that would otherwise be committed by the body is taken instead to have been committed by:
- (a) if the body is a partnership—any partner:
    - (i) who was knowingly concerned in, or party to, the relevant act or omission; or
    - (ii) who aided, abetted, counselled or procured the relevant act or omission; or
  - (b) in any other case—any member of the committee of management of the body:
    - (i) who was knowingly concerned in, or party to, the relevant act or omission; or
    - (ii) who aided, abetted, counselled or procured the relevant act or omission.

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### *Contravention of civil penalty provisions*

- (4) The third change is that any contravention of a civil penalty provision that would otherwise be committed by the body is taken instead to have been committed by:
- (a) if the body is a partnership—any partner:
    - (i) who was knowingly concerned in, or party to, the relevant contravention; or
    - (ii) who aided, abetted, counselled or procured the relevant contravention; or
  - (b) in any other case—any member of the committee of management of the body:
    - (i) who was knowingly concerned in, or party to, the relevant contravention; or
    - (ii) who aided, abetted, counselled or procured the relevant contravention.

## **232 Annual report**

- (1) As soon as practicable after 30 June in each year, the Secretary must give the Minister a written report on the administrative operation of the family assistance law during the financial year that ended on that 30 June.
- (2) The Minister is to cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

## **233 Appropriation**

Payments under this Act are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

## **234 Agreements on administrative arrangements**

- (1) The Secretary and the Principal Member may agree on administrative arrangements to further the objectives of Division 2 of Part 5.

- (2) The Secretary and the Commissioner of Taxation may agree on administrative arrangements to further the objectives of this Act.

### **235 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient for carrying out or giving effect to this Act.

#### *Offences and civil penalties*

- (1A) Without limiting subsection (1), the regulations may:
- (a) prescribe penalties for offences against the regulations that do not exceed a fine of 10 penalty units; and
  - (b) declare that specified provisions of the regulations are civil penalty provisions for the purposes of this Act, and prescribe penalties for contraventions of such provisions that do not exceed:
    - (i) for a body corporate—250 penalty units; or
    - (ii) in any other case—50 penalty units.

#### *Fees*

- (2) Without limiting subsection (1), the regulations may prescribe fees for the making of applications under section 194 or 207. Any such fees must not be such as to amount to taxation.

#### *Proof of making of claims etc.*

- (3) Without limiting subsection (1), if a provision of the family assistance law provides that the Secretary or another officer may approve:
- (a) the form or manner of making or withdrawing any application or claim; or
  - (b) the way of doing any other thing that is required or permitted to be done for the purposes of that law;

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the regulations may make provision for the proof of the making or withdrawing of the application or claim, or the doing of the other thing, for the purposes of any legal proceedings.

*Date of effect of review decisions*

- (4) Without limiting subsection (1), the regulations may provide that specified decisions by:
- (a) the Secretary under any provision of this Act; or
  - (b) an authorised review officer, the Social Security Appeals Tribunal, or the Administrative Appeals Tribunal, under Part 5;

that have the effect of creating or increasing an entitlement to be paid family tax benefit by instalment, only have effect from a specified day before the making of the decisions.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

A = Act	orig = original
ad = added or inserted	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
am = amended	pres = present
amdt = amendment	prev = previous
c = clause(s)	(prev...) = previously
C[x] = Compilation No. x	Pt = Part(s)
Ch = Chapter(s)	r = regulation(s)/rule(s)
def = definition(s)	Reg = Regulation/Regulations
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
Div = Division(s)	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislative Instruments	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LI = Legislative Instrument	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
o = order(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	



## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
A New Tax System (Family Assistance) (Administration) Act 1999	81, 1999	8 July 1999	s 1, 2 and 235(5): Royal Assent Remainder: 1 July 2000 s 2(2))	
A New Tax System (Tax Administration) Act 1999	179, 1999	22 Dec 1999	Schedule 1 (items 5, 6): (a)	—
Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999	192, 1999	23 Dec 1999	Schedule 4: 1 July 2000 (b)	—
A New Tax System (Tax Administration) Act (No. 1) 2000	44, 2000	3 May 2000	Schedule 3 (item 1): (c)	—
A New Tax System (Family Assistance and Related Measures) Act 2000	45, 2000	3 May 2000	Schedules 2, 5 and 6: (d)	Sch 5 and 6
Family and Community Services (2000 Budget and Related Measures) Act 2000	138, 2000	24 Nov 2000	Schedule 2 (items 7–10): 1 Jan 2001 (e)	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Family and Community Services and Veterans' Affairs Legislation Amendment (Debt Recovery) Act 2001	47, 2001	12 June 2001	Schedule 1 (items 3–27, 29, 32, 33), Schedule 3 (items 1–15) and Schedule 4 (items 1–8A): 1 July 2001 Remainder: Royal Assent	Sch. 3 (item 17)
Child Support Legislation Amendment Act 2001	75, 2001	30 June 2001	Schedule 1A (items 22–24): 1 July 2002 (f)	—
Family and Community Services Legislation Amendment (Application of Criminal Code) Act 2001	137, 2001	1 Oct 2001	2 Oct 2001	. 4
Family Assistance Estimate Tolerance (Transition) Act 2001	138, 2001	1 Oct 2001	1 Oct 2001	—
Family and Community Services Legislation Amendment (Budget Initiatives and Other Measures) Act 2002	95, 2002	10 Nov 2002	Schedules 1 and 2: 1 July 2003 Remainder: Royal Assent	Sch.2 (item 14)
Family and Community Services Legislation Amendment Act 2003	30, 2003	15 Apr 2003	s. 4 and Schedule 2 (items 14–51): Royal Assent Schedule 2 (item 72): (g) Schedule 2 (item 83): 1 July 2000 Schedule 2 (items 84–86): (g)	s 4

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003	35, 2003	24 Apr 2003	Schedule 7 (items 4–6): 24 Apr 2003	—
Family and Community Services and Veterans’ Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003	122, 2003	5 Dec 2003	Schedule 4 (items 1–4): 1 July 2004	Sch 4 (item 1)
Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003	150, 2003	19 Dec 2003	Schedule 2 (item 95): ( <i>h</i> )	—
Family Assistance Legislation Amendment (Extension of Time Limits) Act 2004	33, 2004	20 Apr 2004	20 Apr 2004	Sch 1 (item 6)
Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004	52, 2004	27 Apr 2004	Schedule 3 (items 9, 10): 1 July 2004 (s 2)	—
Family Assistance Legislation Amendment (More Help for Families—Increased Payments) Act 2004	59, 2004	26 May 2004	Schedule 1 (items 9, 10, 11(1)) and Schedule 2 (items 12–33): 1 July 2004	Sch 1 (item 11(1)) and Sch. 2 (items 14, 25, 27, 29, 31, 33)

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004	60, 2004	26 May 2004	26 May 2004	Sch 3 (item 1)
Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Election Commitments) Act 2004	132, 2004	8 Dec 2004	Schedule 4 (items 14–44): 1 Jan 2005	Sch 4 (item 44)
Family and Community Services and Veterans' Affairs Legislation Amendment (Further 2004 Election Commitments and Other Measures) Act 2005	29, 2005	21 Mar 2005	Schedule 1 (items 8, 9, 10(1)): 1 Jan 2005	Sch. 1 (item 10(1))
Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Act 2005	61, 2005	26 June 2005	Schedule 1, Schedule 2 (items 1–6), Schedule 3 (items 2, 3) and Schedule 4 (items 1–30): 1 July 2005 Schedule 3 (item 4): 1 Jan 2005 Schedule 3 (items 5–10, 14–17): 1 Jan 2006 Remainder: Royal Assent	Sch 1 (item 12), Sch 2 (items 4–7) and Sch 3 (items 9, 17)
Human Services Legislation Amendment Act 2005	111, 2005	6 Sept 2005	Schedule 2 (items 84–89): 1 Oct 2005	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Family and Community Services Legislation Amendment (Welfare to Work) Act 2005	150, 2005	14 Dec 2005	Schedule 1 (items 9–17) and Schedule 2 (items 15–35): Royal Assent	Sch 1 (items 16, 17) and Sch. 2 (item 35)
Tax Laws Amendment (2005 Measures No. 4) Act 2005	160, 2005	19 Dec 2005	Schedule 1 (item 11): Royal Assent	—
Family Assistance, Social Security and Veterans' Affairs Legislation Amendment (2005 Budget and Other Measures) Act 2006	36, 2006	3 May 2006	Schedules 2 and 5: 4 May 2006 Schedule 4: 1 July 2006	Sch 2 (item 20), Sch 4 (item 2) and Sch 5 (items 6, 7)
Families, Community Services and Indigenous Affairs and Other Legislation (2006 Budget and Other Measures) Act 2006	82, 2006	30 June 2006	Schedule 10: 1 July 2006 Schedule 11: 1 July 2002	Sch 11 (item 2)
Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Act 2006	108, 2006	27 Sept 2006	Schedule 2: (items 1, 2) and Schedule 8: (items 40–75): Royal Assent	—
Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006	146, 2006	6 Dec 2006	Schedule 5 (item 73): Royal Assent Schedule 5 (items 78–89) and Schedule 8 (items 92–109, 145(1)): 1 July 2008	Sch 8 (item 145(1)) Sch. 5 (item 73) (rs by 63, 2008, Sch. 6 [item 16]) Sch. 5 (item 73A) (ad. by 63, 2008, Sch. 6 [item 16])

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
<b>as amended by</b>				
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Act 2008	63, 2008	30 June 2008	Schedule 6 (item 16): (i)	—
Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007	82, 2007	21 June 2007	Schedule 6 (items 2–7, 25–37): 1 July 2007	Sch. 6 (items 7, 37)
Families, Community Services and Indigenous Affairs Legislation Amendment (Child Care and Other 2007 Budget Measures) Act 2007	113, 2007	28 June 2007	Schedule 1 (items 12–18, 23): 1 July 2007	Sch. 1 (item 23)

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007	118, 2007	28 June 2007	Schedule 1: (j) Schedule 2: 1 July 2007 Schedule 3: 29 June 2007 Remainder: Royal Assent	Sch. 1 (items 91, 92, 94–96, 97, 98, 99, 101), Sch. 2 (item 9) and Sch. 3 (items 39–47) Sch. 1 (item 93) (am. by 34, 2010, Sch. 5 [item 1]) Sch. 1 (item 96A) (ad. by 34, 2010, Sch. 5 [item 2]; am. by 34, 2010, Sch. 5 [item 4]) Sch. 1 (item 97B) (ad. by 34, 2010, Sch. 5 [item 3]; am. by 34, 2010, Sch. 5 [item 5] [as am. by 79, 2011, Sch. 1 [item 35]]; am. by 34, 2010, Sch. 5 [items 6, 7]) Sch. 1 (item 97C) (ad. by 34, 2010, Sch. 1 [item 29]; am. by 25, 2011, Sch. 2 [item 15]; am. by 79, 2011, Sch. 1 [item 33]) Sch. 1 (item 102) (ad. by 34, 2010, Sch. 6 [item 1])

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
<b>as amended by</b>				
Family Assistance Legislation Amendment (Child Care) Act 2010	34, 2010	13 Apr 2010	Schedule 1 (item 29), Schedules 5 and 6: ( <i>see</i> 34, 2010 below)	Sch. 5 (item 8) and Sch. 6 (item 2)
<b>as amended by</b>				
Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011	79, 2011	25 July 2011	Schedule 1 (item 35): ( <i>k</i> )	—
Family Assistance Legislation Amendment (Child Care Rebate) Act 2011	25, 2011	21 Apr 2011	Schedule 2 (item 15): ( <i>n</i> ) Schedule 3 (item 9): ( <i>n</i> )	s. 2(1) (item 28) (rs. by 91, 2011, Sch. 2 [item 2]) s. 2(1) (items 29–32) (ad. by 91, 2011, Sch. 2 [item 2])
<b>as amended by</b>				
Social Security and Other Legislation Amendment (Miscellaneous Measures) Act 2011	91, 2011	4 Aug 2011	Schedule 2 (item 2): ( <i>q</i> )	—
Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011	79, 2011	25 July 2011	Schedule 1 (item 33): 26 July 2011	—



## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007	130, 2007	17 Aug 2007	18 Aug 2007	Sch. 2 (item 7) ss. 4–7 (rep. by 93, 2010, Sch. 1 [item 3])
<b>as amended by</b>				
Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010	93, 2010	29 June 2010	Schedule 1 (items 3, 4): 31 Dec 2010	Sch. 1 (item 4)
Dental Benefits (Consequential Amendments) Act 2008	42, 2008	25 June 2008	Schedule 1 (items 2, 3): 26 June 2008 ( <i>see s. 2(1)</i> )	—
Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Act 2008	53, 2008	25 June 2008	Schedule 1 (items 14–63): 7 July 2008 Schedule 1 (item 64), Schedule 3 and Schedule 5 (items 6–22, 24–27, 29–31): Royal Assent Schedule 2 (items 13–40): 1 July 2008 Schedule 4: 26 June 2008 Schedule 5 (item 23): 1 Jan 2009	Sch. 1 (items 63, 64), Sch. 2 (items 32–35, 36(1), 37–40), Sch. 3 (items 26, 27), Sch. 4 (items 86, 87) and Sch. 5 (items 27, 29–31) Sch. 2 (item 36(2)) (am. by 50, 2009, Sch. 1 [items 15, 39])

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
<b>as amended by</b>				
Family Assistance Legislation Amendment (Child Care) Act 2009	50, 2009	24 June 2009	Schedule 1 (items 15, 39): Royal Assent	—
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Act 2008	63, 2008	30 June 2008	s. 4 and Schedule 6 (items 10, 11, 13, 15): Royal Assent Schedule 2 (items 16–21, 22(1), 24–34, 43, 44): 1 Jan 2009	s. 4 and Sch. 6 (item 15) Sch. 2 (item 22(1)) (am. by 70, 2013, Sch. 3 [items 42–44]) Sch. 2 (item 34) (am. by 70, 2013, Sch. 3 [item 45]) Sch. 2 (item 44) (am. by 70, 2013, Sch. 3 [item 46])
<b>as amended by</b>				
Family Assistance and Other Legislation Amendment Act 2013	70, 2013	27 June 2013	Schedule 3 (items 42–46, 57): 28 June 2013	Sch. 3 (item 57)
Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008	131, 2008	1 Dec 2008	Schedule 3 (items 5–15): Royal Assent	—
Tax Laws Amendment (Education Refund) Act 2008	141, 2008	9 Dec 2008	Schedule 1 (items 1, 10): Royal Assent	Sch. 1 (item 10)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Act 2008	143, 2008	9 Dec 2008	Schedule 1 (items 10– 14): 1 Jan 2009	Sch. 1 (items 12– 14)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws— General Law Reform) Act 2008	144, 2008	9 Dec 2008	Schedule 6 (items 21, 22): 1 July 2009	—
Household Stimulus Package Act (No. 2) 2009	4, 2009	18 Feb 2009	Schedule 3 (items 4–14): Royal Assent	—
Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Act 2009	48, 2009	24 June 2009	Schedule 1 (items 2–6, 8–12, 14, 15): 1 July 2009 Schedule 1 (items 7, 16): Royal Assent	Sch. 1 (items 12, 14–16)
Family Assistance Amendment (Further 2008 Budget Measures) Act 2009	49, 2009	24 June 2009	Schedule 1, Schedule 2 (items 1–3, 7) and Schedule 3: 1 July 2009 Schedule 2 (items 4–6, 8): 1 July 2010 Remainder: Royal Assent	Sch. 1 (item 2), Sch. 2 (items 7, 8) and Sch. 3 (items 3, 4)

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Family Assistance Legislation Amendment (Child Care) Act 2009	50, 2009	24 June 2009	Schedule 1 (items 11–15, 23–38, 42, 43), Schedule 2 (items 11–22), Schedule 3 and Schedule 5 (items 2–12): Royal Assent Schedule 4 (items 1–9): 25 June 2009 Schedule 4 (items 10–14): 24 Dec 2009 Schedule 5 (items 13–19): 22 July 2009	Sch. 1 (items 42, 43), Sch. 2 (items 20–22), Sch. 3 (items 2, 5) and Sch. 5 (items 3, 8, 10, 19)
Family Assistance Legislation Amendment (Participation Requirement) Act 2009	129, 2009	10 Dec 2009	Schedule 1 (items 11–14): 1 Jan 2010	Sch. 1 (items 13, 14) (am. by 45, 2010, Sch. 3)
<b>as amended by</b> Social Security and Family Assistance Legislation Amendment (Weekly Payments) Act 2010	45, 2010	14 Apr 2010	Schedule 3: ( <i>see</i> 45, 2010 below)	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Schedule 10 (items 2, 3): 20 Feb 2010	—
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Act 2010	33, 2010	13 Apr 2010	Schedule 1 (items 1–14): 14 Apr 2010	Sch. 1 (item 14)

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Family Assistance Legislation Amendment (Child Care) Act 2010	34, 2010	13 Apr 2010	Sch 2 and 4: 11 May 2010 Sch 3 and 6: 14 Apr 2010 Sch 5 (items 1–3): 29 June 2007 Sch 5 (items 4–7): 16 May 2009 Remainder: 13 Apr 2010	Sch. 1 (item 28), Sch 2 (item 6), Sch 3 (item 2), Sch 4 (item 5), Sch 5 (item 8) and Sch 6 (item 2)
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Act 2010	38, 2010	13 Apr 2010	Sch 3 (items 1–5, 16(1), (2), 18–50, 157–163): 11 May 2010 Sch 6 and Sch 7 (item 8): 1 July 2010	Sch 3 (items 16(1), (2), 157–163) and Sch. 6 (item 2)
Social Security and Family Assistance Legislation Amendment (Weekly Payments) Act 2010	45, 2010	14 Apr 2010	Sch 1 (items 1–5, 7, 8): 14 Apr 2010 Sch 3: (l)	Sch 1 (items 7, 8)
Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Act 2010	65, 2010	28 June 2010	Sch 2 (items 22–38, 100–112) and Sch 3 (items 1–12): 1 July 2010 Sch 3 (items 13–15): (m)	Sch 2 (items 100–112) and Sch. 3 (item 15)
Paid Parental Leave (Consequential Amendments) Act 2010	105, 2010	14 July 2010	Sch 1 (items 19–28, 30, 31) and Sch 2 (items 1, 2, 5): 1 Oct 2010 (s 2(1)) Sch 1 (item 29): 1 Jan 2011	Sch. 2 (items 1, 2, 5)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (items 6–8): 22 Mar 2011 Sch 7 (item 16): 19 Apr 2011	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Family Assistance Legislation Amendment (Child Care Rebate) Act 2011	25, 2011	21 Apr 2011	Sch 1 (items 9–81): 22 Apr 2011 Sch 2 (items 1–13): (n) Sch 3 (items 1–8): (n)	Sch 1 (items 77–81) and Sch 2 (item 13) s 2(1) (item 28) (rs. by 91, 2011, Sch 2 item 2)) s 2(1) (items 29–32) (ad. by 91, 2011, Sch. 2 (item 2))
<b>as amended by</b>				
Social Security and Other Legislation Amendment (Miscellaneous Measures) Act 2011	91, 2011	4 Aug 2011	Sch 2 (item 2): (q)	—
Human Services Legislation Amendment Act 2011	32, 2011	25 May 2011	Sch 4 (items 19–45, 655): 1 July 2011	—
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011	34, 2011	26 May 2011	Sch 5 (items 16, 17(1)): 26 May 2011	Sch 5 (item 17(1))
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Election Commitments and Other Measures) Act 2011	50, 2011	27 June 2011	Sch 2 (items 13, 17(5)): 1 Jan 2012 Sch 3: 1 July 2011 Sch 5 (item 1): 28 June 2011	Sch 2 (item 17(5)) and Sch. 3 (item 2)

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Act 2011	53, 2011	28 June 2011	Sch 1 (items 9–20), Sch 2 (items 5–8) and Sch 5 (items 19–31): 1 July 2011	Sch 1 (items 17–20)
Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011	79, 2011	25 July 2011	Sch 1 (items 1–4, 7–32, 34), Sch 4 (items 3, 5–7) and Sch 5: 26 July 2011 Sch 2 (item 4) and Sch 3 (items 1–6): 22 Aug 2011 Sch 4 (item 4): (o)	Sch 1 (item 34), Sch 3 (item 6), Sch 4 (item 7) and Sch 5 (item 21) s 2(1) (item 5) (rs. by 32, 2011, Sch 4 [item 658]) s 2(1) (items 6–12) (ad by 32, 2011, Sch 4 (item 658))
<b>as amended by</b>				
Family Assistance Legislation Amendment (Child Care Rebate) Act 2011	25, 2011	21 Apr 2011	Schedule 2 (item 14): 26 July 2011 (s. 2(1))	—
Human Services Legislation Amendment Act 2011	32, 2011	25 May 2011	Sch 4 (item 658): (p)	—
Social Security and Other Legislation Amendment (Miscellaneous Measures) Act 2011	91, 2011	4 Aug 2011	Sch 2 (item 1): (q)	—

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Family Assistance Legislation Amendment (Child Care Financial Viability) Act 2011	120, 2011	14 Oct 2011	15 Oct 2011 (s 2(1))	Sch 1 (item 26)
Clean Energy (Household Assistance Amendments) Act 2011	141, 2011	29 Nov 2011	Sch 2 (items 4–14, 33, 34(1), 47): 14 May 2012 Sch 8 (items 6–17): 14 May 2012 (s 2(1) items 6, 16)	Sch 2 (item 34(1)) and Sch. 8 (item 17)
Family Assistance and Other Legislation Amendment Act 2012	49, 2012	26 May 2012	Sch 1 (items 3–6, 15–45, 52), Sch 3 (items 3–10) and Sch 6 (items 29–32): 1 July 2012 (s 2(1) items 2, 7, 12) Sch 2 (items 3, 4) and Sch 6 (items 26, 27): 26 May 2012 (s 2(1) items 4, 9) Sch 6 (item 28): 14 May 2012 (s 2(1) item 17)	Sch 1 (item 52), Sch 3 (item 10) and Sch. 6 (item 27)
Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Act 2012	50, 2012	26 May 2012	Sch 1 (items 3–13) and Sch 2 (items 13–17): 27 May 2012 (s 2(1) items 2, 4) Sch 1 (item 25) and Sch 2 (item 22): 1 July 2012 (s 2(1) items 3, 5)	—
Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Act 2012	98, 2012	29 June 2012	Sch 3 (items 14, 17(1)): 1 Jan 2013 (s 2(1) item 10) Sch 7 (item 15): 30 June 2012 (s 2(1) item 13)	Sch. 3 (item 17(1))



## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures) Act 2012	154, 2012	17 Nov 2012	Sch 3 (items 1–28, 159–162): 15 Dec 2012 (s 2(1) item 3) Sch 5 (item 60) and Sch 6 (item 7): 17 Nov 2012 (s 2(1) items 5, 8)	Sch. 3 (items 159–162)
Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012	169, 2012	3 Dec 2012	Sch 2 (item 148): 3 Dec 2012 (s 2(1) item 7)	—
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (items 6–8): 12 Mar 2014 (s 2(1) item 3)	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 2 (item 2): 12 April 2013 (s 2(1) item 3)	—
Family Assistance and Other Legislation Amendment Act 2013	70, 2013	27 June 2013	Sch 1 (items 4–6, 9), Sch 2B (items 15–53, 55–58) and Sch 3 (items 34, 35(2), 40, 41, 57): 28 June 2013 (s 2(1) items 3, 5, 9G, 10) Sch 1 (item 7) and Sch 3 (items 66, 67): 1 July 2013 (s 2(1) items 4, 13) Sch 2A (items 11–15, 28–44, 67(1), (12)): 1 Mar 2014 (s 2(1) items 9A, 9C)	Sch. 1 (item 9), Sch. 2A (item 67(1), (12)), Sch. 2B (items 55–58) and Sch. 3 (items 35(2), 57)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 1 (items 15, 16): 29 June 2013 (s 2(1) item 2)	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Farm Household Support (Consequential and Transitional Provisions) Act 2014	13, 2014	28 Mar 2014	Sch 2 (items 4–6): 1 July 2014 (s 2(1) item 6)	Sch 2 (item 6)
Social Services and Other Legislation Amendment Act 2014	14, 2014	31 Mar 2014	Sch 3 (items 31–35, 36(5), (6)): 1 May 2014 (s 2(1) item 3A) Sch 10 (items 6–8): 1 July 2014 (2(1) item 6) Sch 12 (items 15–26, 29–31): 1 Apr 2014 (s 2(1) item 8) Sch 12 (items 85–88): 1 Mar 2014 (2(1) item 10)	Sch 3 (item 36(5), (6)), Sch 10 (item 8) and Sch 12 (items 26, 31)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (item 3) and Sch 8 (item 2): 24 June 2014 (2(1) items 2, 9)	—
Minerals Resource Rent Tax Repeal and Other Measures Act 2014	96, 2014	5 Sept 2014	Sch 9 (item 1N): 5 Sept 2014 (s 2(1) item 8) Sch 9 (items 15–20, 24): <u>31 Dec 2016 (s 2(1) item 9)</u>	Sch 9 (item 24)
Social Services and Other Legislation Amendment (Seniors Health Card and Other Measures) Act 2014	98, 2014	11 Sept 2014	Sch 2 (item 1): 12 Sept 2014 (s 2(1) item 2)	—
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 10 (item 12): 17 Oct 2014 (s 2(1) item 8)	—

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Social Services and Other Legislation Amendment (2014 Budget Measures No. 6) Act 2014	122, 2014	26 Nov 2014	Sch 1 (items 189–193): 20 Sept 2014 (s 2(1) item 2)	Sch 1 (item 193)
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (item 5): 25 Mar 2015 (s 2(1) item 2)	—

- (a) The *A New Tax System (Family Assistance) (Administration) Act 1999* was amended by Schedule 1 (items 5 and 6) only of the *A New Tax System (Tax Administration) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Pay As You Go) Act 1999*.
- Section 1 commenced on 22 December 1999.
- (b) The *A New Tax System (Family Assistance) (Administration) Act 1999* was amended by Schedule 4 only of the *Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999*, subsection 2(3) of which provides as follows:
- (3) Schedules 3 and 4 commenced on 1 July 2000.
- (c) The *A New Tax System (Family Assistance) (Administration) Act 1999* was amended by Schedule 3 (item 1) only of the *A New Tax System (Tax Administration) Act (No. 1) 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Tax Administration) Act 1999*.
- Section 1 commenced on 22 December 1999.
- (d) The *A New Tax System (Family Assistance) (Administration) Act 1999* was amended by Schedule 2 only of the *A New Tax System (Family Assistance and Related Measures) Act 2000*, subsection 2(4) of which provides as follows:
- (4) Schedule 2, items 3 to 5 and 15 to 57 of Schedule 3 and Schedules 5 and 6 commence immediately after the commencement of the provisions

## Endnotes

### Endnote 3—Legislation history

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referred to in subsection 2(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

The provisions referred to in subsection 2(2) commenced on 1 July 2000.

- (e) The *A New Tax System (Family Assistance) (Administration) Act 1999* was amended by Schedule 2 (items 7–10) only of the *Family and Community Services (2000 Budget and Related Measures) Act 2000*, subsection 2(2)(b) of which provides as follows:

(2) The following provisions:

(b) Schedules 2 and 3;

commence on 1 January 2001.

- (f) The *A New Tax System (Family Assistance) (Administration) Act 1999* was amended by Schedule 1A (items 22–24) only of the *Child Support Legislation Amendment Act 2001*, subsection 2(1A)(a) of which provides as follows:

(1A) Items 22, 23, 24, 25 and 26 of Schedule 1A commence on whichever of the following days applies:

(a) if this Act receives the Royal Assent on or before 1 July 2002—on 1 July 2002;

- (g) Subsection 2(1) (items 8 and 10) of the *Family and Community Services Legislation Amendment Act 2003* provide as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
8. Schedule 2, items 52 to 72	Immediately after the commencement of the provisions of the <i>A New Tax System (Family Assistance and Related Measures) Act 2000</i> referred to in subsection 2(2) of that Act	1 July 2000
10. Schedule 2, items 84 to 86	Immediately after the commencement of Schedule 2 to the <i>A New Tax System (Family Assistance and Related Measures) Act 2000</i>	1 July 2000
(h)	Subsection 2(1) (item 8) of the <i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i> provides as follows:	

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## Endnote 3—Legislation history

- (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.

Provision(s)	Commencement	Date/Details
8. Schedule 2, items 95 to 103	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004

- (i) Subsection 2(1) (item 21) of the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Act 2008* provides as follows:

- (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.

Provision(s)	Commencement	Date/Details
21. Schedule 6, items 16 and 17	Immediately after the commencement of items 73 and 74 of Schedule 5 to the <i>Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006</i> .	6 December 2006

- (j) Subsection 2(1) (items 2 and 4) of the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007* provides as follows:

- (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.

Provision(s)	Commencement	Date/Details
2. Schedule 1	Immediately after the commencement of the provision(s) covered by table item 4.	29 June 2007
4. Schedule 3	The day after this Act receives the Royal Assent.	29 June 2007

- (k) Subsection 2(1) (item 3) of the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011* provides as follows:

## Endnotes

### Endnote 3—Legislation history

- (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.

Provision(s)	Commencement	Date/Details
3. Schedule 1, Part 2	Immediately after the time specified in the <i>Family Assistance Legislation Amendment (Child Care) Act 2010</i> for the commencement of item 5 of Schedule 5 to that Act.	16 May 2009

- (l) Subsection 2(1) (item 3) of the *Social Security and Family Assistance Legislation Amendment (Weekly Payments) Act 2010* provides as follows:

- (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.

Provision(s)	Commencement	Date/Details
3. Schedule 3	Immediately after the commencement of Schedule 1 to the <i>Family Assistance Legislation Amendment (Participation Requirement) Act 2009</i> .	1 January 2010

- (m) Subsection 2(1) (item 4) of the *Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Act 2010* provides as follows:

- (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.

Provision(s)	Commencement	Date/Details
4. Schedule 3, items 13 to 15	Immediately after the commencement of item 6 of Schedule 2 to the <i>Family Assistance Amendment (Further 2008 Budget Measures) Act 2009</i> .	1 July 2010

- (n) Subsection 2(1) (items 25 and 27–32) of the *Family Assistance Legislation Amendment (Child Care Rebate) Act 2011* provides as follows:

- (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.

## Endnote 3—Legislation history

Provision(s)	Commencement	Date/Details
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 July 2011
27. Schedule 2, Part 3	At the same time as the provision(s) covered by table item 25.	26 July 2011
28. Schedule 3, item 1	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 after that day, the provision(s) do not commence at all.	Does not commence
29. Schedule 3, item 2	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 after that day, the provision(s) do not commence at all.	Does not commence
30. Schedule 3, item 3	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 after that day, the provision(s) do not commence at all.	Does not commence
31. Schedule 3, items 4 and 5	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 after that day, the provision(s) do not commence at all.	Do not commence
32. Schedule 3, items 6 to 10	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 after that day, the provision(s) do not commence at all.	Do not commence

## Endnotes

### Endnote 3—Legislation history

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- (o) Subsection 2(1) (item 6) of the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011* provides as follows:
- (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.

Provision(s)	Commencement	Date/Details
6. Schedule 4, item 4	The day after this Act receives the Royal Assent. However, if item 655 of Schedule 4 to the <i>Human Services Legislation Amendment Act 2011</i> commences before the day after this Act receives the Royal Assent, the provision(s) do not commence at all.	Does not commence

- (p) Subsection 2(1) (item 7B) of the *Human Services Legislation Amendment Act 2011* provides as follows:
- (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.

Provision(s)	Commencement	Date/Details
7B. Schedule 4, Part 6	Immediately after the commencement of section 2 of the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> . However, if section 2 of the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> commences before the day this Act receives the Royal Assent, the provision(s) do not commence at all.	25 July 2011

- (q) Subsection 2(1) (items 3 and 4) of the *Social Security and Other Legislation Amendment (Miscellaneous Measures) Act 2011* provides as follows:
- (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.



## Endnote 3—Legislation history

Provision(s)	Commencement	Date/Details
3. Schedule 2, item 1	Immediately after the commencement of item 8 of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011</i> .	26 July 2011
4. Schedule 2, item 2	Immediately after the commencement of section 2 of the <i>Family Assistance Legislation Amendment (Child Care Rebate) Act 2011</i> .	21 April 2011

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

Provision affected	How affected
<b>Part 2</b>	
s 3 .....	am No 45, 2000; No 138, 2000; No 47, 2001; No 30, 2003; No 150, 2003; No 59, 2004; No 111, 2005; No 36, 2006; No 82, 2006; No 82, 2007; No 118, 2007; No 53, 2008; No 48, 2009; No 50, 2009; No 34, 2010; No 38, 2010; No 65, 2010; No 105, 2010; No 5, 2011; No 25, 2011; No 32, 2011; No 53, 2011; No 79, 120, 2011; No 141, 2011; No 49, 2012; No 154, 2012; No 70, 2013; No 103, 2013; No 31, 2014
s 3A.....	ad No 137, 2001
s 4 .....	am No 118, 2007
s 4A.....	ad No 53, 2008
<b>Part 3</b>	
<b>Division 1</b>	
<b>Subdivision A</b>	
s 5 .....	am No 70, 2013
s 7 .....	am No 45, 2000; No 105, 2010
s 7A.....	ad No 45, 2000
s 8 .....	am No 45, 2000
s 8A.....	ad No 45, 2000
s 9 .....	am No 45, 2000; No 122, 2003
s 10 .....	am No 179, 1999; No 45, 2000; No 122, 2003; No 33, 2004; No 63, 2008; No 48, 2009; No 38, 2010; No 53, 2011; No 70, 2013; No 14, 2014
<b>Subdivision B</b>	
s 13 .....	am No 45, 2000
s 14 .....	am No 45, 2000; No 48, 2009
s 14A.....	ad No 70, 2013
s 15 .....	rs No 45, 2000
s 15A.....	ad No 45, 2000
s 15B.....	ad No 105, 2010
s 16 .....	am No 45, 2000; No 146, 2006

## Endnote 4—Amendment history

Provision affected	How affected
s 20 .....	am No 45, 2000; No 30, 2003; No 36, 2006; No 49, 2012
s 20A.....	ad No 36, 2006
s 20B.....	ad No 36, 2006
s 20C.....	ad No 36, 2006
	am No 82, 2006
s 21 .....	am No 63, 2008; No 49, 2012
s 22 .....	am No 45, 2000; No 45, 2010
s 23 .....	am No 45, 2000; No 75, 2001; No 95, 2002; No 49, 2009; No 45, 2010
s 24 .....	am No 45, 2000; No 75, 2001; No 95, 2002; No 49, 2009; No 70, 2013
s 24A.....	ad No 70, 2013
s 25 .....	am No 45, 2000; No 137, 2001; No 45, 2010
s 25A.....	ad No 45, 2000
s 26 .....	am No 30, 2003
s 26A.....	ad No 45, 2000
<b>Subdivision C</b>	
s 27 .....	am No 45, 2000
s 27A.....	ad No 45, 2000
s 28 .....	am No 33, 2004; No 61, 2005; No 70, 2013 (md)
s 28AA.....	ad No 14, 2014
s 28A.....	ad No 45, 2000
	am No 30, 2003; No 36, 2006
s 28B.....	ad No 45, 2000
	am No 146, 2006
s 29 .....	am No 61, 2005; No 129, 2009; No 14, 2014
s 30A.....	ad No 122, 2003
	am No 14, 2014
s 30B.....	ad No 122, 2003
	am No 146, 2006; No 14, 2014
s 31 .....	am No 45, 2000; No 122, 2003; No 61, 2005
s 31A.....	ad No 45, 2000
	am No 122, 2003; No 61, 2005; No 36, 2006

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 31B.....	ad No 45, 2000 am No 122, 2003; No 61, 2005
s 31C.....	ad No 36, 2006
s 31D.....	ad No 36, 2006
s 31E.....	ad No 49, 2009 am No 53, 2011
s 32 .....	am No 45, 2000
<b>Subdivision CA</b>	
Subdivision CA.....	ad No 49, 2009
s 32AA.....	ad No 49, 2009 am No 49, 2009; No 49, 2012
s 32AB .....	ad No 49, 2009 am No 65, 2010
s 32AC .....	ad No 49, 2009 am No 65, 2010
s 32AD .....	ad No 49, 2009 am No 49, 2012
s 32AE .....	ad No 49, 2009 am No 65, 2010; No 49, 2012
s 32AEA .....	ad No 14, 2014
<b>Subdivision CB</b>	
Subdivision CB.....	ad No 49, 2012
s 32AF .....	ad No 49, 2012
s 32AG.....	ad No 49, 2012
s 32AH.....	ad No 49, 2012
s 32AI .....	ad No 49, 2012
s 32AJ .....	ad No 49, 2012
s 32AK.....	ad No 49, 2012
s 32AL .....	ad No 49, 2012
s 32AM.....	ad No 49, 2012

## Endnote 4—Amendment history

Provision affected	How affected
<b>Subdivision D</b>	
Subdivision D .....	ad No 59, 2004
s 32A.....	ad No 59, 2004 am No 29, 2005; No 61, 2005; No 141, 2011; No 122, 2014
s 32B.....	ad No 59, 2004
s 32C.....	ad No 59, 2004 am No 70, 2013 rs No 14, 2014
s 32D.....	ad No 59, 2004 am No 146, 2006; No 70, 2013 rs No 14, 2014
s 32E.....	ad No 59, 2004 am No 70, 2013 rs No 14, 2014
s 32F .....	ad No 59, 2004 am No 70, 2013 rs No 14, 2014
s 32G.....	ad No 59, 2004 am No 70, 2013 rep No 14, 2014
s 32H.....	ad No 59, 2004 am No 70, 2013 rep No 14, 2014
s 32J.....	ad No 59, 2004 am No 146, 2006; No 14, 2014
s 32K.....	ad No 59, 2004 am No 146, 2006; No 34, 2011 rep No 14, 2014
s 32L.....	ad No 59, 2004 am No 50, 2011 rep No 14, 2014

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 32M.....	ad No 59, 2004
s 32N.....	ad No 59, 2004
s 32P .....	ad No 59, 2004
	am No 146, 2006; No 14, 2014
s 32Q.....	ad No 59, 2004
	am No 108, 2006
s 32R.....	ad No 59, 2004
	am No 108, 2006
	rs No 70, 2013
	rep No 14, 2014
<b>Division 2</b>	
Division 2 .....	rs No 53, 2011
<b>Subdivision A</b>	
s 33 .....	am No 45, 2000; No 30, 2003; No 61, 2005; No 146, 2006
	rs No 53, 2011
s 34 .....	rs No 53, 2011
s 35 .....	am No 45, 2000
	rs No 95, 2002; No 53, 2011
<b>Subdivision B</b>	
s 35A.....	ad No 53, 2011
	am No 98, 2012
<b>Subdivision C</b>	
s 35B.....	ad No 53, 2011
<b>Subdivision D</b>	
s 35C.....	ad No 53, 2011
s 35D.....	ad No 53, 2011
<b>Subdivision E</b>	
s 35E.....	ad No 53, 2011
<b>Division 2A</b>	
Division 2A heading .....	ad No 50, 2012
	rep <u>No 96, 2014</u>

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## Endnote 4—Amendment history

Provision affected	How affected
s 35F .....	ad No 50, 2012 rep <u>No 96, 2014</u>
s 35G.....	ad No 50, 2012 am No 50, 2012 rep <u>No 96, 2014</u>
s 35H.....	ad No 70, 2013 rep <u>No 96, 2014</u>
s 35J.....	ad No 96, 2014 rep <u>No 96, 2014</u>
<b>Division 3</b>	
Division 3 heading.....	rs No 59, 2004; No 82, 2007; No 49, 2012; No 70, 2013
s 36 .....	am No 59, 2004; No 82, 2007; No 49, 2012 rs No 70, 2013
s 37 .....	rs No 70, 2013
s 38 .....	am No 30, 2003; No 59, 2004; No 82, 2007; No 63, 2008; No 105, 2010; No 49, 2012 rs No 70, 2013
s 38A.....	ad No 30, 2003 am No 59, 2004; No 82, 2007; No 49, 2012; No 70, 2013;
s 38B.....	ad No 30, 2003 am No 59, 2004; No 82, 2007; No 49, 2012; No 70, 2013;
s 39 .....	am No 30, 2003; No 59, 2004; No 61, 2005; No 82, 2007; Nos 63 and 143, 2008; No 105, 2010; No 53, 2011; No 49, 2012; No 70, 2013 rs No 70, 2013 am No 14, 2014
s 41 .....	am No 59, 2004; No 82, 2007; Nos 63 and 143, 2008; No 105, 2010; No 49, 2012 rs No 70, 2013
s 41A.....	ad No 30, 2003
s 42 .....	am No 59, 2004; No 82, 2007; No 49, 2012 rs No 70, 2013

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 43 .....	am No 30, 2003; No 59, 2004; No 82, 2007; No 49, 2012 rs No 70, 2013
s 44 .....	am No 59, 2004; No 82, 2007; No 49, 2012 rs No 70, 2013
s 45 .....	rs No 70, 2013
s 46 .....	am No 45, 2000; No 59, 2004; No 82, 2007; No 49, 2012 rs No 70, 2013
s 47 .....	am No 45, 2000; No 95, 2002 rs No 59, 2004 am Nos 82 and 130, 2007; No 63, 2008 rs No 45, 2010 am No 50, 2011; Nos 49 and 98, 2012; No 70, 2013 rs No 70, 2013
s 47AA .....	ad No 45, 2010 rep No 49, 2012
s 47AB .....	ad No 45, 2010 am No 49, 2012 rep No 70, 2013
s 47A .....	ad No 30, 2003 am No 59, 2004; No 82, 2007; No 49, 2012; No 70, 2013
s 47B .....	ad No 38, 2010 am No 105, 2010; No 70, 2013 rep No 70, 2013
s 47C .....	ad No 38, 2010 rep No 70, 2013
<b>Division 4</b>	
Division 4 .....	rs No 45, 2000
<b>Subdivision A</b>	
s 48 .....	rs No 45, 2000; No 118, 2007
<b>Subdivision B</b>	
s 49 .....	rs No 45, 2000

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## Endnote 4—Amendment history

Provision affected	How affected
s 49A.....	ad No 45, 2000
s 49B.....	ad No 45, 2000
s 49C.....	ad No 45, 2000
	am No 132, 2004; No 53, 2008; No 25, 2011
s 49D.....	ad No 45, 2000
s 49E.....	ad No 45, 2000
	am No 53, 2008
s 49F.....	ad No 45, 2000
	am No 53, 2008
s 49G.....	ad No 45, 2000
s 49H.....	ad No 45, 2000
s 49J.....	ad No 45, 2000
	am No 33, 2004; No 70, 2013
s 49K.....	ad No 45, 2000
s 49L.....	ad No 45, 2000
s 49M.....	ad No 45, 2000
s 49N.....	ad No 45, 2000
<b>Subdivision C</b>	
s 50.....	rs No 45, 2000
	am No 53, 2008
s 50A.....	ad No 45, 2000
s 50B.....	ad No 45, 2000
	am No 53, 2008
s 50C.....	ad No 45, 2000
	an No 132, 2004
s 50D.....	ad No 45, 2000
s 50E.....	ad No 45, 2000
s 50F.....	ad No 45, 2000
s 50G.....	ad No 45, 2000
s 50H.....	ad No 45, 2000
	am No 150, 2005

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s 50J.....	ad No 45, 2000 am No 53, 2008
s 50K.....	ad No 45, 2000
s 50L.....	ad No 45, 2000 am No 118, 2007
s 50M.....	ad No 45, 2000 am No 118, 2007
s 50N.....	ad No 45, 2000
s 50P.....	ad No 45, 2000
<b>Subdivision CA</b>	
Subdivision CA.....	ad No 132, 2004
s 50Q.....	ad No 132, 2004
s 50R.....	ad No 132, 2004 am No 144, 2008
s 50S.....	ad No 132, 2004
s 50T.....	ad No 132, 2004
s 50U.....	ad No 132, 2004
s 50V.....	ad No 132, 2004 am No 118, 2007
s 50W.....	ad No 132, 2004
s 50X.....	ad No 132, 2004
s 50Y.....	ad No 132, 2004
<b>Subdivision CB</b>	
Subdivision CB.....	ad No 118, 2007
s 50Z.....	ad No 118, 2007 am No 53, 2008
s 50ZA.....	ad No 118, 2007 am No 53, 2008; No 79, 2011
s 50ZB.....	ad No 118, 2007
s 50ZC.....	ad No 118, 2007 am No 79, 2011

## Endnote 4—Amendment history

Provision affected	How affected
<b>Subdivision D</b>	
s 51 .....	rs No 45, 2000
s 51A.....	ad No 45, 2000
s 51B.....	ad No 45, 2000
	am No 53, 2008
s 51C.....	ad No 45, 2000
	rs No 53, 2008
s 51D.....	ad No 45, 2000
s 51E.....	ad No 45, 2000
	am No 118, 2007
<b>Subdivision E</b>	
s 52 .....	rs No 45, 2000
s 52A.....	ad No 45, 2000
s 52B.....	ad No 45, 2000
s 52C.....	ad No 45, 2000
s 52D.....	ad No 45, 2000
	am No 53, 2008
s 52E.....	ad No 45, 2000
	am No 53, 2008
s 52F .....	ad No 45, 2000
s 52G.....	ad No 45, 2000
	rs No 53, 2008
s 52H.....	ad No 45, 2000
	am No 53, 2008; No 50, 2009
s 52J.....	ad No 45, 2000
<b>Subdivision F</b>	
s 53 .....	rs No 45, 2000
s 53A.....	ad No 45, 2000
s 53B.....	ad No 45, 2000
s 53C.....	ad No 45, 2000
s 53D.....	ad No 45, 2000

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	rs No 53, 2008
s 53E.....	ad No 45, 2000
	rs No 53, 2008
s 53F.....	ad No 45, 2000
	am No 53, 2008; No 50, 2009
s 53G.....	ad No 45, 2000
<b>Subdivision G</b>	
s 54.....	rs No 45, 2000
s 54A.....	ad No 45, 2000
s 54B.....	ad No 45, 2000
s 54C.....	ad No 45, 2000
	am No 150, 2005
s 54D.....	ad No 45, 2000
	am No 118, 2007
<b>Subdivision H</b>	
s 55.....	rs No 45, 2000
	am No 36, 2006; No 53, 2008
s 55AA.....	ad No 36, 2006
s 55AB.....	ad No 36, 2006
s 55AC.....	ad No 36, 2006
	am No 82, 2006
s 55A.....	ad No 45, 2000
	am No 53, 2008
s 55B.....	ad No 45, 2000
	rs No 53, 2008
s 55C.....	ad No 45, 2000
	rs No 53, 2008
s 55D.....	ad No 45, 2000
<b>Subdivision J</b>	
s 56.....	rs No 45, 2000
	am No 95, 2002; No 118, 2007

## Endnote 4—Amendment history

Provision affected	How affected
s 56A.....	ad No 45, 2000 am No 95, 2002
s 56B.....	ad No 45, 2000 am No 118, 2007
<b>Subdivision K</b>	
s 56C.....	ad No 45, 2000 am No 137, 2001; No 132, 2004; No 150, 2005
s 56D.....	ad No 45, 2000 am No 137, 2001; No 150, 2005
<b>Subdivision L</b>	
s 57 .....	rs No 45, 2000
s 57A.....	ad No 45, 2000
s 57B.....	ad No 45, 2000 am No 53, 2008
s 57C.....	ad No 45, 2000 am No 53, 2008
s 57D.....	ad No 45, 2000
s 57E.....	ad No 45, 2000
s 57F .....	ad No 45, 2000 am No 150, 2005
s 57G.....	ad No 118, 2007
<b>Subdivision M</b>	
s 58 .....	rs No 45, 2000 am No 53, 2008
s 58A.....	ad No 45, 2000
s 58B.....	ad No 45, 2000
<b>Subdivision N</b>	
s 59 .....	rs No 45, 2000 am No 150, 2005
s 59A.....	ad No 45, 2000
s 59b .....	ad No 45, 2000

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 59C.....	ad No 45, 2000
s 59D.....	ad No 45, 2000 am No 53, 2008
s 59E.....	ad No 45, 2000
s 59F .....	ad No 45, 2000 am No 150, 2005
s 59G.....	ad No 132, 2004
<b>Subdivision P</b>	
s 60 .....	rs No 45, 2000 am No 53, 2008 rs No 50, 2009
s 60A.....	ad No 45, 2000 am No 53, 2008 rs No 50, 2009
s 60B.....	ad No 45, 2000 am No 53, 2008; No 50, 2009
s 60C.....	ad No 45, 2000 am No 53, 2008
s 60D.....	ad No 45, 2000 am No 61, 2005; No 53, 2008
s 60E.....	ad No 45, 2000 am No 36, 2006; No 53, 2008
<b>Subdivision Q</b>	
s 61 .....	rs No 45, 2000
s 61A.....	ad No 45, 2000
<b>Subdivision R</b>	
s 62 .....	rs No 45, 2000 am No 118, 2007
s 62A.....	ad No 45, 2000 am No 53, 2008
s 62B.....	ad No 45, 2000

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## Endnote 4—Amendment history

Provision affected	How affected
s 62C.....	ad No 45, 2000
s 62CA.....	ad No 132, 2004
<b>Subdivision S</b>	
s 62D.....	ad No 45, 2000
	am No 132, 2004; No 150, 2005
<b>Subdivision T</b>	
s 63 .....	rs No 45, 2000
	am No 132, 2004; No 118, 2007
<b>Subdivision U</b>	
s 64 .....	rs No 45, 2000
s 64A.....	ad No 45, 2000
	am No 150, 2005
s 64B.....	ad No 45, 2000
	am No 150, 2005
s 64C.....	ad No 45, 2000
	am No 150, 2005
s 64D.....	ad No 45, 2000
	am No 150, 2005
s 64DA.....	ad No 53, 2008
s 64E.....	ad No 45, 2000
	am No 118, 2007; No 53, 2008
s 64EA .....	ad No 53, 2008
s 64F .....	ad No 45, 2000
<b>Subdivision V</b>	
s 65 .....	rs No 45, 2000
s 65A.....	ad No 45, 2000
s 65B.....	ad No 45, 2000
	am No 36, 2006
s 65BA.....	ad No 36, 2006
s 65BB .....	ad No 36, 2006
s 65C.....	ad No 45, 2000

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 65D.....	ad No 45, 2000 am No 150, 2005
s 65DA.....	ad No 132, 2004
s 65E.....	ad No 45, 2000 am No 118, 2007
<b>Division 4AA</b>	
Division 4AA heading .....	rs No 50, 2009
Division 4AA.....	ad No 113, 2007
<b>Subdivision AAA</b>	
Subdivision A .....	ad No 25, 2011
s 65EAAAA.....	ad No 25, 2011
s 65EAAAB.....	ad No 25, 2011
s 65EAAAC.....	ad No 25, 2011
<b>Subdivision AAB</b>	
Subdivision AAB.....	ad No 25, 2011
s 65EAAA.....	ad No 25, 2011
s 65EAAAB.....	ad No 25, 2011
s 65EAAC.....	ad No 25, 2011
s 65EAAD.....	ad No 25, 2011
s 65EAAE.....	ad No 25, 2011 am No 25, 2011
s 65EAAF.....	ad No 25, 2011
<b>Subdivision AA</b>	
Subdivision AA heading.....	rs No 50, 2009
Subdivision AA .....	ad No 53, 2008
s 65EAA .....	ad No 53, 2008 am No 50, 2009; No 25, 2011
s 65EAB.....	ad No 53, 2008 am No 50, 2009; No 25, 2011
s 65EAC.....	ad No 53, 2008 am No 50, 2009



## Endnote 4—Amendment history

Provision affected	How affected
<b>Subdivision A</b>	
Subdivision A heading.....	rs No 50, 2009
s 65EA .....	ad No 113, 2007
	am No 53, 2008
	rs No 50, 2009
s 65EB .....	ad No 113, 2007
	am No 53, 2008
	rs No 50, 2009
s 65EC .....	ad No 113, 2007
	am No 53, 2008
	rs No 50, 2009
s 65ECA.....	ad No 50, 2009
s 65ED .....	ad No 113, 2007
s 65EE.....	ad No 113, 2007
	am No 50, 2009
<b>Subdivision B</b>	
s 65EF.....	ad No 113, 2007
	am No 53, 2008; No 50, 2009; No 25, 2011
<b>Division 4A</b>	
Division 4A.....	ad No 60, 2004
s 65F .....	ad No 60, 2004
<b>Division 4B</b>	
Division 4B.....	ad No 131, 2008
s 65G.....	ad No 131, 2008
<b>Division 4C</b>	
Division 4C.....	ad No 4, 2009
s 65H.....	ad No 4, 2009
<b>Division 4CA</b>	
Division 4CA.....	ad No 50, 2012
s 65HA.....	ad No 50, 2012
	am No 50, 2012

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Division 4D</b>	
Division 4D.....	ad No 141, 2011
s 65J.....	ad No 141, 2011
	am No 49, 2012
<b>Division 4E</b>	
Division 4E.....	ad No 141, 2011
<b>Subdivision A</b>	
s 65K.....	ad No 141, 2011
s 65KA.....	ad No 141, 2011
s 65KB.....	ad No 141, 2011
s 65KC.....	ad No 141, 2011
s 65KD.....	ad No 141, 2011
	am No 70, 2013
s 65KE.....	ad No 141, 2011
s 65KF.....	ad No 141, 2011
<b>Subdivision B</b>	
s 65KG.....	ad No 141, 2011
s 65KH.....	ad No 141, 2011
s 65KI.....	ad No 141, 2011
	am No 70, 2013
s 65KJ.....	ad No 141, 2011
s 65KK.....	ad No 141, 2011
s 65KL.....	ad No 141, 2011
s 65KM.....	ad No 141, 2011
s 65KN.....	ad No 141, 2011
s 65KO.....	ad No 141, 2011
s 65KP.....	ad No 141, 2011
	am No 70, 2013; No 5, 2015
s 65KQ.....	ad No 141, 2011
s 65KR.....	ad No 141, 2011
s 65KS.....	ad No 141, 2011

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## Endnote 4—Amendment history

Provision affected	How affected
s 65KT .....	ad No 141, 2011
<b>Division 5</b>	
s 66 .....	am No 45, 2000; No 75, 2001; Nos 59 and 60, 2004; No 108, 2006; Nos 82, 118 and 130, 2007; Nos 53, 63 and 131, 2008; Nos 4 and 50, 2009; No 34, 2010; Nos 25 and 53, 2011; No 79, 2011 (as am by No 25, 2011); No 141, 2011; Nos 49 and 50, 2012; No 70, 2013; <u>No 96, 2014</u>
<b>Part 4</b>	
<b>Division 1</b>	
s 68 .....	am No 45, 2000; No 118, 2007; No 25, 2011
s 68A.....	ad No 53, 2008
s 69 .....	rs No 45, 2000
<b>Division 2</b>	
s 70 .....	am No 60, 2004; No 131, 2008; No 4, 2009; No 34, 2010; No 25, 2011; No 141, 2011; No 50, 2012
s 71 .....	rs No 45, 2000 am No 47, 2001; No 59, 2004; No 82, 2007; No 25, 2011; No 141, 2011; Nos 49 and 50, 2012; No 70, 2013; <u>No 96, 2014</u>
s 71A.....	ad No 45, 2000 rs No 53, 2011
s 71B.....	ad No 45, 2000 am No 30, 2003 rs No 118, 2007 am No 25, 2011
s 71C.....	ad No 45, 2000
s 71CAA .....	ad No 113, 2007 rs No 50, 2009 am No 25, 2011
s 71CAB .....	ad No 113, 2007 rs No 50, 2009 am No 25, 2011
s 71CAC .....	ad No 50, 2009
s 71CA .....	ad No 118, 2007

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s 71CB .....	ad No 25, 2011
s 71D.....	ad No 45, 2000
s 71E.....	ad No 45, 2000
	am No 146, 2006
s 71F .....	ad No 45, 2000
	am No 30, 2003
s 71G.....	ad No 45, 2000
	rs No 118, 2007
	am No 53, 2008; No 34, 2010; No 25, 2011; No 79, 2011
s 71GA.....	ad No 118, 2007
s 71GB .....	ad No 34, 2010
s 71H.....	ad No 45, 2000
s 71I.....	ad No 60, 2004
s 71J.....	ad No 131, 2008
s 71K.....	ad No 4, 2009
s 71L.....	ad No 141, 2011
s 71M.....	ad No 50, 2012
s 72 .....	rep No 59, 2004
s 74 .....	am No 45, 2000; No 60, 2004; No 131, 2008; No 4, 2009; No 141, 2011; No 50, 2012
s 75 .....	am No 137, 2001; No 4, 2010
s 77 .....	am No 45, 2000
s 78 .....	am No 45, 2000
	rs No 47, 2001
ss 78A, 78B.....	ad No 47, 2001
s 79 .....	am No 47, 2001; No 108, 2006
s 79A.....	ad No 47, 2001
	am No 108, 2006
<b>Division 3</b>	
s 82 .....	rs No 45, 2000

## Endnote 4—Amendment history

Provision affected	How affected
	am No 47, 2001; No 30, 2003; No 60, 2004; No 36, 2006; Nos 113 and 118, 2007; Nos 53 and 131, 2008; Nos 4 and 50, 2009; No 34, 2010; Nos 25, 79 and 141, 2011; No 50, 2012
s 83 .....	rep No 45, 2000
s 84 .....	rs No 45, 2000
	am No 47, 2001; No 30, 2003; No 52, 2004; No 105, 2010; No 13, 2014
s 84A.....	ad No 45, 2000
	am No 30, 2003; No 52, 2004; No 53, 2008; No 50, 2009; No 105, 2010; No 13, 2014
s 85 .....	rep No 45, 2000
s 86 .....	am No 45, 2000; No 47, 2001; No 118, 2007; No 79, 2011
s 87 .....	am No 47, 2001
s 87A.....	ad No 45, 2000
	am No 118, 2007; No 34, 2010
	rs No 79, 2011
s 87B.....	ad No 118, 2007
	am No 34, 2010
	rep No 79, 2011
s 88 .....	am No 45, 2000; No 47, 2001; No 118, 2007; No 79, 2011
s 90 .....	am No 45, 2000; No 47, 2001; No 118, 2007; No 79, 2011
s 91 .....	am No 45, 2000
	rs No 47, 2001
	am No 30, 2003
s 92 .....	rs No 45, 2000
	am No 30, 2003; No 52, 2004; No 105, 2010; No 13, 2014
s 92A.....	ad No 45, 2000
	am No 30, 2003; No 52, 2004; No 113, 2007; No 53, 2008; No 50, 2009; No 105, 2010; No 13, 2014
s 93 .....	am No 45, 2000
s 93A.....	ad No 47, 2001

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
	am No 30, 2003; No 60, 2004; Nos 113 and 118, 2007; Nos 53 and 131, 2008; Nos 4 and 50, 2009; No 34, 2010; Nos 25 and 141, 2011; Nos 49 and 50, 2012; No 70, 2013; <u>No 96, 2014</u>
<b>Division 4</b>	
s 95 .....	am No 45, 2000; No 47, 2001; No 61, 2005; No 118, 2007; No 53, 2008; No 79, 2011; No 70, 2013
s 99 .....	am No 45, 2000; No 118, 2007; No 53, 2008; No 79, 2011
s 100 .....	am No 47, 2001; No 108, 2006
s 102 .....	am No 138, 2001; No 108, 2006
s 103 .....	rep No 5, 2011
<b>Part 5</b>	
<b>Division 1</b>	
Division 1 .....	rs No 45, 2000
<b>Subdivision A</b>	
s 104 .....	rs No 45, 2000
	am No 146, 2006; No 118, 2007; No 53, 2008; No 50, 2009; No 34, 2010; No 25, 2011
s 105 .....	rs No 45, 2000
	am No 65, 2010
s 105A.....	ad No 59, 2004
	am No 29, 2005; No 61, 2005
s 105B.....	ad No 141, 2011
	am No 70, 2013; No 122, 2014
s 106 .....	rs No 45, 2000
	am No 30, 2003; Nos 60 and 132, 2004; No 146, 2006; No 118, 2007; No 131, 2008; No 4, 2009; No 38, 2010; No 141, 2011; No 50, 2012
s 107 .....	am No 192, 1999
	rs No 45, 2000
	am No 30, 2003; No 132, 2004; No 53, 2011; No 49, 2012; No 70, 2013; No 14, 2014
<b>Subdivision B</b>	
s 108 .....	rs No 45, 2000

## Endnote 4—Amendment history

Provision affected	How affected
	am No 30, 2003; No 146, 2006; No 118, 2007; No 53, 2008; No 50, 2009; No 34, 2010; Nos 25, 32 and 79, 2011; No 31, 2014
s 109 .....	rs No 45, 2000
	am No 30, 2003
	rep No 146, 2006
s 109A.....	ad No 45, 2000
	am No 65, 2010; No 53, 2008
	rs No 50, 2009; No 65, 2010
s 109B.....	ad No 45, 2000
	am No 132, 2004; No 146, 2006; No 118, 2007
s 109C.....	ad No 45, 2000
	am No 32, 2011
s 109D.....	ad No 45, 2000
	am Nos 60 and 132, 2004; No 118, 2007; No 131, 2008; No 4, 2009; No 65, 2010; Nos 53 and 141, 2011; Nos 49 and 50, 2012; No 70, 2013; No 14, 2014
s 109DA.....	ad No 118, 2007
s 109E.....	ad No 45, 2000
	am No 65, 2010; No 53, 2011; No 49, 2012; No 70, 2013; No 14, 2014
s 109F.....	ad No 45, 2000
s 109G.....	ad No 45, 2000
	am No 132, 2004; No 108, 2006; No 65, 2010
s 109H.....	ad No 45, 2000
<b>Division 2</b>	
s 110 .....	am No 154, 2012
s 111 .....	am No 45, 2000; No 132, 2004; No 36, 2006; No 146, 2006; No 118, 2007; No 65, 2010; No 53, 2008; No 50, 2009; No 25, 2011; No 32, 2011, No 53, 2011; No 79, 2011; No 120, 2011; No 141, 2011
s 111A.....	ad No 45, 2000
s 111B.....	ad No 45, 2000
s 112 .....	am No 45, 2000; No 132, 2004; No 154, 2012
s 113 .....	am No 45, 2000; No 65, 2010

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 115 .....	rep No 45, 2000
s 117 .....	am No 154, 2012
s 118 .....	am No 45, 2000; No 111, 2005; No 146, 2006; No 48, 2009; No 38, 2010; No 32, 2011; No 154, 2012; No 103, 2013
<b>Division 3</b>	
<b>Subdivision A</b>	
s 119 .....	am No 38, 2010
s 120 .....	am No 38, 2010; No 154, 2012
s 121 .....	am No 38, 2010
s 122 .....	am No 45, 2000; No 146, 2006; No 38, 2010
<b>Subdivision B</b>	
Subdivision B heading .....	rs No 33, 2010; No 32, 2011
s 122A.....	ad No 33, 2010 am No 32, 2011
s 123 .....	am No 33, 2010; No 38, 2010; No 154, 2012
s 124 .....	rep No 33, 2010
s 125 .....	am No 33, 2010; No 38, 2010
s 126 .....	am No 33, 2010. No 38, 2010
<b>Subdivision BA</b>	
Subdivision BA heading .....	rs No 32, 2011
Subdivision BA.....	ad No 33, 2010
s 126A.....	ad No 33, 2010 am No 38, 2010; No 32, 2011; No 154, 2012
<b>Subdivision BB</b>	
Subdivision BB heading .....	ad No 33, 2010
s 128 .....	am No 38, 2010
s 128A.....	ad No 38, 2010
s 128B.....	ad No 38, 2010
s 128C.....	ad No 38, 2010
s 129 .....	am No 38, 2010



## Endnote 4—Amendment history

Provision affected	How affected
<b>Subdivision BC</b>	
Subdivision BC heading .....	rs No 154, 2012
Subdivision BC.....	ad No 38, 2010
s 129A.....	ad No 38, 2010
	am No 154, 2012
s 129B.....	ad No 38, 2010
	am No 154, 2012
<b>Subdivision C</b>	
s 130 .....	am No 154, 2012
s 131 .....	am No 38, 2010
s 132 .....	rep No 45, 2000
s 133 .....	am No 137, 2001; No 38, 2010
	rep No 154, 2012
<b>Subdivision D</b>	
s 134 .....	am No 154, 2012
s 135 .....	am No 38, 2010
	rs No 154, 2012
s 136 .....	am No 38, 2010
	rs No 154, 2012
s 137 .....	rs No 38, 2010
s 138 .....	am No 38, 2010
s 139 .....	am No 45, 2000; No 146, 2006; No 38, 2010; No 154, 2012
<b>Subdivision E</b>	
s 141 .....	am No 33, 2010; No 38, 2010; No 32, 2011
s 141A.....	ad No 45, 2000
	am No 132, 2004; No 118, 2007
<b>Subdivision F</b>	
Subdivision F.....	ad No 38, 2010
s 141B.....	ad No 38, 2010
<b>Subdivision G</b>	
Subdivision G .....	ad No 154, 2012

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 141C.....	ad No 154, 2012
s 141D.....	ad No 154, 2012
s 141E.....	ad No 154, 2012
<b>Division 4</b>	
<b>Subdivision A</b>	
s 142 .....	am No 45, 2000; No 146, 2006; No 53, 2008; No 50, 2009; No 65, 2010
s 144 .....	am No 45, 2000; No 30, 2003; No 36, 2006; No 118, 2007; No 32, 2011
<b>Subdivision B</b>	
s 149 .....	am No 98, 2014
s 150 .....	am No 38, 2010
<b>Division 5</b>	
Division 5 heading.....	rs No 50, 2009
Division 5 .....	ad No 53, 2008
s 152A.....	ad No 53, 2008
	rs No 50, 2009
s 152B.....	ad No 50, 2009
<b>Division 6</b>	
Division 6 .....	ad No 65, 2010
s 152C.....	ad No 65, 2010
s 152D.....	ad No 65, 2010
<b>Part 6</b>	
<b>Division 1</b>	
s 153 .....	am No 118, 2007
s 154 .....	am No 45, 2000; No 30, 2003; No 132, 2004; Nos 113 and 118, 2007; No 53, 2008; No 50, 2009; No 25, 2011
s 154A.....	ad No 45, 2000
	am No 33, 2004; No 49, 2009; No 141, 2011
	rep No 14, 2014
s 154B.....	ad No 49, 2009
	rep No 14, 2014
s 155 .....	am No 30, 2003

## Endnote 4—Amendment history

Provision affected	How affected
s 156 .....	am No 30, 2003
s 157 .....	am No 45, 2000; No 30, 2003; No 150, 2005
s 158 .....	am No 30, 2003; No 118, 2007
s 159 .....	rs No 137, 2001
	am No 118, 2007
s 159A.....	ad No 65, 2010
s 160 .....	am No 30, 2003; No 118, 2007
<b>Division 1A</b>	
Division 1A.....	ad No 14, 2014
s 160A.....	ad No 14, 2014
<b>Division 2</b>	
s 161 .....	am No 45, 2000; No 79, 2011
s 162 .....	am No 35, 2003; No 108, 2006; No 118, 2007; No 42, 2008; No 32, 2011
s 163 .....	rs No 137, 2001
s 164 .....	rs No 137, 2001
s 165 .....	am No 137, 2001
s 168 .....	am No 95, 2002; Nos 32 and 79, 2011
s 169 .....	am No 108, 2006
	rs No 79, 2011
s 169A.....	ad No 160, 2005
s 169B.....	ad No 141, 2008
	rep No 109, 2014
<b>Division 3</b>	
<b>Subdivision A</b>	
s 171 .....	am No 45, 2000
<b>Subdivision B</b>	
s 172 .....	rs No 137, 2001
s 173 .....	am No 45, 2000
	rs No 137, 2001
	am No 132, 2004; No 118, 2007; No 53, 2008; No 50, 2009; No 25, 2011
s 174 .....	am No 45, 2000

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	rs No 137, 2001
s 175 .....	am No 45, 2000
	rs No 137, 2001
	am No 53, 2008; No 50, 2009; No 25, 2011
s 175AA.....	ad No 53, 2008
	am No 50, 2009; No 25, 2011
s 175A.....	ad No 45, 2000
	am No 137, 2001; No 118, 2007
s 176 .....	rs No 45, 2000; No 137, 2001
	am No 118, 2007; No 34, 2010; No 25, 2011
<b>Subdivision C</b>	
s 178 .....	am No 45, 2000; No 118, 2007; No 34, 2010; No 25, 2011
<b>Part 7</b>	
Part 7 heading .....	rs No 137, 2001
<b>Division 1</b>	
s 186 .....	rep No 137, 2001
s 187 .....	rep No 137, 2001
s 188 .....	rs No 137, 2001
	am No 4, 2010
Division 2 .....	rep No 137, 2001
s 189 .....	rep No 137, 2001
s 190 .....	rep No 137, 2001
<b>Part 8</b>	
<b>Division 1</b>	
s 194 .....	am No 138, 2000
s 195 .....	am No 45, 2000; No 30, 2003; No 118, 2007; No 53, 2008; Nos 25, 79 and 120, 2011
s 195A.....	ad No 50, 2009
	am No 79, 2011
s 196 .....	am No 45, 2000; No 53, 2008; Nos 79 and 120, 2011
s 196A.....	ad No 120, 2011

## Endnote 4—Amendment history

Provision affected	How affected
s 197 .....	am No 53, 2008
s 198 .....	am No 108, 2006
s 200 .....	am No 108, 2006; No 118, 2007; No 53, 2008; No 25, 2011
s 201 .....	am No 118, 2007; No 25, 2011
s 201A.....	ad No 118, 2007
s 201B.....	ad No 53, 2008
	am No 25, 2011
s 202 .....	am No 30, 2003; No 108, 2006
s 204 .....	am No 53, 2008
s 204A.....	ad No 118, 2007
s 205 .....	am No 108, 2006
s 206 .....	am No 36, 2006; No 108, 2006; No 53, 2008
s 207 .....	am No 53, 2008
s 207A.....	ad No 36, 2006
s 207B.....	ad No 36, 2006
s 208 .....	rep No 108, 2006
<b>Division 2</b>	
s 209 .....	am No 138, 2000
s 210 .....	am No 108, 2006
s 213 .....	am No 108, 2006
s 214 .....	am No 108, 2006
s 219 .....	rep No 108, 2006
<b>Part 8A</b>	
Part 8A heading .....	rs No 50, 2009
Part 8A.....	ad No 45, 2000
<b>Division 1</b>	
Division 1 heading .....	rs No 50, 2009
<b>Subdivision A</b>	
Subdivision A heading.....	ad No 25, 2011
s 219A.....	ad No 45, 2000

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
	am No 137, 2001; No 132, 2004; No 150, 2005; No 36, 2006; No 118, 2007
	rs No 118, 2007
s 219AA.....	ad No 118, 2007
s 219AB.....	ad No 118, 2007
	am No 34, 2010
s 219AC.....	ad No 118, 2007
	am No 53, 2008
s 219AD.....	ad No 118, 2007
s 219AE.....	ad No 118, 2007
s 219AF.....	ad No 118, 2007
	am No 34, 2010
s 219AG.....	ad No 118, 2007
	am No 53, 2008
<b>Subdivision B</b>	
Subdivision B heading.....	ad No 25, 2011
s 219B.....	ad No 45, 2000
	am No 137, 2001; No 150, 2005; No 118, 2007
	rs No 118, 2007
	am No 53, 2008; No 79, 2011
s 219BA.....	ad No 118, 2007
	am No 79, 2011
s 219BB.....	ad No 118, 2007
	am No 53, 2008
s 219BC.....	ad No 118, 2007
	am No 53, 2008
s 219BD.....	ad No 118, 2007
	am No 53, 2008
s 219C.....	ad No 45, 2000
	am No 137, 2001
	rep No 118, 2007

## Endnote 4—Amendment history

Provision affected	How affected
s 219D.....	ad No 45, 2000 am No 137, 2001; No 118, 2007 rep No 118, 2007
s 219E.....	ad No 45, 2000 am No 137, 2001; No 108, 2006; No 118, 2007; No 53, 2008 rs No 53, 2008 am No 34, 2010
<b>Subdivision C</b>	
Subdivision C .....	ad No 25, 2011
s 219EA .....	ad No 118, 2007 am No 53, 2008 rep No 50, 2009 ad No 25, 2011 am No 25, 2011
s 219EB .....	ad No 25, 2011
<b>Subdivision D</b>	
Subdivision D heading.....	ad No 25, 2011
s 219F .....	ad No 45, 2000 am No 137, 2001; No 108, 2006; No 53, 2008
s 219G.....	ad No 45, 2000 am No 137, 2001; No 118, 2007; No 53, 2008
s 219GA.....	ad No 120, 2011 am No 169 and 197, 2012
s 219GB.....	ad No 120, 2011
s 219H.....	ad No 45, 2000 am No 120, 2011
s 219J.....	ad No 45, 2000 rs No 53, 2008 rep No 120, 2011
s 219K.....	ad No 45, 2000 am No 118, 2007; No 53, 2008; No 120, 2011

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 219KA.....	ad No 120, 2011
s 219KB.....	ad No 120, 2011
s 219KC.....	ad No 120, 2011
s 219L.....	ad No 45, 2000 am No 137, 2001; No 53, 2008
s 219LA.....	ad No 120, 2011
<b>Subdivision E</b>	
Subdivision E heading.....	ad No 25, 2011 rs No 120, 2011
s 219M.....	ad No 45, 2000 am No 53, 2008; No 50, 2009; No 34, 2010
s 219N.....	ad No 45, 2000 rs No 118, 2007 am No 53, 2008; No 34, 2010; No 25, 2011; No 79, 2011
s 219NA.....	ad No 36, 2006 am No 53, 2008
s 219NB.....	ad No 118, 2007 am No 53, 2008
s 219P.....	ad No 45, 2000 rs No 118, 2007 am No 53, 2008; No 25, 2011
<b>Subdivision F</b>	
Subdivision F.....	ad No 120, 2011
s 219PA.....	ad No 120, 2011 am No 197, 2012
<b>Division 2</b>	
Division 2.....	rs No 118, 2007
s 219Q.....	ad No 45, 2000 rs No 118, 2007 am No 34, 2010; No 25, 2011; No 79, 2011
s 219QA.....	ad No 118, 2007



## Endnote 4—Amendment history

Provision affected	How affected
	am No 25, 2011; No 79, 2011
s 219QB .....	ad No 118, 2007
	am No 53, 2008; No 34, 2010; Nos 25 and 79, 2011
<b>Division 2A</b>	
Division 2A.....	ad No 25, 2011
s 219QC .....	ad No 25, 2011
	am No 25, 2011
s 219QD.....	ad No 25, 2011
	am No 25, 2011
s 219QE .....	ad No 25, 2011
<b>Division 3</b>	
Division 3 .....	ad No 118, 2007
s 219R.....	ad No 45, 2000
	rs No 118, 2007
s 219RA .....	ad No 118, 2007
	am No 34, 2010; No 25, 2011; No 79, 2011
s 219RB .....	ad No 118, 2007
s 219RC .....	ad No 118, 2007
	am No 34, 2010; No 25, 2011; No 79, 2011
<b>Division 4</b>	
Division 4 .....	ad No 34, 2010
s 219RD.....	ad No 34, 2010
s 219RE .....	ad No 34, 2010
	am Nos 25 and 79, 2011
s 219S .....	ad No 45, 2000
	rep No 118, 2007
s 219T .....	ad No 45, 2000
	rep No 118, 2007
<b>Part 8B</b>	
Part 8B .....	ad No 95, 2002

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Division 1</b>	
s 219TA .....	ad No 95, 2002 am Nos 59 and 60, 2004; Nos 82 and 113, 2007; No 131, 2008; Nos 4 and 50, 2009; No 141, 2011; Nos 49 and 50, 2012; No 70, 2013; <u>No 96, 2014</u>
<b>Division 2</b>	
s 219TB .....	ad No 95, 2002
s 219TC .....	ad No 95, 2002
s 219TD .....	ad No 95, 2002
s 219TE.....	ad No 95, 2002 am No 130, 2007; No 50, 2011
<b>Division 3</b>	
s 219TF .....	ad No 95, 2002
<b>Division 4</b>	
s 219TG .....	ad No 95, 2002
s 219TH .....	ad No 95, 2002
s 219TI.....	ad No 95, 2002
s 219TJ.....	ad No 95, 2002
s 219TK .....	ad No 95, 2002
<b>Division 5</b>	
s 219TG .....	ad No 95, 2002
s 219TH .....	ad No 95, 2002
s 219TI.....	ad No 95, 2002
s 219TJ.....	ad No 95, 2002
s 219TK .....	ad No 95, 2002
<b>Part 8C</b>	
Part 8C .....	ad No 118, 2007
<b>Division 1</b>	
s 219TSA .....	ad No 118, 2007 rep No 53, 2008
s 219TSB .....	ad No 118, 2007 am No 53, 2008

## Endnote 4—Amendment history

Provision affected	How affected
s 219TSC .....	ad No 118, 2007 am No 53, 2008; No 13, 2013
s 219TSD .....	ad No 118, 2007 rs No 53, 2008 am No 50, 2009
s 219TSE .....	ad No 118, 2007 am No 13, 2013
s 219TSF .....	ad No 118, 2007
s 219TSG .....	ad No 118, 2007 am No 13, 2013
s 219TSGA .....	ad No 53, 2008
s 219TSGB .....	ad No 53, 2008 am No 13, 2013
s 219TSGC .....	ad No 53, 2008
s 219TSGD .....	ad No 53, 2008
s 219TSGE .....	ad No 53, 2008
s 219TSGF .....	ad No 53, 2008 am No 13, 2013
<b>Division 2</b>	
s 219TSH .....	ad No 118, 2007 am No 53, 2008
s 219TSI .....	ad No 118, 2007
s 219TSJ .....	ad No 118, 2007 am No 13, 2013
s 219TSK .....	ad No 118, 2007 am No 53, 2008; No 50, 2009
s 219TSL .....	ad No 118, 2007
s 219TSM .....	ad No 118, 2007
s 219TSN .....	ad No 118, 2007 am No 53, 2008; No 13, 2013
s 219TSO .....	ad No 118, 2007

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 219TSP.....	ad No 118, 2007
<b>Division 3</b>	
s 219TSQ.....	ad No 118, 2007 am No 34, 2010
<b>Part 9</b>	
s 220A.....	ad No 53, 2008
s 221 .....	am No 45, 2000; No 118, 2007; No 53, 2008; No 32, 2011; No 120, 2011; No 154, 2012; <u>No 96, 2014</u>
s 221A.....	ad No 118, 2007
s 223 .....	rs No 38, 2001
s 224 .....	am No 45, 2000; No 132, 2004; No 53, 2008; No 50, 2009; No 25, 2011; No 154, 2012
s 224A.....	ad No 118, 2007 am No 53, 2008
s 225 .....	am No 44, 2000
s 226 .....	am No 45, 2000
s 227 .....	rep No 45, 2000 ad No 75, 2001
s 228 .....	rep No 45, 2000 ad No 75, 2001 am No 146, 2006
s 231 .....	am No 118, 2007; No 120, 2011
s 234 .....	am No 111, 2005; No 38, 2010; No 32, 2011
s 235 .....	am No 45, 2000; No 50, 2009