



# **A New Tax System (Family Assistance and Related Measures) Act 2000**

**No. 45, 2000**



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**An Act to amend legislation providing for  
assistance to families, and for related purposes**

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# **A New Tax System (Family Assistance and Related Measures) Act 2000**

**No. 45, 2000**

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## **An Act to amend legislation providing for assistance to families, and for related purposes**

*[Assented to 3 May 2000]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *A New Tax System (Family Assistance  
and Related Measures) Act 2000*.

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## 2 Commencement

- (1) Sections 1, 2 and 3 and items 1, 29 and 31 of Schedule 4 commence on the day on which this Act receives the Royal Assent.
- (2) The items of Schedule 1 (other than item 83) commence immediately after the commencement of the *A New Tax System (Family Assistance) Act 1999*.
- (3) Item 83 of Schedule 1 commences immediately after the commencement of Schedule 4 to the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999*.
- (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 referred to in subsection 2(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.
- (5) Item 6 of Schedule 3 commences immediately after the commencement of Part 1 of Schedule 1 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*.
- (6) Items 1, 2 and 7 and items 11 to 14 of Schedule 3 commence immediately after the commencement of Schedule 1 to the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999*.
- (7) Items 8 to 10 of Schedule 3 commence immediately after the commencement of Schedule 7 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*.
- (8) Items 2 to 9 of Schedule 4 commence immediately after the commencement of Schedule 4 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*.
- (9) Item 10 of Schedule 4 commences immediately after the commencement of item 16 of Schedule 7 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*.

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- (10) Items 11 to 27 and item 30 of Schedule 4 commence immediately after the commencement of Schedule 8 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*.
- (11) Item 28 of Schedule 4 commences immediately after the commencement of Schedule 10 (other than item 63) to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*.

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

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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

### **Part 1—Amendments relating to family tax benefit and maternity immunisation allowance**

#### **1 Paragraph 21(1)(b)**

Repeal the paragraph, substitute:

(b) the individual:

- (i) is an Australian resident; or
- (ii) meets the requirements set out in subparagraph 729(2)(f)(ii), (iii), (iv) or (v) of the *Social Security Act 1991* and is in Australia; and

#### **2 Subsection 22(3) (second sentence)**

Repeal the sentence.

#### **3 Subsections 22(7) and (8)**

Repeal the subsections, substitute:

(7) If:

- (a) the Secretary is satisfied there has been, or will be, a pattern of care for an individual (the *child*) over a period such that, for the whole, or for parts (including different parts), of the period, the child was, or will be, an FTB child of more than one other individual under subsection (2), (3), (4), (5) or (6); and
- (b) one of those other individuals makes, or has made, a claim under Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* for payment of family tax benefit in respect of the child for some or all of the days in that period; and
- (c) subsection 25(1) does not require that the child be taken not to be an FTB child of that individual for any part of that period;

the child is to be taken to be an FTB child of that individual for the purposes of this section on each day in that period, whether or not the child was in that individual's care on that day.



#### 4 After section 22

Insert:

#### 22A Exceptions to the operation of section 22

##### *Exceptions*

- (1) Despite section 22, an individual cannot be an FTB child of another individual (an **adult**) in the cases set out in this table:

When the individual is not an FTB child of the adult at a particular time		
	If the individual is aged:	then the individual cannot be an FTB child of the adult if:
1	5 or more and less than 16	(a) the individual is not undertaking full-time study and the individual has adjusted taxable income, for the income year in which the particular time occurs, that equals or exceeds the cut-out amount (see subsection (2)); or (b) the adult is the individual's partner.
2	16 or more	(a) the individual has adjusted taxable income, for the income year in which the particular time occurs, that equals or exceeds the cut-out amount (see subsection (2)); or (b) the adult is the individual's partner; or (c) the individual, or someone on behalf of the individual, is, at the particular time, receiving payments under a prescribed educational scheme.
3	any age	the individual, or someone on behalf of the individual, is, at the particular time, receiving: (a) a social security pension; or (b) a social security benefit; or (c) payments under a program included in the programs known as Labour Market Programs.

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*Definition*

(2) In subsection (1):

**cut-out amount** means the sum of:

- (a) the amount specified in column 2 of item 2 of the table in clause 30 of Schedule 1 divided by 0.3; and
- (b) the amount specified in clause 33 of that Schedule.

**5 Subsections 23(1) and (2)**

After “22(2) or (3)” (wherever occurring), insert “(including that subsection in its application by virtue of subsection 22(7))”.

**6 Subsection 23(3)**

Repeal the subsection.

**7 Subsection 23(4)**

Omit “or (3)”.

**8 Section 25**

Repeal the section, substitute:

**25 Effect of FTB child being in individual’s care for less than 10% of a period**

(1) If:

- (a) the Secretary is satisfied there has been, or will be, a pattern of care for an individual (the **child**) over a period such that, for the whole, or for parts (including different parts), of the period, the child was, or will be, an FTB child of more than one other individual in accordance with subsection 22(2), (3), (4), (5) or (6); and
- (b) one of those other individuals makes, or has made, a claim under Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* for payment of family tax benefit in respect of the child for some or all of the days in that period; and
- (c) the Secretary is satisfied that the child was, or will be, in the care of that last-mentioned individual for less than 10% of that period;

the child is to be taken, despite that subsection, not to be an FTB child of that last-mentioned individual for any part of that period.

- (2) For the purposes of this section, a child cannot be in the care of more than one of the other individuals referred to in subsection (1) on any particular day.
- (3) For the purposes of this section, the Secretary must determine which of the other individuals referred to in subsection (1) has the care of the child on any given day having regard to the living arrangements of the child.

#### **9 Paragraph 28(1)(e)**

Omit “, such that each of those percentages is a multiple of 5%”.

#### **10 Paragraph 29(e)**

Omit “, such that each of those percentages is a multiple of 5%”.

#### **11 Section 30**

Repeal the section.

#### **12 Paragraph 33(2)(c)**

Omit “the subject amount”, substitute “so much of the subject amount as does not relate to any period before the beginning of the income year preceding the income year in which the individual died”.

#### **13 Paragraph 33(2)(d)**

Omit “the subject amount”, substitute “that much of the subject amount”.

#### **14 Subsection 33(2)**

Omit “the subject amount and no-one else is, or can become, eligible for or entitled to be paid that amount”, substitute “that much of the subject amount and no-one else is, or can become, eligible for or entitled to be paid any of the subject amount”.

#### **15 Subsection 35(1) (table items 2 and 3)**

Repeal the items, substitute:

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

**Part 1** Amendments relating to family tax benefit and maternity immunisation allowance

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2	16 or more	(a) the individual has adjusted taxable income, for the income year in which the particular time occurs, that equals or exceeds the cut-out amount (see subsection (3)); or (b) the individual, or someone on behalf of the individual, is, at the particular time, receiving payments under a prescribed educational scheme.
3	any age	the individual, or someone on behalf of the individual, is, at the particular time, receiving: (a) a social security pension; or (b) a social security benefit; or (c) payments under a program included in the programs known as Labour Market Programs.

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**16 Subparagraph 39(2)(b)(v)**

Repeal the subparagraph.

**17 Paragraph 39(4)(c)**

Repeal the paragraph.

**18 Paragraphs 59(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) the FTB child is also an FTB child of another individual who is not person A's partner;

**19 Subsection 59(1) (second sentence)**

Repeal the sentence.

**20 Section 68**

Repeal the section, substitute:

**68 When the maternity immunisation allowance is shared**

If:

- (a) apart from this section, more than one individual is eligible for maternity immunisation allowance under subsection 39(2) or (4) in respect of the same child; and

(b) the Secretary, under subsection 59(1), has determined each individual's percentage of family tax benefit for the child; each individual is eligible instead only for a percentage of the allowance equal to the percentage of family tax benefit that the Secretary determined in relation to the individual.

**21 Clause 3 of Schedule 1**

Omit "Subject to clauses 5 and 6", substitute "Subject to the operation of clause 5".

**22 Clause 5 of Schedule 1**

Omit "If", substitute "Subject to subclause (2), if".

**23 At the end of clause 5 of Schedule 1**

Add:

- (2) If, at any time, the FTB advance rate in respect of an individual would equal or exceed the individual's Part A rate were subclause (1) to be disregarded, then, with effect from that time, subclause (1) ceases to have effect.

**24 Clause 6 of Schedule 1**

Repeal the clause.

**25 Paragraph 13(1)(b) of Schedule 1**

Repeal the paragraph, substitute:

- (b) the individual's claim for family tax benefit is not a claim to which subclause (2) applies; and  
(ba) neither the individual nor the individual's partner is receiving payments of incentive allowance under clause 36 of Schedule 1A to the *Social Security Act 1991*; and

**26 Paragraph 13(1)(f) of Schedule 1**

Repeal the paragraph, substitute:

- (f) if the individual is not a relevant shared carer—the rent is payable at a rate of more than:  
(i) if the individual is not a member of a couple—\$2,485.65 per year; or

- (ii) if the individual is a member of a couple but is not partnered (partner in gaol) or a member of an illness separated couple, a respite care couple or a temporarily separated couple—\$3,675.55 per year; or
- (iii) if the individual is partnered (partner in gaol) or is a member of an illness separated couple or a respite care couple—\$2,485.65 per year; or
- (iv) if the individual is a member of a temporarily separated couple—\$2,485.65 per year; and
- (fa) if the individual is a relevant shared carer—the rent is payable at a rate of more than:
  - (i) if the individual is not a member of a couple—\$1,898.00 per year; or
  - (ii) if the individual is a member of a couple but is not partnered (partner in gaol) or a member of an illness separated couple, a respite care couple or a temporarily separated couple—\$3,087.90 per year; or
  - (iii) if the individual is partnered (partner in gaol) or is a member of an illness separated couple or a respite care couple—\$1,898.00 per year; or
  - (iv) if the individual is a member of a temporarily separated couple—\$1,898.00 per year; and

## **27 Subclauses 13(2), (3) and (4) of Schedule 1**

Repeal the subclauses, substitute:

- (2) This subclause applies to an individual's claim for family tax benefit if:
    - (a) the claim is for family tax benefit for a past period that occurs in the income year before the one in which the claim is made; and
    - (b) when the claim is made the individual:
      - (i) is eligible for family tax benefit; and
      - (ii) is not prevented by section 9 of the *A New Tax System (Family Assistance) (Administration) Act 1999* from making an effective claim for payment of family tax benefit by instalment; and
    - (c) the claim is not accompanied by a claim for family tax benefit by instalment.
-

## 28 Clause 14 of Schedule 1

After “The rate of rent assistance”, insert “payable to an individual who is not a relevant shared carer”.

## 29 Clause 14 of Schedule 1 (table)

Repeal the table, substitute:

<b>Rent assistance payable to individual who is not a relevant shared carer</b>				
<b>(Part A—Method 1)</b>				
<b>Column 1</b>		<b>Column 2</b>	<b>Column 3</b>	
<b>Family situation</b>		<b>Rate A</b>	<b>Rate B</b>	
			<b>Column 3A</b>	<b>Column 3B</b>
			<b>1 or 2 rent assistance children</b>	<b>3 or more rent assistance children</b>
1	Not member of a couple	$\frac{(\text{Annual rent} - \$2,485.65)}{4} \times 3$	\$2,310.45	\$2,606.10
2	Member of a couple other than a person who is partnered (partner in gaol) or a member of an illness separated couple, a respite care couple or a temporarily separated couple	$\frac{(\text{Annual rent} - \$3,675.55)}{4} \times 3$	\$2,310.45	\$2,606.10

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

**Part 1** Amendments relating to family tax benefit and maternity immunisation allowance

<b>Rent assistance payable to individual who is not a relevant shared carer</b>				
<b>(Part A—Method 1)</b>				
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>		
<b>Family situation</b>	<b>Rate A</b>	<b>Rate B</b>		
		<b>Column 3A</b>	<b>Column 3B</b>	
		<b>1 or 2 rent assistance children</b>	<b>3 or more rent assistance children</b>	
3 Person who is partnered (partner in gaol) or a member of an illness separated couple or a respite care couple	$\frac{(\text{Annual rent} - \$2,485.65)}{4} \times 3$	\$2,310.45	\$2,606.10	
4 Member of a temporarily separated couple	$\frac{(\text{Annual rent} - \$2,485.65)}{4} \times 3$	\$2,310.45	\$2,606.10	

Note: The heading to clause 14 of Schedule 1 is replaced by the heading “**Rate of rent assistance payable to individual who is not a relevant shared carer**”.

**30 After clause 14 of Schedule 1**

Insert:

**14A Rate of rent assistance payable to individual who is a relevant shared carer**

The rate of rent assistance payable to an individual who is a relevant shared carer is the higher of:

- the rate of rent assistance that would be payable to that individual if that individual were not a relevant shared carer; and
- the rate of rent assistance worked out using the following table.



In working out rent assistance, work out the individual's family situation using column 1 and calculate Rate A for the individual using the corresponding formula in column 2. This will be the individual's rate of rent assistance in accordance with the table but only up to Rate B specified in column 3.

**Rent assistance payable to individual who is a relevant shared carer**

**(Part A—Method 1)**

	<b>Column 1</b> <b>Family situation</b>	<b>Column 2</b> <b>Rate A</b>	<b>Column 3</b> <b>Rate B</b>
1	Not member of a couple	$\frac{(\text{Annual rent} - \$1,898.00)}{4} \times 3$	\$1,981.95
2	Member of a couple other than a person who is partnered (partner in gaol) or a member of an illness separated couple, a respite care couple or a temporarily separated couple	$\frac{(\text{Annual rent} - \$3,087.90)}{4} \times 3$	\$1,865.15
3	Person who is partnered (partner in gaol) or a member of an illness separated couple or a respite care couple	$\frac{(\text{Annual rent} - \$1,898.00)}{4} \times 3$	\$1,981.95
4	Member of a temporarily separated couple	$\frac{(\text{Annual rent} - \$1,898.00)}{4} \times 3$	\$1,865.15

**31 After clause 16 of Schedule 1**

Insert:

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**16A Rent paid by a member of an illness separated, respite care or temporarily separated couple**

If an individual is a member of an illness separated, respite care or temporarily separated couple, any rent that the individual's partner pays or is liable to pay in respect of the premises occupied by the individual is to be treated as paid or payable by the individual.

**32 Clause 17 of Schedule 1**

After "or a service pension", insert "or is receiving income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*".

**33 Before clause 20 of Schedule 1**

Insert:

**19A Extended meaning of receiving maintenance income**

In this Division, if the FTB child of an individual receives maintenance income, the individual is taken to have received the maintenance income.

**19B Application of maintenance income test to certain pension and benefit recipients and their partners**

If the individual, or the individual's partner, is:

- (a) permanently blind; and
- (b) receiving:
  - (i) an age pension (under Part 2.2 of the *Social Security Act 1991*); or
  - (ii) a disability support pension (under Part 2.3 of the *Social Security Act 1991*); or
  - (iii) a service pension; or
  - (iv) income support supplement (under Part IIIA of the *Veterans' Entitlements Act 1986*);

then:

- (c) the individual's maintenance income excess is nil; and
- (d) the individual's income and maintenance tested rate is the same as the individual's income tested rate.

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**34 Clause 20 of Schedule 1**

Omit “work out an individual’s reduction for maintenance income:”,  
substitute “work out an individual’s reduction for maintenance income  
if clause 19B does not apply:”.

### **35 Clause 20 of Schedule 1 (method statement, step 1)**

Omit “annual rate”, substitute “annualised amount”.

### **36 After clause 20 of Schedule 1**

Insert:

#### **20A Annualised amount of maintenance income**

##### *Object of clause*

- (1) The object of this clause is to annualise the maintenance income (other than capitalised maintenance income) (**CMI**) of an individual during an income year.

##### *Annualisation of maintenance income other than CMI*

- (2) If an individual receives maintenance income (other than CMI) from another individual during any period or periods (the **relevant period or periods**) in an income year, the annualised amount of the maintenance income of the individual is worked out using the following formula:

$$\begin{array}{c} \text{The amount of maintenance income} \\ \text{(other than CMI) received by the} \\ \text{individual during the relevant period} \\ \text{or periods} \end{array} \times \frac{\begin{array}{c} \text{Number of days} \\ \text{in the income year} \end{array}}{\begin{array}{c} \text{Number of days} \\ \text{in the relevant period} \\ \text{or periods} \end{array}}$$

##### *Commencement of relevant period*

- (3) If:
- (a) an individual (**payee**) receives maintenance income (other than CMI) from another individual (**payer**) in an income year under a maintenance liability; and
  - (b) subsection (4) does not apply;
- the relevant period in respect of the maintenance income commences:

- (c) in the case where the maintenance liability arises after 1 July of the income year in which the maintenance income is received—on the day that the maintenance liability arises; or
  - (d) in the case where the maintenance liability exists on 1 July of the income year in which the maintenance income is received—1 July.
- (4) If:
  - (a) a payee receives maintenance income (other than CMI) from a payer in an income year under a maintenance liability; and
  - (b) the payee has received maintenance income (other than CMI) from that payer previously during a period in the income year, but not under a maintenance liability; and
  - (c) in between the time the payee receives maintenance income under paragraph (a) and the end of the period referred to in paragraph (b):
    - (i) the payee and the payer were not members of the same couple; and
    - (ii) the payee was entitled to claim, or apply for, maintenance from the payer;the relevant period in respect of the maintenance income commences:
  - (d) on the day the payee first received the previously received maintenance income in the income year; or
  - (e) on such earlier day in respect of the previously received maintenance income that the Secretary determines.
- (5) If a payee receives maintenance income (other than CMI) from a payer during a period in an income year but not under a maintenance liability, the relevant period, in respect of the maintenance income, commences:
  - (a) on the day that the payee first received the maintenance income during that period; or
  - (b) on such earlier day that the Secretary determines.

*End of relevant period*

- (6) A relevant period, in respect of maintenance income (other than CMI) received under a maintenance liability in an income year, ends either when the maintenance liability ceases (if it ceases
-

before the end of the income year) or on 30 June of the income year.

(7) If:

- (a) a payee receives maintenance income (other than CMI) in an income year; and
- (b) the maintenance income is not received under a maintenance liability;

the relevant period ends in respect of the payee either:

- (c) unless subclause (8) applies—when the payee ceases to receive the maintenance income (if the payee ceases to receive the income before the end of the income year); or
- (d) on 30 June of the income year.

(8) If:

- (a) a payee receives maintenance income (other than CMI) from a payer in an income year under a maintenance liability; and
- (b) the payee has received maintenance income (other than CMI) from that payer previously during a period in the income year, but not under a maintenance liability; and
- (c) in between the time the payee receives maintenance income under paragraph (a) and the end of the period referred to in paragraph (b):
  - (i) the payee and the payer were not members of the same couple; and
  - (ii) the payee was entitled to claim, or apply for, maintenance from the payer;

the relevant period ends either when the maintenance liability ceases (if it ceases before the end of the income year) or on 30 June of the income year.

*Relevant period where payee elects to end an assessment*

(9) If:

- (a) a payee receives maintenance income (other than CMI) in an income year from a payer under a maintenance liability which is an assessment under Part 5 of the *Child Support (Assessment) Act 1989*; and
- (b) the payee and payer become members of the same couple; and

- (c) the payee elects under the *Child Support (Assessment) Act 1989* to end the assessment from a specified day before the day the payee and payer became members of the same couple;

for the purpose of determining the commencement or end of the relevant period, the assessment is taken to end from the day the payee and the payer became a member of the same couple or from such earlier day as the Secretary determines (not being a day earlier than the specified day).

*Meaning of maintenance liability*

- (10) In this clause, ***maintenance liability*** means a liability to provide:
  - (a) child support; or
  - (b) maintenance (other than child support) that arises as a result of:
    - (i) the order of a court; or
    - (ii) a maintenance agreement registered in, or approved by, a court under the *Family Law Act 1975* or the law of a State or Territory.

*Day a maintenance liability arises*

- (11) The day a maintenance liability arises is:
  - (a) if the liability is to provide child support, the day that the liability arises under the *Child Support (Assessment) Act 1989*; or
  - (b) if the liability is to provide maintenance that arises as set out in paragraph (10)(b), the day that the order of the court or the maintenance agreement has effect from.

**37 Clause 21 of Schedule 1**

Repeal the clause, substitute:

**21 Maintenance income of members of couple to be added**

The annualised amount of the maintenance income of an individual who is a member of a couple is the sum of the amounts that, apart from this clause, would be the respective annualised amounts of each of the members of the couple.

### 38 After subclause 24(2) of Schedule 1

Insert:

- (2A) For the capitalisation period in an income year, the annualised amount of an individual's capitalised maintenance income is worked out using the following formula:

$$\begin{array}{c} \text{The amount worked out} \\ \text{under subclause (2) in} \\ \text{respect of the individual} \\ \text{for the capitalisation period} \\ \text{in the income year} \end{array} \times \frac{\begin{array}{c} \text{Number of days in the} \\ \text{income year} \end{array}}{\begin{array}{c} \text{Number of days in the} \\ \text{capitalisation period in the} \\ \text{income year} \end{array}}$$

### 39 Clause 25 of Schedule 1

Omit "If", substitute "Subject to the operation of clause 25A, if".

### 40 Clause 25 of Schedule 1 (method statement, step 2)

Repeal the step, substitute:

- Step 2.* Apply the income test in Division 3 of this Part (clause 28) to work out any reduction for adjusted taxable income. Take any reduction away from the individual's maximum rate: the result is the individual's ***provisional Part A rate***.
- Step 3.* The individual's Part A rate is:
- (a) the individual's provisional Part A rate if that rate is equal to or greater than the rate that would be the individual's income and maintenance tested rate under step 3 of the method statement in clause 3 if the individual's Part A rate were to be calculated using Part 2; or
  - (b) the rate that would be the individual's income and maintenance tested rate as so calculated if it is greater than the individual's provisional Part A rate.

### 41 After clause 25 of Schedule 1

Insert:

**25A Family tax benefit advance to individual**

- (1) Subject to subclause (2), if family tax benefit advance is paid to an individual, the individual's Part A rate during the individual's family tax benefit advance period is to be reduced by the FTB advance rate.
- (2) If, at any time, the FTB advance rate in respect of an individual would equal or exceed the individual's Part A rate were subclause (1) to be disregarded, then, with effect from that time, subclause (1) ceases to have effect.
- (3) In subclause (2), the reference to the individual's Part A rate includes a reference to a nil rate.



## **Part 2—Amendments relating to child care benefit**

### **42 Subsection 3(1)**

Before the definition of *absence*, insert:

*24 hour care* has the meaning given in subsection (5).

### **43 Subsection 3(1)**

Before the definition of *absence*, insert:

*24 hour care limit*, in respect of a week and child, means a limit of:

- (a) one or more 24 hour care periods during which 24 hour care is provided to the child, as certified by an approved child care service under subsection 56(3) or (4) or decided by the Secretary under subsection 56(6) or (8); and
- (b) all of the hours in the sessions of care provided by an approved child care service to the child in the week, other than those hours that are included in a 24 hour care period.

### **44 Subsection 3(1)**

Before the definition of *absence*, insert:

*24 hour care period* means a period of time that is at least 24 consecutive hours but less than 48 consecutive hours.

### **45 Subsection 3(1) (definition of *absence*)**

Repeal the definition, substitute:

*absence*, in relation to care provided by an approved child care service, has a meaning affected by sections 10 and 10A.

### **46 Subsection 3(1)**

Insert:

*disabled person* means a person who is:

- (a) receiving a disability support pension under Part 2.3 of the *Social Security Act 1991*; or

- (b) receiving an invalidity pension under Division 4 of Part III of the *Veterans' Entitlements Act 1986*; or
- (c) participating in an independent living program provided by CRS Australia or such other body determined by the Minister for the purposes of this paragraph; or
- (d) diagnosed by a medical practitioner or a psychologist (see subsection 3(3)) as a person who is impaired to a degree that significantly incapacitates him or her; or
- (e) included in a class of persons determined by the Minister to be a disabled person for the purposes of this paragraph.

#### **47 Subsection 3(1)**

Insert:

***week***, in relation to child care benefit, has the meaning given in subsection (6).

#### **48 At the end of section 3**

Add:

- (3) For the purposes of paragraph (d) of the definition of ***disabled person***, the reference to a psychologist is a reference to a psychologist who:
  - (a) is registered with a Board established under a law of a State or Territory that registers psychologists in that State or Territory; and
  - (b) has qualifications or experience in assessing impairment in adults.
- (4) A determination by the Minister for the purposes of paragraph (c) or (e) of the definition of ***disabled person*** is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) If, in relation to a 24 hour care period and a child:
  - (a) an approved child care service provides care to the child during the whole of the period; or
  - (b) an approved child care service:
    - (i) provides care to the child during more than half of the period; and

- (ii) during the remaining part of the period, when the service is not providing care to the child, has responsibility for the child;
- the service providing the care, or providing the care and having the responsibility, is providing **24 hour care** to the child.
- (6) A **week**, for the purposes of child care benefit, commences on a Monday.

#### **49 Subsection 8(1)**

Repeal the subsection, substitute:

- (1) The Secretary may determine:
  - (a) that an individual who is not an Australian resident is to be taken to be an **Australian resident** for the purposes of Division 4 of Part 3 (eligibility for child care benefit) for a period or indefinitely; and
  - (b) if the determination is for a period—the period in respect of which the individual is to be taken to be an Australian resident.

#### **50 At the end of paragraphs 8(2)(a) and (b)**

Add “for a period or indefinitely”.

#### **51 Subsection 8(4)**

Repeal the subsection, substitute:

- (4) The Minister may make guidelines:
  - (a) relating to the making of determinations under subsection (1); and
  - (b) in particular, setting time limits applicable to the determining of periods under paragraph (1)(b).

#### **52 Section 10**

Repeal the section, substitute:

**10 Effect of absence of child from care of approved child care service other than an approved occasional care service**

*Absence from part of a session*

- (1) For the purposes of this Act, if a child is absent from part only of a session of care provided by an approved child care service (other than an approved occasional care service) the service is taken to have provided that part of the session of care to the child.

*Absence from all of a session*

- (2) For the purposes of this Act, if:
- (a) a child is absent from all of a session of care that would otherwise have been provided to the child by an approved child care service (other than an approved occasional care service); and
  - (b) one of the following applies:
    - (i) the absence is due to the illness of the child, the individual in whose care the child is, that individual's partner, or another individual with whom the child lives and a medical certificate covering that illness is obtained from a medical practitioner and given to the service;
    - (ii) the absence is due to the child's attendance at a pre-school;
    - (iii) the absence is due to alternative care arrangements being made for the child because the child does not have to be at school on a pupil-free day;
    - (iv) the absence occurs in circumstances specified in a determination under subsection 11(1) as permitted circumstances for the purpose of this subparagraph;
    - (v) the absence occurs on a permitted absence day (see subsection (3));

the service is taken to have provided the session of care to the child.

*Permitted absence days*

- (3) For the purposes of subparagraph (2)(b)(v), a ***permitted absence day*** is a day that meets the following requirements:

- (a) the day is not a day:
  - (i) before the day the service has started providing care for the child; or
  - (ii) after the day the service has stopped providing care for the child (otherwise than temporarily);
- (b) the child is absent from all of one or more sessions of care that would otherwise have been provided to the child by the approved child care service on the day (even if the child is not absent from some or all of another session or sessions of care provided by the service or another service on the day);
- (c) the child's absence from all of the one or more sessions of care is not covered by subparagraph (2)(b)(i), (ii), (iii) or (iv);
- (d) before the day, not more than 29 permitted absence days in relation to the child have elapsed in the same financial year.

#### **10A Effect of absence of child from care of approved child care service that is an approved occasional care service**

##### *Absence from part of a session*

- (1) For the purposes of this Act, if a child is absent from part only of a session of care provided by an approved child care service that is an approved occasional care service, the service is taken to have provided that part of the session of care to the child.

##### *Absence from all of a session*

- (2) For the purposes of this Act, if:
  - (a) a child is absent from all of a session of care that would otherwise have been provided to the child by an approved child care service that is an approved occasional care service; and
  - (b) the absence occurs in circumstances specified in a determination under subsection 11(1) as permitted circumstances for the purpose of this paragraph;the service is taken to have provided the session of care to the child.

#### **53 Subsection 11(1)**

Omit “subsection 10(2) or subparagraph 10(3)(b)(iv)”, substitute “subparagraph 10(2)(b)(iv) or paragraph 10A(2)(b)”.

## **54 Division 4 of Part 3**

Repeal the Division, substitute:

## **Division 4—Eligibility for child care benefit**

### **41 Overview of Division**

- (1) This Division deals with eligibility for child care benefit. Before a person may be determined under Division 4 of Part 3 of the Family Assistance Administration Act to be entitled to be paid child care benefit, the person must first be eligible for it.

#### *Eligibility of individual for child care benefit*

- (2) An individual may be eligible for child care benefit:
- (a) by fee reduction for care provided by an approved child care service (see section 43, Subdivision A); or
  - (b) for a past period for care provided by an approved child care service (see section 44, Subdivision B); or
  - (c) for a past period for care provided by a registered carer (see section 45, Subdivision C); or
  - (d) by single payment/in substitution because of the death of another individual (see section 46, Subdivision D).

Before an individual can be eligible under section 43, the individual must be conditionally eligible under section 42.

#### *Eligibility of an approved child care service for child care benefit*

- (3) An approved child care service may be eligible for child care benefit by fee reduction for care provided by the service to a child at risk (see section 47, Subdivision E).

**Subdivision A—Eligibility of an individual for child care benefit by fee reduction for care provided by an approved child care service**

**42 When an individual is conditionally eligible for child care benefit by fee reduction for care provided by an approved child care service**

- (1) An individual is conditionally eligible for child care benefit by fee reduction for care provided by an approved child care service to a child if:
  - (a) the child is an FTB child of the individual, or the individual's partner; and
  - (b) the individual, or the individual's partner:
    - (i) is an Australian resident; or
    - (ii) meets the requirements set out in subparagraph 729(2)(f)(ii), (iii), (iv) or (v) of the *Social Security Act 1991* and is in Australia; or
    - (iii) is undertaking a course of study in Australia and receiving financial assistance directly from the Commonwealth for the purpose of undertaking that study; and
  - (c) where the FTB child is under 7 and born on or after 1 January 1996, either:
    - (i) the child meets the immunisation requirements set out in section 6; or
    - (ii) a pre-notice period is operating in respect of the individual and the child (see subsection (3)); or
    - (iii) a 63 day notice period is operating in respect of the individual and the child (see section 57E of the Family Assistance Administration Act).

*Secretary may determine that child is an FTB child*

- (2) The Secretary may determine that a child who is not an FTB child of an individual at a particular time is taken to be an FTB child of the individual at that time for the purposes of paragraph (1)(a).
- (3) In subparagraph (1)(c)(ii), the reference to a ***pre-notice period*** is a reference to the period of time that ends on the day before a 63 day

notice period begins to operate in respect of the individual and the child.

*Section subject to Subdivision F*

- (4) This section is subject to Subdivision F (which deals with limits on eligibility).

**43 When an individual is eligible for child care benefit by fee reduction for care provided by an approved child care service**

- (1) An individual is eligible for child care benefit by fee reduction for a session of care provided by an approved child care service to a child if:
- (a) when the session of care is provided, a determination is in force under Part 3 of the Family Assistance Administration Act with the effect that the individual is conditionally eligible for child care benefit by fee reduction in respect of the child; and
  - (b) the care is provided in Australia; and
  - (c) the individual, or the individual's partner, has incurred a liability to pay for the session (whether or not the liability has been discharged).

*Section subject to Subdivisions F and G*

- (2) This section is subject to Subdivisions F and G (which deal with limits on eligibility).

**Subdivision B—Eligibility of an individual for child care benefit for a past period for care provided by an approved child care service**

**44 When an individual is eligible for child care benefit for a past period for care provided by an approved child care service**

- (1) An individual is eligible for child care benefit for a past period for a session of care provided by an approved child care service to a child if:



- (a) the child is an FTB child of the individual, or the individual's partner, during the session; and
- (b) the care is provided in Australia; and
- (c) the individual, or the individual's partner, has incurred a liability to pay for the session (whether or not the liability has been discharged); and
- (d) when a claim by the individual for payment of child care benefit in respect of the session is determined in accordance with Part 3 of the Family Assistance Administration Act, the individual, or the individual's partner:
  - (i) is an Australian resident; or
  - (ii) meets the requirements set out in subparagraph 729(2)(f)(ii), (iii), (iv) or (v) of the *Social Security Act 1991* and is in Australia; or
  - (iii) is undertaking a course of study in Australia and receiving financial assistance directly from the Commonwealth for the purpose of undertaking that study; and
- (e) when a claim by the individual for payment of child care benefit in respect of the session is determined in accordance with Part 3 of the Family Assistance Administration Act, the requirement relating to immunisation set out in subsection (2) is met in respect of the child; and
- (f) the session starts on or after the commencement of this Act.

*Requirement relating to immunisation referred to in paragraph (1)(e)*

- (2) For the purposes of paragraph (1)(e), the requirement relating to immunisation is that, if the child is under 7 and is born on or after 1 January 1996, the child must meet the immunisation requirements set out in section 6.

*Secretary may determine that child is an FTB child*

- (3) The Secretary may determine that a child who is not an FTB child of an individual during the session of care is taken to be an FTB child of the individual during that session for the purposes of paragraph (1)(a).

*Section subject to Subdivisions F and G*

- (4) This section is subject to Subdivisions F and G (which deal with limits on eligibility).

**Subdivision C—Eligibility of an individual for child care benefit for a past period for care provided by a registered carer**

**45 When an individual is eligible for child care benefit for a past period for care provided by a registered carer**

- (1) An individual is eligible for child care benefit for a past period for care provided (see section 12) by a registered carer to a child if:
- (a) the child is an FTB child of the individual, or the individual's partner, during the period; and
  - (b) the care is provided in Australia; and
  - (c) the child is not an FTB child of the registered carer, or the partner of the carer; and
  - (d) the individual, or the individual's partner, is liable to pay for the care and the care has been paid for; and
  - (e) the individual, and the individual's partner, satisfy the work/training/study test at some time during the week in which the care is provided; and
  - (f) when a claim by the individual for payment of child care benefit in respect of the period is determined in accordance with Part 3 of the Family Assistance Administration Act, the individual, or the individual's partner:
    - (i) is an Australian resident; or
    - (ii) meets the requirements set out in subparagraph 729(2)(f)(ii), (iii), (iv) or (v) of the *Social Security Act 1991* and is in Australia; or
    - (iii) is undertaking a course of study in Australia and receiving financial assistance directly from the Commonwealth for the purpose of undertaking that study; and
  - (g) when a claim by the individual for payment of child care benefit in respect of the period is determined in accordance with Part 3 of the Family Assistance Administration Act, the

requirement relating to immunisation set out in subsection (2) is met in respect of the child; and

- (h) the care is not provided as part of the compulsory education program in the State or Territory where the care is provided; and
- (i) the care starts on or after the commencement of this Act.

*Requirement relating to immunisation referred to in paragraph (1)(g)*

- (2) For the purposes of paragraph (1)(g), the requirement relating to immunisation is that, if:
  - (a) the child is under 7 and is born on or after 1 January 1996; and
  - (b) the individual has previously made a claim for payment of child care benefit under Part 3 of the Family Assistance Administration Act in respect of a period of care provided by a registered carer to the child;

the child must meet the immunisation requirements set out in section 6.

*Secretary may determine that child is an FTB child*

- (3) The Secretary may determine that a child who is not an FTB child of an individual during the period of care is taken to be an FTB child of the individual during that period for the purposes of paragraph (1)(a).

*Section subject to sections 48 and 49*

- (4) This section is subject to sections 48 and 49 (which deal with limits on eligibility).

**Subdivision D—Eligibility of an individual for child care benefit by single payment/in substitution because of the death of another individual**

**46 Eligibility for child care benefit if a conditionally eligible or eligible individual dies**

*If deceased eligible for child care benefit*

(1) If:

- (a) an individual is eligible for an amount of child care benefit in respect of a child (the *subject amount*) under section 43, 44 or 45; and
- (b) the individual dies; and
- (c) before the individual died, the subject amount had not been paid to the individual (whether or not a claim under Part 3 of the Family Assistance Administration Act had been made); and
- (d) another individual makes a claim under that Part for payment of child care benefit in respect of the child because of the death of a person, stating that he or she wishes to become eligible for so much of the subject amount as does not relate to any period before the beginning of the income year preceding the income year in which the individual died; and
- (e) the Secretary considers that the other individual ought to be eligible for that much of the subject amount;

the other individual is eligible for that much of the subject amount and no-one else is, or can become, eligible for or entitled to be paid any of the subject amount.

*If deceased conditionally eligible for child care benefit by fee reduction*

(2) If:

- (a) a determination of conditional eligibility under section 50F of the Family Assistance Administration Act is in force in respect of an individual with the effect that an individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and
- (b) the individual dies; and

- (c) before the individual died, the individual's entitlement to be paid child care benefit by fee reduction had not been determined under section 51B of the Family Assistance Administration Act; and
  - (d) another individual makes a claim under Part 3 of that Act for payment of child care benefit in respect of the child because of the death of an individual, stating that he or she wishes to become eligible for such amount (if any) of child care benefit that the first individual would have been entitled to be paid as does not relate to any period before the beginning of the income year preceding the income year in which the first individual died; and
  - (e) the Secretary considers that the other individual ought to be eligible for the amount;
- the other individual is eligible for the amount and no-one else is, or can become, eligible for or entitled to be paid that amount.

**Subdivision E—Eligibility of an approved child care service for child care benefit by fee reduction for care provided by the service to a child at risk**

**47 When an approved child care service is eligible for child care benefit by fee reduction for care provided to a child at risk**

- (1) An approved child care service is eligible for child care benefit by fee reduction for a session of care provided by the service to a child if:
  - (a) at the time the care is provided, the service believes the child is at risk of serious abuse or neglect; and
  - (b) the care is provided in Australia.

*Section subject to Subdivisions F and G*

- (2) This section is subject to Subdivisions F and G (which deal with limits on eligibility).

**Subdivision F—Limitations on conditional eligibility or eligibility for child care benefit for care provided by an approved child care service or a registered carer that do not relate to hours**

**48 No multiple eligibility for same care**

- (1) If, apart from this section, more than one individual would be eligible, or conditionally eligible, for child care benefit in respect of the same session, or period, of care for the same child under Subdivision A, B or C, the only individual who is eligible, or conditionally eligible, is the one whom the Secretary determines to be eligible.

*Determination to be in accordance with any Ministerial rules*

- (2) The Secretary must make the determination under subsection (1) in accordance with any rules in force under subsection (3).

*Ministerial rules*

- (3) The Minister may make rules in accordance with which the Secretary is to make determinations under subsection (1).

*Disallowable instrument*

- (4) The rules are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**49 Person not conditionally eligible or eligible for child care benefit if child in care under a welfare law or child in exempt class of children**

- (1) A person is not eligible, or conditionally eligible, for child care benefit as mentioned in Subdivision A, B, C or E if the child concerned:
- (a) is under the care (however described) of a person under:
    - (i) a child welfare law of a State or Territory; or
    - (ii) a law of a State or Territory that is taken to be a child welfare law of the State or Territory in a determination under subsection (2); or

- (b) is a member of a class specified in a determination under subsection (3).

*Child welfare law*

- (2) The Minister may determine that a specified law of a State or Territory is taken to be a child welfare law of the State or Territory for the purposes of subparagraph (1)(a)(ii).

*Exempt class of children*

- (3) The Minister may determine that children included in a specified class are children in respect of whom no-one is eligible for child care benefit under this Division.

*Disallowable instrument*

- (4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**50 Person not eligible for child care benefit while an approved child care service's approval is suspended**

- (1) If:
  - (a) except for the operation of this section, a person would be eligible for child care benefit for care provided by an approved child care service to a child as mentioned in Subdivision A, B or E; and
  - (b) at the time a session of care is provided to the child, the service's approval under section 195 of the Family Assistance Administration Act has been suspended under section 200 of that Act;the person is not eligible for child care benefit for the sessions of care provided by the service during the period when the service's approval is suspended.
- (2) For the purposes of subsection (1), an approved child care service's approval is suspended for the period beginning when that suspension takes effect and ending on the day with effect from which that suspension is revoked.

**51 Approved child care service not eligible for care provided to a child at risk if Minister so determines**

*Limit on eligibility under section 47*

- (1) The Minister may determine that, in specified circumstances, after a specified period or specified periods of eligibility of approved child care services for child care benefit by fee reduction in respect of a child under section 47, the services are not able to be eligible under that section for any further period in respect of the child.

*Disallowable instrument*

- (2) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Subdivision G—Limitations on eligibility for child care benefit for care provided by an approved child care service relating to hours**

**52 Limit on eligibility for child care benefit relating to hours**

*Limit on eligibility*

- (1) Despite:
  - (a) an individual or an approved child care service (a *fee reduction claimant*) being eligible for child care benefit by fee reduction under section 43 or 47 respectively; or
  - (b) an individual (a *past period claimant*) being eligible under section 44 for child care benefit for a past period;the number of hours, in sessions of care in a week for which the claimant is eligible, is limited.

*How limit is worked out*

- (2) The limit is worked out using this Subdivision. The Minister's determination under section 57A deals with the hours that are to count towards that limit in certain circumstances.



*If fee reduction claimant is an individual—how the limit is used*

- (3) If a fee reduction claimant who is an individual, the Secretary determines the limit under section 50H of the Family Assistance Administration Act while the claimant is conditionally eligible for child care benefit by fee reduction.
- (4) The limit may be varied under:
  - (a) section 59F, 62C or 65D of the Family Assistance Administration Act; or
  - (b) Subdivision U of Division 4 of Part 3 of that Act.

The limit, and variations to it made under Subdivision U of Division 4 of Part 3 of the Family Assistance Administration Act or section 65D of that Act, are worked out using this Subdivision as if the reference in subsection (1) to an individual being eligible under section 43 for child care benefit was a reference to the individual being conditionally eligible under section 42. The Secretary applies the limit when determining, under section 51B of the Family Assistance Administration Act, the amount of child care benefit the claimant is entitled to be paid.

*If fee reduction claimant is a service—how the limit is used*

- (5) If a fee reduction claimant that is an approved child care service, the limit is taken to be determined under section 54C of the Family Assistance Administration Act. The Secretary applies the limit when determining, under section 54B of the Family Assistance Administration Act, the amount of child care benefit the claimant is entitled to be paid.

*Past period claimant—how the limit is used*

- (6) If a past period claimant, the Secretary applies the limit when determining, under section 52E of the Family Assistance Administration Act, the amount the claimant is entitled to be paid.

### **53 Weekly limit of hours**

*Weekly limit for fee reduction claimants*

- (1) The weekly limit of hours applicable to a fee reduction claimant is as provided for in this Subdivision:
  - (a) a limit of 20 hours; or

- (b) a limit of 50 hours: or
- (c) a limit of more than 50 hours; or
- (d) a 24 hour care limit (but see section 56 which provides that this limit can only apply if the care is not provided by an approved occasional care service).

*Weekly limit for past period claimants*

- (2) The weekly limit of hours applicable to a past period claimant is, as provided for in this Subdivision:
  - (a) a limit of 20 hours; or
  - (b) a limit of 50 hours.

*20 hour limit applies if no other limit does*

- (3) In a week, a limit of 20 hours applies to a claimant if:
  - (a) in the case of a fee reduction claimant—a limit of 50 hours, a limit of more than 50 hours or a 24 hour care limit does not apply in respect of the week; and
  - (b) in the case of a past period claimant—a limit of 50 hours does not apply in respect of the week.

*Weekly limit of hours must not include unauthorised 24 hour care*

- (4) The weekly limit of hours applicable to a claimant under this section, other than a 24 hour care limit under paragraph (1)(d), must not include hours during which an approved child care service is providing 24 hour care to the child.

## **54 Circumstances when a limit of 50 hours applies**

*Overview of section*

- (1) This section sets out the circumstances in which a limit of 50 hours for sessions of care provided by an approved child care service to a child applies in a week to the eligibility of:
  - (a) a fee reduction claimant (see paragraph 52(1)(a)); or
  - (b) a past period claimant (see paragraph 52(1)(b)).

*If claimant is an individual and work/training/study test satisfied*

- (2) A limit of 50 hours in the week applies to a fee reduction claimant who is an individual or to a past period claimant if that claimant, and that claimant's partner (if any), satisfy the work/training/study test at some time in the week.

*If fee reduction claimant is an approved child care service and work/training/study test satisfied*

- (3) A limit of 50 hours in the week applies to a fee reduction claimant that is an approved child care service if:
- (a) the person in whose care the child last was before the first session of care in the week is an individual; and
  - (b) the individual, and the individual's partner (if any), satisfy the work/training/study test at some time in the week.

*If claimant is an individual and carer allowance is payable*

- (4) A limit of 50 hours in the week applies to a fee reduction claimant who is an individual, or to a past period claimant, if carer allowance for a disabled child (within the meaning of section 952 of the *Social Security Act 1991*) is payable to the claimant or the claimant's partner (if any) for some or all of the week:
- (a) in respect of an FTB child of the claimant or that claimant's partner; and
  - (b) pursuant to a claim under that Act that was determined before the week.

*If fee reduction claimant is an approved child care service and carer allowance is payable*

- (5) A limit of 50 hours in the week applies to a fee reduction claimant that is an approved child care service if:
- (a) the person in whose care the child last was before the first session of care in the week is an individual; and
  - (b) carer allowance for a disabled child (within the meaning of section 952 of the *Social Security Act 1991*) is payable to the individual or the individual's partner (if any) for some or all of the week:
    - (i) in respect of an FTB child of the individual or the individual's partner; and

- (ii) pursuant to a claim under that Act that was determined before the week.

*If claimant and partner are disabled persons*

- (6) A limit of 50 hours in the week applies to a fee reduction claimant who is an individual or to a past period claimant if, during the week:
  - (a) the child is an FTB child of the claimant and that claimant is a disabled person (see subsection 3(1)); and
  - (b) the claimant's partner (if any) is also a disabled person.

*If fee reduction claimant is an approved child care service—disabled persons*

- (7) A limit of 50 hours in the week applies to a fee reduction claimant that is an approved child care service if:
  - (a) the person in whose care the child last was before the first session of care in the week is an individual; and
  - (b) during the week, the child is an FTB child of the individual and that individual is a disabled person (see subsection 3(1)); and
  - (c) during the week, the individual's partner (if any) is also a disabled person.

*If fee reduction claimant is an individual and Secretary considers that exceptional circumstances exist*

- (8) A limit of 50 hours in the week applies to a fee reduction claimant who is an individual if the Secretary considers that, for a specified period that includes, or is the same as, the week, the child needs or needed more than 20, up to a maximum of 50, hours of care in a week because exceptional circumstances exist or existed in the period in relation to the claimant.

*If fee reduction claimant is an approved child care service and Secretary considers that exceptional circumstances exist*

- (9) A limit of 50 hours in the week applies to a fee reduction claimant that is an approved child care service if:
  - (a) the person in whose care the child last was before the first session of care in the week is an individual; and

- (b) the Secretary considers that, for a specified period that includes, or is the same as, the week, the child needs or needed more than 20, up to a maximum of 50, hours of care in a week because exceptional circumstances exist or existed in the period in relation to the individual.

*Service considers that child at risk*

- (10) Subject to subsection (11), a limit of 50 hours in the week applies to a fee reduction claimant if:
  - (a) in the case where the claimant is an individual—the approved child care service providing care to the child; or
  - (b) in the case where the claimant is an approved child care service—the service;certifies that, for a specified period that includes, or is the same as, the week, the child needs or needed more than 20, up to a maximum of 50, hours of care in a week because the child is or has been at risk of serious abuse or neglect.

*Limitation on service giving certificates under subsection (10)*

- (11) An approved child care service providing care to a child may only give a certificate under subsection (10) if the period specified in the certificate, and the period specified in each other certificate (if any) given by the service under subsection (10) in respect of the child and the same financial year, do not in total exceed 13 weeks.

*Secretary considers that child at risk*

- (12) A limit of 50 hours in the week applies to a fee reduction claimant if:
  - (a) either:
    - (i) in the case where the claimant is an individual—the approved child care service providing care to the child; or
    - (ii) in the case where the claimant is an approved child care service—the service;has given one or more certificates under subsection (10), such that the total period specified in the certificates in respect of the child in the same financial year equals 13 weeks; and

- (b) the Secretary considers that the child needs or needed more than 20, up to a maximum of 50, hours of care in a week in a specified period beginning at any time after those 13 weeks, because the child is or has been at risk of serious abuse or neglect; and
- (c) the week falls within, or is the same as, the period specified by the Secretary.

*Determination that service is sole provider in area*

- (13) A limit of 50 hours in the week applies to a fee reduction claimant or past period claimant if a determination is in force under section 57 (sole provider) during the week in respect of the approved child care service providing the care to the child.

*Approved outside school hours care service providing care to child*

- (14) A limit of 50 hours in the week applies to a fee reduction claimant or past period claimant:
  - (a) who is an individual; or
  - (b) that is an approved outside school hours care service providing care to the child;if the Secretary considers that, during the week, the claimant needs or needed care before or after school for the child from an approved outside school hours care service.

## **55 Circumstances when a limit of more than 50 hours applies**

*Overview of section*

- (1) This section sets out the circumstances in which a limit of more than 50 hours for sessions of care provided by an approved child care service to a child applies in a week to the eligibility of a fee reduction claimant (see paragraph 52(1)(a)).

*Work/disability test satisfied if fee reduction claimant is an individual*

- (2) A limit of more than 50 hours in the week applies to a fee reduction claimant who is an individual if:
  - (a) the Secretary considers that for a specified period or indefinitely (if no period is specified), the claimant needs or

needed care for the child for a particular number of hours in a week more than 50; and

- (b) the Secretary considers that the amount of care is needed because the individual, and that individual's partner (if any), satisfy the work/disability test (see subsections 57E(1), (2) and (3)) for the particular number of hours during the period or indefinitely, as the case may be; and
- (c) the week falls within, or is the same as, the period or, if no period is specified, the week is one after the start of the indefinite period.

The amount of the limit is the particular number of hours more than 50.

*Work/disability test satisfied if fee reduction claimant is an approved child care service*

- (3) A limit of more than 50 hours in the week applies to a fee reduction claimant that is an approved child care service if:
  - (a) the person in whose care the child last was before the first session of care in the week is an individual; and
  - (b) the Secretary considers:
    - (i) that for a specified period the individual needs or needed care for the child for a particular number of hours in a week more than 50; and
    - (ii) that the amount of care is needed because the individual, and that individual's partner (if any), satisfy the work/disability test (see subsections 57E(1), (2) and (3)) for the particular number of hours during the period; and
  - (c) the week falls within, or is the same as, the period.

The amount of the limit is the particular number of hours more than 50.

*If fee reduction claimant is an individual and Secretary considers that exceptional circumstances exist*

- (4) A limit of more than 50 hours in the week applies to a fee reduction claimant who is an individual if the Secretary considers:
  - (a) that for a specified period that includes, or is the same as, the week, the child needs or needed care, for a particular number of hours in a week more than 50; and

- (b) the reason the child needs or needed the care is because exceptional circumstances exist or existed in the period in relation to the claimant.

The amount of the limit is the particular number of hours more than 50.

*If fee reduction claimant is an approved child care service and Secretary considers that exceptional circumstances exist*

- (5) A limit of more than 50 hours in the week applies to a fee reduction claimant that is an approved child care service if:
  - (a) the person in whose care the child last was before the first session of care in the week is an individual; and
  - (b) the Secretary considers:
    - (i) that, for a specified period that includes, or is the same as, the week, the child needs or needed care, for a particular number of hours in a week more than 50; and
    - (ii) that the reason the child needs or needed the care is because exceptional circumstances exist or existed in the period in relation to the individual.

The amount of the limit is the particular number of hours more than 50.

*Service considers that child at risk*

- (6) Subject to subsection (7), a limit of more than 50 hours in the week applies to a fee reduction claimant if:
  - (a) in the case where the claimant is an individual—the approved child care service providing care to the child; or
  - (b) in the case where the claimant is an approved child care service—the service;certifies that, for a specified period that includes, or is the same as, the week, the child needs or needed a particular number of hours of care in a week more than 50 because the child is or has been at risk of serious abuse or neglect. The amount of the limit is the particular number of hours more than 50 that the service specifies.

*Limitation on service giving certificates under subsection (6)*

- (7) An approved child care service providing care to a child may only give a certificate under subsection (6) if the period specified in the



certificate, and the period specified in each other certificate (if any) given by the service under that subsection in relation to the child and the same financial year, does not in total exceed 13 weeks.

*Secretary considers that child at risk*

- (8) A limit of more than 50 hours in the week applies to a fee reduction claimant if:
- (a) either:
    - (i) in the case where the claimant is an individual—the approved child care service providing care to the child; or
    - (ii) in the case where the claimant is an approved child care service—the service;
  - has given one or more certificates under subsection (6) such that the total period specified in the certificates in respect of the child in the same financial year equals 13 weeks; and
  - (b) the Secretary considers that the child needs or needed a particular number of hours of care in a week more than 50 in a specified period beginning at any time after those 13 weeks, because the child is or has been at risk of serious abuse or neglect; and
  - (c) the week falls within, or is the same as, the period specified by the Secretary.

The amount of the limit is the particular number of hours more than 50.

## **56 Circumstances when 24 hour care limit applies**

*Overview of section*

- (1) This section sets out the circumstances in which a 24 hour care limit for sessions of care provided to a child applies in a week to the eligibility of certain fee reduction claimants (see paragraph 52(1)(a)). A 24 hour care limit can only apply if the care is provided by an approved child care service other than an approved occasional care service.

*Meaning of **fee reduction claimant** and **approved child care service***

- (2) In this section (other than subsection (1)):
- (a) **fee reduction claimant** does not include an individual if the care the individual is eligible for is provided by an approved occasional care service; and
  - (b) **approved child care service** does not include an approved occasional care service.

*24 hour care certified by a service—if claimant is an individual*

- (3) Subject to subsection (5), a 24 hour care limit applies in the week to a fee reduction claimant who is an individual if the approved child care service providing care to the child certifies that the child needs, or needed, 24 hour care in the week for one or more 24 hour care periods specified in the certificate, because neither the claimant, nor the claimant's partner (if any), is able to care for the child during those periods for the reason that:
- (a) both the claimant and the claimant's partner (if any) have work related commitments during those periods; or
  - (b) exceptional circumstances exist during those periods.

*24 hour care certified by a service—if claimant is a service*

- (4) Subject to subsection (5), a 24 hour care limit applies in the week to a fee reduction claimant that is an approved child care service if:
- (a) the person in whose care the child last was before the first session of care in the week is an individual; and
  - (b) the service certifies that the child needs, or needed, 24 hour care in the week for one or more 24 hour care periods specified in the certificate, because neither the individual, nor the individual's partner (if any), is able to care for the child during those periods for the reason that:
    - (i) both the individual and that individual's partner (if any) have work related commitments during those periods; or
    - (ii) exceptional circumstances exist during those periods.

*Limitation on service giving certificates under subsection (3) or (4)*

- (5) An approved child care service may only give a certificate under subsection (3) or (4) if the number of 24 hour care periods
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specified in the certificate in relation to a child, together with the number of 24 hour care periods specified in each other certificate (if any) given by the service, or any other approved child care service, in relation to the child and the same financial year, does not in total exceed 14.

*24 hour care decided by the Secretary*

- (6) Subject to subsection (7), a 24 hour care limit applies in the week to a fee reduction claimant if:
- (a) the approved child care service providing care to the child has given a certificate under subsection (3) or (4) such that the total of the 24 hour care periods specified in that certificate and other certificates (if any) given by the service, or any other approved child care service, in respect of the child in the same financial year equals 14; and
  - (b) the Secretary considers that, at some time after those 14 24 hour care periods, the child needs or needed 24 hour care for one or more specified 24 hour care periods in the week because:
    - (i) in the case where the claimant is an individual—neither the claimant nor the claimant’s partner (if any); or
    - (ii) in the case where the claimant is the approved child care service providing care to the child—neither the individual in whose care the child last was before the first session of care in the week nor the individual’s partner (if any);is able to care for the child during those periods; and
  - (c) the Secretary considers that the reason for that inability is:
    - (i) because both the individual and the individual’s partner (if any) have work related commitments during those periods; or
    - (ii) because exceptional circumstances exist during those periods.

*Limitation on Secretary’s decision making under subsection (5)*

- (7) Subject to subsection (8), in respect of a child during a financial year, the Secretary may make a decision under subsection (6) in respect of only 14 24 hour care periods.

*Maximum of 28 24 hour care periods may be lifted in certain circumstances*

(8) If:

- (a) in respect of the child during a financial year, there have already been certificates given, and decisions of the Secretary made, in which the total of the 24 hour care periods specified is 28; and
- (b) the Secretary is satisfied that it is essential in the circumstances that the child receive one or more further periods of 24 hour care during the financial year;

a 24 hour care limit applies in the week to a fee reduction claimant if:

- (c) the Secretary considers that, at some time after those 28 24 hour care periods, the child needs or needed 24 hour care for one or more specified 24 hour care periods in the week because:
  - (i) in the case where the claimant is an individual—neither the claimant nor the claimant’s partner (if any); or
  - (ii) in the case where the claimant is the approved child care service providing care to the child—neither the individual in whose care the child last was before the first session of care in the week nor the individual’s partner (if any);is able to care for the child during those periods; and
- (d) the Secretary considers that the reason for that inability is:
  - (i) because both the individual and the individual’s partner (if any) have work related commitments during those periods; or
  - (ii) because exceptional circumstances exist during those periods.

**57 Minister’s determination of sole provider**

(1) If the Minister considers that:

- (a) an approved child care service is the sole provider in an area of the kind of care the service provides; and
- (b) the service would be likely to close if the Minister were not to make a determination that would be in force for a period of

one or more weeks under this subsection in relation to the service;

the Minister may make a determination to that effect (while a determination is in force, a weekly limit of 50 hours applies under subsection 54(13)).

- (2) The determination:
  - (a) may be expressed to be subject to conditions, and
  - (b) must specify the period of one or more weeks; and
  - (c) is in force during the period specified.
- (3) The determination may be varied by the Minister from a date, or for a period, specified in the revocation.
- (4) The determination may be revoked by the Minister from a date specified in the revocation.
- (5) The determination, or a variation of a determination, may only be made on application by the approved child care service concerned.
- (6) The application 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.
- (7) The Secretary must give notice of the determination, or of a variation or revocation of a determination, to the approved child care service the subject of the determination. A determination, variation or revocation is not ineffective by reason only that the notice is not given, or if given, that all of the requirements are not complied with.

**57A Minister to determine which hours in sessions of care are to count towards the limits**

- (1) The Minister must determine rules relating to how to work out the hours in sessions of care provided by an approved child care service to a child in a week that are to count towards:
  - (a) the limit of 20 hours; or
  - (b) the limit of 50 hours; or
  - (c) the limit of more than 50 hours.

- (2) For the purposes of subsection (1), *sessions of care* means sessions other than sessions for which:
- (a) the standard hourly rate set out in item 1 of the table in subclause 4(1) of Schedule 2 applies; and
  - (b) a part-time % is 100% under subclause 2(2) of Schedule 2.

**57B Minister may determine rules**

The Minister may determine rules relating to:

- (a) the giving of certificates by an approved child care service under subsection 54(10), 55(6) or subsection 56(3) or (4); and
- (b) the making of decisions by the Secretary under section 54 or 55 or subsection 56(6) or (8); and
- (c) the making of the Minister's determinations under section 57; and
- (d) the meaning of terms used in this Subdivision.

**57C Certificates to be given and decisions and determinations to be made in accordance with rules**

All of the following must be made in accordance with rules (if any) in force under section 57B:

- (a) a certificate given by an approved child care service under subsection 54(10), 55(6) or subsection 56(3) or (4);
- (b) a decision made by the Secretary under section 54 or 55 or subsection 56(6) or (8);
- (c) a determination made by the Minister under section 57.

**57D Minister's determinations subject to disallowance**

A determination under section 57A or 57B is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **57E Meaning of work/disability test**

*Meaning of satisfying the work/disability test for individual without partner*

- (1) An individual who does not have a partner satisfies the work/disability test in relation to care provided by an approved child care service to a child if the individual is unable to care for the child because of work related commitments.

*Meaning of satisfying the work/disability test for individual and partner where one of the individuals has work related commitments and the other is a disabled person*

- (2) An individual who has a partner and the partner satisfy the work/disability test in relation to care provided by an approved child care service to a child if:
  - (a) one of the individuals is unable to care for the child because of work related commitments; and
  - (b) the other individual is a disabled person.

*Meaning of satisfying the work/disability test for individual and partner where both of the individuals have work related commitments*

- (3) An individual who has a partner and the partner satisfy the work/disability test in relation to care provided by an approved child care service if both of the individuals are unable to care for the child at the same time because of work related commitments.

## **55 Divisions 4 and 5 of Part 4**

Repeal the Divisions, substitute:

### **Division 4—Child care benefit**

#### **Subdivision A—Overview of Division**

### **69 Overview of Division**

- (1) Subdivisions B and C deal with the rate of fee reductions and child care benefit applicable if care is provided by an approved child care service.

- (2) Subdivision B sets out the circumstances in which the rate of fee reductions and child care benefit for care provided by an approved child care service are calculated using Schedule 2 and when they are calculated under Subdivision C.
- (3) Subdivision C deals with the rate applicable in respect of a session of care provided by an approved child care service to a child if:
  - (a) the service gives a certificate under section 76; or
  - (b) the Secretary makes a determination under subsection 81(2), (3) or (4).
- (4) Subdivision C applies if:
  - (a) a determination of conditional eligibility is in force in respect of an individual with the effect that the individual is conditionally eligible for child care benefit by fee reduction; or
  - (b) an approved child care service is eligible under section 47 for child care benefit by fee reduction for care provided by the service to the child.
- (5) Subdivision D deals with the rate of child care benefit applicable to an individual who is eligible under section 45 for child care benefit for a past period for care provided by a registered carer.

**Subdivision B—General provisions relating to rate of fee reductions and child care benefit for care provided by an approved child care service**

**70 Application of Subdivision to parts of sessions of care**

This Subdivision applies to a rate of fee reductions or child care benefit for a part of a session of care as if a reference in this Subdivision to a session of care included a reference to a part of a session of care.

**71 Weekly limit on child care benefit for care provided by an approved child care service**

The total amount of child care benefit for sessions of care provided by an approved child care service to a child in a week is not to exceed:



- (a) if an individual is eligible under section 43 for child care benefit by fee reduction for sessions of care provided to the child in the week—the amount that the service would have charged the individual, if the individual was not so eligible, for the sessions; or
- (b) if an individual is eligible under section 44 for child care benefit for a past period for sessions of care provided to the child in the week—the amount charged by the service for the sessions; or
- (c) if the service is eligible under section 47 for child care benefit by fee reduction for sessions of care provided in the week—the amount that, if the service had not been so eligible, the service would have charged the individual in whose care the child last was before the first session of care provided to the child in that week for the sessions.

**72 Weekly limit on rate of fee reductions while individual is conditionally eligible for care provided by an approved child care service**

- (1) If a determination of conditional eligibility under section 50F of the Family Assistance Administration Act is in force in respect of an individual and a child for child care benefit by fee reduction for care provided by an approved child care service to the child, the rate of fee reductions for sessions of care provided by the service to the child in a week is limited.
- (2) The rate is not to exceed the amount that the service would have charged the individual, if the individual were not so conditionally eligible, for sessions of care provided by the service to the child in that week, up to the weekly limit of hours determined as applicable to the individual under section 50H of the Family Assistance Administration Act.

**73 Rate of fee reductions or child care benefit—individual conditionally eligible or eligible under section 43**

*Individual conditionally eligible for child care benefit*

- (1) If a determination of conditional eligibility under section 50F of the Family Assistance Administration Act is in force in respect of

an individual and a child for child care benefit by fee reductions for care provided by an approved child care service to the child, the individual's rate of fee reductions for a session of care provided by the service to the child is the hourly rate:

- (a) if paragraph (b) or (c) does not apply (no child at risk or individual in hardship)—worked out by the service using Schedule 2 as if:
  - (i) references in that Schedule to a person being eligible were references to the person being determined to be conditionally eligible under section 50F of the Family Assistance Administration Act; and
  - (ii) references to child care benefit were references to fee reductions; or
- (b) if the service gives a certificate under subsection 76(1) in respect of the session—specified by the service in the certificate; or
- (c) if the Secretary makes a determination under subsection 81(2) or (3) in respect of the session—specified by the Secretary in the determination.

*Individual eligible for child care benefit*

- (2) If an individual is eligible under section 43 for child care benefit by fee reduction for a session of care provided by an approved child care service to a child, the individual's rate of child care benefit for the session is the hourly rate:
    - (a) if paragraph (b) or (c) does not apply (no child at risk or individual in hardship)—worked out using Schedule 2; or
    - (b) if the service gave a certificate under subsection 76(1) in respect of the session while the individual was conditionally eligible—specified by the service in the certificate in respect of fee reductions; or
    - (c) if the Secretary made a determination under subsection 81(2) or (3) in respect of the session while the individual was conditionally eligible—specified by the Secretary in the determination in respect of fee reductions.
  - (3) The rate mentioned in paragraph (1)(b) or (c) is taken into account when the Secretary determines the individual's entitlement to be paid child care benefit by fee reduction under section 51B of the Family Assistance Administration Act.
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- (4) Section 71 imposes a limit on the amount of child care benefit that may be paid for sessions of care provided by the service to the child in a week. Section 72 imposes a limit on the rate of fee reductions for sessions of care provided by the service to the child in a week.

#### **74 Rate of child care benefit—individual eligible under section 44**

- (1) If an individual is eligible under section 44 for child care benefit for a past period for a session of care provided by an approved child care service to a child, the rate of child care benefit for the session is the hourly rate worked out using Schedule 2.
- (2) The rate is taken into account in setting the amount of the individual's entitlement to be paid child care benefit for the past period under section 52E of the Family Assistance Administration Act.
- (3) Section 71 imposes a limit on the amount of child care benefit that may be paid for sessions of care provided by the service to the child in a week.

#### **75 Rate of child care benefit—approved child care service if child at risk**

- (1) If an approved child care service is eligible under section 47 for child care benefit by fee reduction for a session of care provided by the service to a child at risk, the service's rate of child care benefit for the session is the hourly rate specified by the service in a certificate given under subsection 76(2), or determined by the Secretary under subsection 81(4), as the case may be.
- (2) The rate is taken into account in setting the amount of the service's entitlement to be paid child care benefit by fee reduction under section 54B of the Family Assistance Administration Act.
- (3) Section 71 imposes a limit on the amount of child care benefit that may be paid for sessions of care provided to the child in a week.

**Subdivision C—Rate of fee reductions and child care benefit if care provided by an approved child care service and child is at risk or individual is in hardship**

**76 Fee reductions or child care benefit rate certified by an approved child care service**

*Service may certify rate if individual is conditionally eligible*

- (1) If:
- (a) a determination of conditional eligibility under section 50F of the Family Assistance Administration Act is in force in respect of an individual and a child for child care benefit by fee reduction for care provided by an approved child care service to the child; and
  - (b) the service providing the care to the child is satisfied that:
    - (i) the child is at risk of serious abuse or neglect; or
    - (ii) the individual is experiencing hardship of a kind specified in a determination in force under paragraph 82(3)(a);

the service providing the care to the child may, subject to sections 77, 78, 79 and 80, certify in writing the hourly rate of fee reductions applicable for sessions of care provided by the service to the child while the certificate is in force.

*Service must certify rate if approved child care service is eligible*

- (2) If an approved child care service is eligible under section 47 for child care benefit by fee reduction for care provided by the service to a child at risk, the service must, subject to sections 77 and 79, certify in writing the hourly rate of child care benefit applicable for sessions of care provided by the service to the child while the certificate is in force.

*Requirements of certificate*

- (3) The certificate under subsection (1) or (2) must:
- (a) specify the period for which that rate applies; and
  - (b) state if the certificate is given under subsection (1) or (2); and

- (c) if the certificate is given under subsection (1)—state whether the certificate is given for a reason set out in subparagraph (1)(b)(i) or (ii).
- (4) The period referred to in paragraph (3)(a):
  - (a) must be a number of complete weeks; and
  - (b) may start before or after the certificate is given.

**77 Limitation on service giving certificates for child at risk—13 weeks only**

An approved child care service providing care to a child may only give a certificate under:

- (a) subsection 76(1) for a reason set out in subparagraph 76(1)(b)(i) (child at risk); or
  - (b) subsection 76(2);
- if:
- (c) the period specified in the certificate; and
  - (d) the period specified in each other certificate (if any) given by the service under either of the subsections (child at risk or hardship) in relation to the child and the same financial year;
- do not in total exceed 13 weeks.

**78 Limitation on service giving certificates for individual in hardship—13 weeks only**

An approved child care service providing care to a child may only give a certificate under subsection 76(1) for a reason set out in subparagraph 76(1)(b)(ii) (hardship) if the total period specified in certificates given:

- (a) under section 76 by the service (child at risk or hardship); or
- (b) under subsection 76(1) for a reason set out in subparagraph 76(1)(b)(ii) (hardship) by any other approved child care service;

in respect of the child in the same financial year does not exceed 13 weeks.

## **79 Limitation on service giving certificates—reporting period limit**

- (1) An approved child care service providing care to a child may not give, in a particular reporting period, a certificate under section 76 (child at risk or hardship) in respect of a session of care provided by the service to a child if:
  - (a) the service has already, by certificates given under section 76, committed amounts of child care benefit in respect of that child, or in respect of other children, during the same reporting period; and
  - (b) the total amount of child care benefit so committed by the service in relation to that child and those other children, exceeds the reporting period limit for that reporting period (whether the sessions of care to which the commitment relates occur before, during or after the reporting period).

### *Reporting period limit*

- (2) For the purposes of paragraph (1)(b), the **reporting period limit**, for a reporting period (the **subject reporting period**) means:
  - (a) 18% of the total amount of child care benefit payable in relation to all care provided by the service during the reference reporting period (see subsection (3)); or
  - (b) if the Secretary determines that paragraph (a) is inappropriate to the circumstances of the service—an amount determined by the Secretary in relation to the subject reporting period.

### *Reference reporting period*

- (3) For the purposes of paragraph (2)(a), the reporting period that is the reference reporting period in relation to the subject reporting period is not the reporting period (the **previous reporting period**) immediately before the subject reporting period. It is the reporting period immediately preceding the previous reporting period.

### *Secretary may specify a higher percentage for paragraph (2)(a)*

- (4) The Secretary may specify a higher percentage for the purposes of paragraph (2)(a) in relation to an approved child care service and a reporting period.

*References in subsection (1) to child care benefit*

- (5) The references in paragraphs (1)(a) and (b) to **child care benefit** are references to:
- (a) if an individual is conditionally eligible for child care benefit by fee reduction in respect of the child—to fee reductions; and
  - (b) if the service is eligible for child care benefit by fee reduction in respect of the child—to child care benefit.

**80 Limitation on service giving certificates for individuals on grounds of hardship—Secretary imposes limit**

- (1) If:
- (a) an approved child care service has given more than one certificate under subsection 76(1) for a reason set out in subparagraph 76(1)(b)(ii) (hardship); and
  - (b) the Secretary is satisfied that the service has demonstrated, in the prior giving of certificates for that reason, a pattern of decisions that are not in accordance with the Minister's specifications under paragraph 82(3)(a) or rules under paragraph 82(3)(b);
- the Secretary may determine that the service must not give a certificate under subsection 76(1) for the reason of hardship after the Secretary's determination has been made and while the determination is in force.

*Matters to be specified in Secretary's determination*

- (2) A determination by the Secretary under subsection (1) must:
- (a) specify the period for which the determination remains in force; and
  - (b) be notified to the service.

**81 Fee reductions or child care benefit rate determined by the Secretary**

*Overview of section*

- (1) This section provides for the rate applicable to:

- (a) an individual in respect of whom a determination of conditional eligibility under section 50F of the Family Assistance Act is in force; or
- (b) an approved child care service that is eligible under section 47 for child care benefit by fee reduction for sessions of care provided by the service to a child at risk;

if the Secretary makes a determination as provided for in this section.

*Secretary may determine rate in cases of hardship—individual conditionally eligible*

(2) If:

- (a) a determination of conditional eligibility under section 50F of the Family Assistance Administration Act is in force in respect of an individual and a child for child care benefit by fee reduction for care provided by an approved child care service to the child; and
  - (b) either:
    - (i) the total period specified in certificates given by the service under section 76 and certificates given under subsection 76(1) for a reason set out in subparagraph 76(1)(b)(ii) (hardship) by any other approved child care service, in respect of the child in the same financial year equals 13 weeks; or
    - (ii) the service is not able to give a certificate under subsection 76(1) because of the operation of section 79 or 80; and
  - (c) the Secretary is satisfied that the individual is experiencing hardship of a kind specified in a determination in force under paragraph 82(3)(a); and
  - (d) the individual applies to the Secretary under subsection (5);
- the Secretary may determine the hourly rate of fee reductions for sessions of care the service provides to the child while the determination is in force.

*Secretary may determine rate if child at risk and individual conditionally eligible*

(3) If:

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- (a) a determination of conditional eligibility under section 50F of the Family Assistance Administration Act is in force in respect of an individual and a child for child care benefit by fee reduction for care provided by an approved child care service to the child; and
  - (b) the service either:
    - (i) has given a certificate under section 76 such that the total period specified in that certificate and other certificates (if any) given by the service under that section in respect of the child in the same financial year equals 13 weeks; or
    - (ii) is not able to give a certificate under subsection 76(1) because of the operation of section 79; and
  - (c) the Secretary is satisfied that the child is at risk of serious abuse or neglect; and
  - (d) the service applies to the Secretary under subsection (5);
- the Secretary may determine the hourly rate of fee reductions for sessions of care the service provides to the child while the determination is in force.

*Secretary must determine rate if service eligible and child at risk*

- (4) If:
- (a) an approved child care service is eligible under section 47 for child care benefit by fee reduction for sessions of care provided by the service to a child at risk; and
  - (b) the service either:
    - (i) has given a certificate under section 76 such that the total period specified in that certificate and other certificates (if any) given by the service under that section in respect of the child in the same financial year equals 13 weeks; or
    - (ii) is not able to give a certificate under subsection 76(2) because of the operation of section 79; and
  - (c) the Secretary is satisfied that the child is at risk of serious abuse or neglect; and
  - (d) the service applies to the Secretary under subsection (5);
- the Secretary must determine the hourly rate of child care benefit for sessions of care the service provides to the child while the determination is in force.

*Application for determination*

- (5) An application under subsection (2), (3) or (4) 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.

*Determination to specify certain things*

- (6) A determination must specify the rate and the period for which the determination is in force.

*Period specified in the determination*

- (7) The period specified in a determination:
- (a) must be a number of complete weeks; and
  - (b) may start before or after the determination is made.

*Notice to be given of a determination under subsection (2)*

- (8) The Secretary must give notice of a determination made under subsection (2) to the individual and the service providing the care to the child.

*Notice to be given of a determination under subsection (3) or (4)*

- (9) The Secretary must give notice of a determination made under subsection (3) or (4) to the service providing the care to the child.

*Content of notice*

- (10) The notice must state:
- (a) the name of the child concerned; and
  - (b) the rate determined by the Secretary in respect of sessions of care provided by the service to the child; and
  - (c) that the claimant may apply for review of the determination in the manner set out in Part 5 of the Family Assistance Administration Act.

- (11) The determination is not ineffective by reason only that any, or all, of the requirements of subsection (8), (9) or (10) are not complied with.

## **82 Certificate and determination to be made according to rules**

- (1) A certificate under section 76 is to be given in accordance with any rules in force under paragraph (3)(b).
- (2) A determination under subsection 81(2), (3) or (4) is to be made in accordance with any rules in force under paragraph (3)(b).
- (3) The Minister may, by determination:
- (a) specify kinds of hardship for the purposes of subparagraph 76(1)(b)(ii) and paragraph 81(2)(c); and
  - (b) make rules relating to the giving of certificates under section 76 and the making of determinations under subsections 81(2), (3) and (4).
- (4) A determination under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Subdivision D—Care provided by registered carer**

### **83 Rate of child care benefit for care provided by registered carer**

- (1) The hourly rate of child care benefit for care provided to a child by a registered carer is an amount per hour worked out in accordance with the formula:

Minimum hourly amount  $\times$  Schooling %

where:

***minimum hourly amount*** is the amount specified in the numerator in the formula in clause 12 of Schedule 2.

***schooling %*** is:

- (a) 85% if the child is a school child; and
- (b) 100% if the child is not a school child.

Section 84 imposes a limit on the amount of child care benefit that may be paid for care provided to a child in a week.

- (2) To avoid doubt, the hourly rate may be applied to a part of an hour. That part of the hour attracts the appropriate proportion of the amount for a full hour.

#### **84 Weekly limit on child care benefit for care provided by a registered carer**

The total amount of child care benefit for care provided to a child by a registered carer or carers in a week is not to exceed:

Hourly rate under section 83  $\times$  50

### **Division 5—Indexation**

#### **85 Indexation of amounts used in rate calculations**

Schedule 4 provides for the indexation of certain amounts used in working out rates of family assistance.

#### **56 Subclause 2(2) of Schedule 2 (definition of *part-time* %)**

Repeal the definition, substitute:

*part-time* % is:

(a) if:

- (i) the care is provided by an approved centre based long day care service; and
- (ii) the child is not a school child; and
- (iii) the total number of hours in sessions of care that are provided to the child by one or more approved child care services, and for which the family incurs liability to pay, in the week concerned, is less than 34—110%; or

(b) if:

- (i) the care is provided by an approved centre based long day care service; and
- (ii) the child is not a school child; and
- (iii) the total number of hours in sessions of care that are provided to the child by one or more approved child care services, and for which the family incurs liability to pay, in the week concerned, is 34 or more, but less than 35—108%; or

- (c) if:
  - (i) the care is provided by an approved centre based long day care service; and
  - (ii) the child is not a school child; and
  - (iii) the total number of hours in sessions of care that are provided to the child by one or more approved child care services, and for which the family incurs liability to pay, in the week concerned, is 35 or more, but less than 36—106%; or
- (d) if:
  - (i) the care is provided by an approved centre based long day care service; and
  - (ii) the child is not a school child; and
  - (iii) the total number of hours in sessions of care that are provided to the child by one or more approved child care services, and for which the family incurs liability to pay, in the week concerned, is 36 or more, but less than 37—104%; or
- (e) if:
  - (i) the care is provided by an approved centre based long day care service; and
  - (ii) the child is not a school child; and
  - (iii) the total number of hours in sessions of care that are provided to the child by one or more approved child care services, and for which the family incurs liability to pay, in the week concerned, is 37 or more, but less than 38—102%; or
- (f) in any other case—100%.

**57 At the end of subparagraph 7(a)(ii) of Schedule 2**

Add “or is receiving income support supplement under Part IIIA of the *Veterans’ Entitlements Act 1986*”.

**58 Clause 8 of Schedule 2**

Omit the number identifying the text of the clause as subclause (1).

**59 Clause 8 of Schedule 2 (method statement, step 8)**

Repeal the step, substitute:

*Step 8.* The individual's **taxable income** % is:

- (a) the individual's provisional taxable income % if it is equal to or greater than the individual's minimum taxable income %; or
- (b) the individual's minimum taxable income % if it is greater than the individual's provisional taxable income %.

**60 The subclause of clause 11 in Schedule 2 preceding subclause (2)**

Insert the symbols identifying the subclause as subclause (1).

**61 Clause 11 of Schedule 2 (table item 4, column 4)**

Omit "Individual's weekly taper amount", substitute "Specific taper amount".

**62 Clause 11 of Schedule 2 (table item 6, column 4)**

Omit "Individual's weekly taper amount", substitute "Specific taper amount".

**63 Clause 11 of Schedule 2 (table item 7 of the table relating to maximum weekly benefit (MWB))**

Repeal the item, substitute:

$$7 \quad 4 \text{ or more} \quad \text{no} \quad \left( \begin{array}{c} \text{Item 5} \\ \text{MWB} \end{array} \right) + \left( \begin{array}{c} \text{Additional} \\ \text{MWB} \end{array} \right) + \left( \begin{array}{c} \text{Additional} \\ \text{loading} \end{array} \right)$$

**64 Clause 11 of Schedule 2 (table item 8, column 4)**

Omit "Individual's weekly taper amount", substitute "Specific taper amount".

**65 Subclause 11(2) of Schedule 2**

Insert:

**additional loading** is one third of the amount, expressed in dollars, in item 5 of the table for each child in care of that kind after the third child.

**66 Subclause 11(2) of Schedule 2**

Insert:

*additional MWB* is item 1 of the table MWB for each child in care of that kind after the third child.

**67 Subclause 11(2) of Schedule 2**

Insert:

*specific taper amount* is the amount that would be the weekly taper amount for an individual worked out under step 4 of the method statement in clause 8 if the individual's adjusted taxable income for the income year were the upper income threshold.

**68 Subclause 11(2) of Schedule 2 (definition of *weekly taper amount*)**

Repeal the definition.

**69 Clause 12 of Schedule 2**

Repeal the clause, substitute:

An individual's *minimum taxable income %* is the percentage worked out in accordance with the following formula and rounded to 2 decimal places:

$$\frac{\$0.402}{\text{Standard hourly rate} \times \text{Multiple child \%}}$$

where:

*multiple child %* is the amount worked out under clause 5 in relation to the individual.

*standard hourly rate* is the amount specified in item 1 of the table in subclause 4(1).

## **Part 3—Common provisions relating to family assistance**

### **70 Subsection 3(1) (definition of *CPC rate*)**

Repeal the definition, substitute:

*CPC rate* has the meaning given by subsection (3).

### **71 Subsection 3(1) (definition of *FTB advance rate*)**

Repeal the definition, substitute:

*FTB advance rate*, in relation to an individual, means:

- (a) unless paragraph (b) applies—half the amount that would, under clause 26 of Schedule 1, be the FTB child rate for an FTB child who had not turned 18 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 in respect of the child; or
- (b) if the amount per year that would be the FTB advance rate under paragraph (a) is not a multiple of \$3.65—the amount per year that is the next highest multiple of \$3.65.

### **72 Subsection 3(1) (definition of *FTB child*)**

Repeal the definition, substitute:

*FTB child*:

- (a) in relation to family tax benefit—has the meaning given in Subdivision A of Division 1 of Part 3; and
- (b) in relation to child care benefit—has the meaning given in Subdivision A of Division 1 of Part 3 but:
  - (i) in applying paragraphs 22(7)(b) and 25(1)(b) to child care benefit, the references in those paragraphs to a claim for payment of family tax benefit are to be read as references to a claim for payment of child care benefit; and
  - (ii) in applying subsections 24(4) and (6) to child care benefit, the references in those subsections to eligibility



for family tax benefit are to be read as references to eligibility, or conditional eligibility, for child care benefit; and

- (c) in relation to child care benefit—also means a child determined by the Secretary under subsection 42(2), 44(3) or 45(3) to be an FTB child.

### **73 Subsection 3(1)**

Insert:

*partnered (partner in gaol)* has the same meaning as in the *Social Security Act 1991*.

### **74 Subsection 3(1)**

Insert:

*relevant shared carer* means an individual each of whose FTB children is the subject of a determination under subsection 59(1).

### **75 After section 3**

Insert:

#### **3A An individual may be in the care of 2 or more other individuals at the same time**

For the avoidance of doubt, except where express provision is made to the contrary, an individual may be taken, for the purposes of this Act, to be in the care of 2 or more other individuals at the same time.

### **76 Clause 2 of Schedule 3**

After “For the purposes of this Act”, insert “and subject to subclause (2)”.

### **77 At the end of clause 2 of Schedule 3**

Add:

- (2) If an individual dies before the end of a particular income year, the individual’s adjusted taxable income for that year is to be calculated in accordance with the following formula:

$$\text{Income of individual to date of death} \times \frac{\text{Number of days in income year}}{\text{Number of days individual was alive during income year}}$$

where:

*income of individual to date of death* means the amount that would, but for the operation of this subclause, have been the amount of adjusted taxable income of the individual for the particular income year in which the individual died if, so far as that particular individual is concerned, that year had comprised only those days preceding the individual's death.

## **78 After clause 3 of Schedule 3**

Insert:

### **3A Working out adjusted taxable income in certain cases where individuals cease to be members of a couple**

If:

- (a) an individual is a member of a couple with another individual (*partner A*) for a period or periods during an income year but not at the end of the income year; and
- (b) for any period during the income year while the individual was a member of that couple, the Secretary had determined the individual's entitlement to family assistance by way of family tax benefit or child care benefit on the basis that a particular amount was the individual's adjusted taxable income (the *current ATI amount*); and
- (c) that amount differs from the amount of the individual's adjusted taxable income as finally determined in respect of the income year by the Secretary (the *final ATI amount*); and
- (d) the individual's entitlement to family assistance of that kind, for the total period, or for the total of the periods, that the individual was a member of that couple, would be less if worked out using the final ATI amount than if worked out using the current ATI amount as determined from time to time; and

- (e) if the current ATI amount at any time was based on an estimate provided by the individual and is less than the final ATI amount:
  - (i) at the time when the estimate was provided—the individual did not know, and had no reason to suspect, that the estimate was incorrect; and
  - (ii) if, after the estimate was provided and before ceasing to be a member of the couple, the individual knew or had reason to suspect that the estimate was incorrect—the individual provided a revised estimate as soon as practicable after knowing or suspecting that the estimate was incorrect;

then, despite the final determination of that adjusted taxable income by the Secretary, the individual's adjusted taxable income during any period during the income year:

- (f) that the individual and partner A were a couple; and
  - (g) that a particular current ATI amount applied;
- is to be taken to be that particular current ATI amount.

#### **79 Clause 2 of Schedule 4 (table items 4 and 5)**

Repeal the items, substitute:

4	Maximum rent assistance for family tax benefit (Part A—Method 1)	FTB RA maximum (A1)	[Schedule 1—clause 14—table—column 3—all amounts]  Schedule 1—clause 14A—table—column 3—all amounts]
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5	Rent threshold rate for rent assistance for family tax benefit (Part A—Method 1)	FTB RA rent threshold (A1)	<p>[Schedule 1—subparagraphs 13(1)(f)(i), (ii), (iii) and (iv)]</p> <p>[Schedule 1—subparagraphs 13(1)(fa)(i), (ii), (iii) and (iv)]</p> <p>[Schedule 1—clause 14—table—column 2—all amounts]</p> <p>[Schedule 1—clause 14A—table—column 2—all amounts]</p>
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**80 Clause 3 of Schedule 4 (table items 4 and 5)**

Omit “\$7.30” (wherever occurring), substitute “\$3.65”.

**81 Clause 8 of Schedule 4 (table item 3)**

Repeal the item, substitute:

3	Schedule 1 (clause 13)	subparagraph (1)(f)(i), (ii), (iii) or (iv)
3A	Schedule 1 (clause 13)	subparagraph (1)(fa)(i), (ii), (iii) or (iv)

**82 Clause 8 of Schedule 4 (after table item 4)**

Insert:

4A	Schedule 1 (clause 14A)	table
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**83 Subclause 9(1) of Schedule 4**

After “clause 14”, insert “or 14A”.

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## **Schedule 2—Amendment of the A New Tax System (Family Assistance) (Administration) Act 1999**

### **Part 1—Amendments relating to family tax benefit, maternity allowance and maternity immunisation allowance**

#### **1 Subsection 3(1) (definition of *instalment period*)**

Repeal the definition, substitute:

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

#### **2 After paragraph 7(2)(a)**

Insert:

- (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

#### **3 At the end of subsection 7(2)**

Add:

- ; 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.

#### **4 After section 7**

Insert:

#### **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).

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*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.

**5 Paragraph 8(7)(a)**

After “is”, insert “, or was,”.

**6 After section 8**

Insert:

**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) (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.

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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 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:
    - (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.

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*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.

Note: The heading to section 8 is altered by omitting "claim" and substituting "claims for family tax benefit by instalment or for a past period".

**7 Subparagraph 9(c)(i)**

After "27(5),", insert "27A(3), 28A(2), 28B(2), 28B(3),".

**8 Subparagraph 10(1)(c)(i)**

After "27(5)", insert "27A(3), 28A(2), 28B(2), 28B(3),".

**9 Subsection 13(1)**

Omit "section and sections 16 to 19", substitute "Subdivision".

**10 Subsection 13(2)**

Repeal the subsection.

**11 Section 14**

Omit all the words before paragraph (b), substitute:

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

**12 Section 15**

Repeal the section, substitute:

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**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:

- (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.

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**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.
- (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.

**13 Subsections 16(2) and (3)**

Repeal the subsections, substitute:

- (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.

**14 Paragraph 16(4)(a)**

Omit “or (3)”.

Note: The heading to subsection (4) is altered by omitting “and (3)”.

**15 Paragraph 20(1)(b)**

Omit “an amount”, substitute “the amount of adjusted taxable income”.

**16 Paragraph 20(1)(c)**

After “individual”, insert “or, if the individual has died, another individual making a claim for family tax benefit by single payment/in substitution because of the death of that individual,”.

**17 At the end of section 20**

Add:

(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.

**18 Subsection 22(2)**

Omit "to any extent if", substitute "by reason only that".

**19 Subsection 23(1)**

Omit "and in such manner as the Secretary considers appropriate", substitute "as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant".

**20 At the end of subsection 23(4)**

Add:

The payment may be made at such time and in such manner as the Secretary considers appropriate.

**21 Subsection 23(5)**

Repeal the subsection, substitute:

*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.

**22 Before subsection 23(6)**

Insert:

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

**23 Subsection 23(6)**

Omit “to 228 (which deal with other debts etc.)”, substitute “and 226 (which deal with tax debts)”.

**24 At the end of subsection 24(2)**

Add:

The payment may be made at such time and in such manner as the Secretary considers appropriate.

**25 Subsection 24(3)**

Repeal the subsection.

**26 Subsection 24(4)**

Omit “to 228 (which deal with other debts etc.)”, substitute “and 226 (which deal with tax debts)”.

**27 Section 25**

Omit “the regulations”, substitute “a written notice given to the claimant under section 25A”.

**28 After section 25**

Insert:

**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.

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**29 After section 26**

Insert:

**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.

**30 Paragraph 27(3)(b)**

Repeal the paragraph, substitute:

- (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;

Note: The heading to subsection 27(3) is replaced by the heading "*Statement made by TFN determination person under subsection 26(3)*".

**31 Paragraph 27(4)(b)**

Repeal the paragraph, substitute:

- (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;

Note: The heading to subsection 27(4) is replaced by the heading "*Statement made by TFN determination person under subsection 26(4)*".

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**32 After subsection 27(4)**

Insert:

*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 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.

**33 Subsection 27(5)**

Omit “or (4)”, substitute “, (4), (4A) or (4B)”.

**34 Paragraph 27(6)(b)**

Omit “concerned”, substitute “or TFN claim person, as the case requires”.

**35 After section 27**

Insert:

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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).

**36 After section 28**

Insert:

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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 calculate the claimant's 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 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.

*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 calculate the claimant's 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;

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



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**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 either:
    - (i) an FTB child of the claimant; or
    - (ii) 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 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 FTB child of the claimant;
- 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 child*

- (3) If:
- (a) this section applies because the individual is the FTB child of the claimant; and

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(b) the individual is not the claimant's only FTB 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.

### **37 Subsection 31(1)**

Repeal the subsection, substitute:

- (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

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(e) if subparagraph (c)(ii) applies—vary the determination so as to establish the different rate with effect from the date of occurrence.

(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.

### **38 Paragraph 31(2)(a)**

Omit "change in the claimant's circumstances", substitute "occurrence of the event".

### **39 Paragraph 31(2)(a)**

Omit "change" (second occurring), substitute "event"

### **40 Paragraph 31(2)(b)**

Omit "change", substitute "occurrence of the event"

### **41 Subsection 31(2)**

Omit "change" (last occurring), substitute "event"

### **42 Paragraph 31(3)(a)**

Omit "28,", substitute "27A, 28, 28A, 28B,".

Note: The heading to subsection 31(3) is replaced by the heading "*Sections 27, 27A, 28, 28A, 28B, 29 and 30 variations prevail*".

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## **43 After section 31**

Insert:

### **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) 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 adjusted taxable income in a particular income year; and
- (c) the claimant, at any time before or during that income year, provides the Secretary with 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) 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;

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:

- (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, 29 or 30; and
  - (b) the variation under that section 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 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

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- (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, 29 or 30; and
  - (b) the variation under that section 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 prevails over the variation under this section.

**44 Subsection 32(2)**

Omit “to any extent if”, substitute “by reason only that”.

**45 Subparagraph 33(1)(a)(ii)**

Repeal the subparagraph.

**46 At the end of subsection 33(1)**

Add:

- ; and (d) the individual is not an individual to whom subsection (1A) applies.

**47 After subsection 33(1)**

Insert:

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(1A) This subsection applies to an individual who, on the advance assessment day, owes a debt to the Commonwealth (whether arising under this Act or not) that is recoverable under Part 4 by means of deductions from the individual's instalments of family tax benefit under section 84.

**48 Section 35**

Omit "to 228 (which deal with other debts etc.)", substitute "and 226 (which deal with tax debts)".

**49 Subsection 46(2)**

Omit "to any extent if", substitute "by reason only that".

**50 At the end of subsection 47(2)**

Add:

The payment may be made at such time and in such manner as the Secretary considers appropriate.

**51 Subsection 47(3)**

Repeal the subsection.

**52 Subsection 47(4)**

Omit "to 228 (which deal with other debts etc.)", substitute "and 226 (which deal with tax debts)".

## Part 2—Amendments relating to child care benefit

### 53 Subsection 3(1)

Insert:

*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 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.

### 54 Subsection 3(1)

Insert:

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

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**55 Subsection 3(1)**

Insert:

*minimum taxable income %*, in respect of an individual, means the minimum taxable income % calculated in respect of the individual under clause 12 of Schedule 2 to the Family Assistance Act.

**56 Subsection 3(1)**

Insert:

*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.

**57 Subsection 3(1)**

Insert:

*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.

**58 Subsection 3(1)**

Insert:

*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.

**59 At the end of section 3**

Add:

- (3) For the purposes of this Act, the *CPC rate (combined pensioner couple rate)* at a particular time is twice the amount that is, at that time, the maximum basic rate of age pension payable to a person under the *Social Security Act 1991* in accordance with item 2 of Table B in point 1064-B1 of Pension Rate Calculator A in section 1064 of 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.
- (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.

## **60 Division 4 of Part 3**

Repeal the Division, substitute:

### **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 reductions**

- (1) If a determination of conditional eligibility under section 50F is in force during an income year 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 an approved child care service to the child, the individual's fees for sessions of care provided by an approved child care service to the child while the determination is in force with that effect are reduced by the service.
- (2) The amount by which the fees are 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 on the day the fees are reduced. The amount of fee reduction is calculated by the service using the provisions of the Family Assistance Act.
- (3) The fees are reduced in anticipation of a determination of entitlement to be paid child care benefit by fee reduction being

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made under section 51B in respect of the individual, the child, the sessions and the income year.

- (4) 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.
- (5) 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.
- (6) To reimburse the service the amount of the fee reductions made for care provided by the service to the child, the service receives an advance (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.

#### **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) and (4), 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;
  - (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 the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.

*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;
  - (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.

**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
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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).

*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 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 the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.

**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).
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- (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).

*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
- (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 the CCB % applicable to the person calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.

**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:
  - (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.

*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.

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**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 but the claim is made before the end of that income year or after the end of the following 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
    - (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.

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*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***).

*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.

**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
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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 service uses these determinations as a basis for reducing the claimant's fees for sessions of care provided 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.

### **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 the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %;

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.

**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):

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- (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).

*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 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.

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**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:
  - (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) 20 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 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
  - (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



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- (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
- (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, and the approved child care service providing care to the child who was the subject of the claim, 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.

### **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 and the approved child care service, or services, that are, or will be, providing care to the child.
- (2) The notice must state:
- (a) that a determination of conditional eligibility under section 50F is in force in respect of the claimant; and
- (b) the date from which the determination came into force; and
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- (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.

#### **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:
  - (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.

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**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 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, the Secretary must determine that the claimant is entitled to be paid child care benefit by fee reduction for the sessions:
  - (a) at the rate for which; and
  - (b) in the amount for which;the Secretary considers the claimant eligible.
- (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**

If the Secretary is not satisfied that the claimant is eligible as mentioned in section 51B, the Secretary must determine that the claimant is not entitled to be paid child care benefit by fee reduction in respect of that income year.

**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) made by an approved child care service providing care to the child, 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

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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.

**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 the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %; 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;

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**

If the Secretary is not satisfied as mentioned in section 52E or 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.

- (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 section 52G 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 section 52G 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:



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- (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.

**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 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 the claimant is eligible for child care benefit under section 46 of the Family Assistance Act in respect of the child, 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**

If the Secretary is not satisfied that the claimant is so eligible under section 46 of the Family Assistance Act, the Secretary must determine that the claimant is not entitled, in respect of the child, to

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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.

(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 section 53E 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 individual for care provided by a registered carer to the child; and
- (b) a determination of no entitlement is made under section 53E 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.

**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.

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**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.
- (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 20 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
  - (c) the total amount already received by the claimant in respect of the financial year from one or more payments of an amount of an advance paid to reimburse the claimant the amount of the fee reductions made for care provided by the service to the child; 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**

- (1) If:
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- (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
  - (d) the claimant gives the Secretary an estimate of the amount needed; and
  - (e) the Secretary considers the estimate to be reasonable;
- the Secretary may determine the CCB % applicable to the claimant 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 % of the claimant will be calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.

**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 to be calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.

**55B CCB % applicable to individual when certain other information not provided**

If:

- (a) either:
  - (i) an individual's CCB % is required to be determined under section 50J; or
  - (ii) 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 the CCB % calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %;

the CCB % is to be calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.

**55C CCB % applicable to individual when tax file number information not given**

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



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- (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;
- the CCB % is to be calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.

**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 fees for those sessions were reduced under section 219A; and
    - (c) the amount of the entitlement is greater than the total amount of the fee reductions (if any) for those sessions;
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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.

*Making of payments to third parties*

- (2) The Secretary may pay the whole or part of the amount of the difference to someone other than the claimant, on behalf of the claimant. The payment may be made at such time and in such manner as the Secretary considers appropriate.

*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 (Overpayments and debt recovery).

**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.

*Making of payments to third parties*

- (2) The Secretary may pay the whole or part of the amount of the difference to someone other than the claimant, on behalf of the

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claimant. The payment may be made at such time and in such manner as the Secretary considers appropriate.

*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 (Overpayments and debt recovery).

**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 amount of the entitlement is greater than the total amount already received by the claimant in respect of the financial year from one or more payments of an advance amount paid to reimburse the service the amount of the fee reductions made for care provided by the service to the child;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).

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**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:
  - (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.

*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

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happen, notify the Secretary that it has happened or is likely to happen.

Penalty: Imprisonment for 6 months.

*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 20 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.

*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.

*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.

*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

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(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

(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.

### **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 20 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.

Penalty: 60 penalty units.

*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.

*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



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(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.

*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.

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Penalty: 60 penalty units.

*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.

## **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

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- (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 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.

*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 the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.

**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 the CCB % applicable to him or her calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %; 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.

**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.

*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.

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**57F Secretary's power to require data verification information**

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.

**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).

*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 to be recalculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the



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taxable income %. The variation takes effect from the Monday after the day the variation is made.

*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) The variation referred to in subsection (6) has the effect that:
- (a) the rate used to calculate the amount of child care benefit that the claimant is entitled to be paid under a determination of entitlement is recalculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %; and
  - (b) the claimant is entitled to be paid that amount.

The claimant is only entitled to be paid the amount as recalculated for that period.

*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).

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**58A Variation where failure to comply with request for bank  
account details**

*Non-compliance with request*

- (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) 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).

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**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**

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.

**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;

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
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- (d) any information requested in the form relevant to the schooling % is not provided;

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 recalculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %

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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) 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 1

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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 20 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).

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**Subdivision P—Other variations of determinations relating to  
CCB %**

**60 Variation where entitlement determination for child care benefit  
for a past period uses minimum taxable income % and  
claimant gives certain information so that entitlement is  
recalculated**

(1) If:

- (a) a determination of entitlement under section 52E to be paid child care benefit for a past period for care provided by an approved child care service is in force in respect of a claimant who is an individual; and
- (b) the amount of child care benefit that the claimant is entitled to be paid under the determination was calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income % as provided for in section 55B; and
- (c) one of the following situations arises:
  - (i) the claimant to whom subparagraph 55B (c)(i) applies gives the Secretary the information needed to work out the number of children in care of a particular kind and provides the tax file number of each of the TFN determination persons;
  - (ii) the claimant to whom subparagraph 55B (c)(ii) applies informs the Secretary that he or she wants the amount of the entitlement to be recalculated on the basis of the CCB % worked out under Schedule 2 to the Family Assistance Act and provides the tax file number of each of the TFN determination persons;

the Secretary must vary the determination.

- (2) The variation has the effect that the amount of benefit that the claimant is entitled to be paid under the determination is recalculated under Schedule 2 to the Family Assistance Act. The claimant is entitled to be paid the difference between the amount as recalculated and the amount of the benefit to which the claimant was previously determined to be entitled.



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**60A Variation where entitlement determination for child care benefit by single payment/in substitution uses minimum taxable income % and claimant gives certain information so that entitlement is recalculated**

(1) If:

- (a) a determination of entitlement under section 53D to be paid child care benefit by single payment/in substitution because of the death of another individual for care provided by an approved child care service is in force in respect of a claimant who is an individual; and
- (b) the amount of child care benefit that the claimant is entitled to be paid under the determination was calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income % as provided for in subsection 55A(2) or section 55B; and
- (c) one of the following situations arises:
  - (i) the claimant to whom subsection 55A(2) applies gives the Secretary an estimate of the amount needed to calculate the CCB % used in calculating the amount of the benefit and the Secretary considers the estimate reasonable;
  - (ii) the claimant to whom subparagraph 55B(c)(i) applies gives the information needed to work out the number of children in care of a particular kind and provides the tax file number of each of the TFN substitution persons;
  - (iii) the claimant to whom subparagraph 55B(c)(ii) applies informs the Secretary that he or she wants the amount of the entitlement to be recalculated on the basis of the CCB % worked out under Schedule 2 to the Family Assistance Act and provides the tax file number of each of the TFN substitution persons;

the Secretary must vary the determination.

- (2) The variation has the effect that the amount of benefit that the claimant is entitled to be paid under the determination is recalculated under Schedule 2 to the Family Assistance Act. The claimant is entitled to be paid the difference between the amount as recalculated and the amount of the benefit to which the claimant was previously determined to be entitled.

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**60B Variation where minimum taxable income % used under section 55, 55B or 55C as the taxable income % 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 calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income % because a certain situation referred to in section 55, 55B or 55C arises; and
- (c) later, the claimant:
  - (i) if the situation in subsection 55(2) arose—gives the Secretary an estimate of the amount needed to calculate the CCB %, which the Secretary considers reasonable; or
  - (ii) if the situation in subparagraph 55B(c)(i) arose—gives the Secretary the information needed to work out the number of children the individual has in care of a particular kind; or
  - (iii) if the situation in subparagraph 55B(c)(ii) arose— 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; or
  - (iv) if the situations in section 55C arose—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.

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- (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:
- (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 calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.
- (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
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- (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) the claimant, or the claimant's partner, or both, are required to lodge an income tax return for the particular income year but have not done so by the end of the second income year (the *particular time*) following that particular income year; and
  - (c) by the particular time, an assessment has not been made under the *Income Tax Assessment Act 1936* of the taxable income;the Secretary may vary the determination.
- (2) The variation has the following effect:
  - (a) the amount of the entitlement for the particular income year for which the Secretary considers the claimant to be eligible is the amount recalculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %; and
  - (b) for that particular income year, the claimant is only entitled to be paid the amount as recalculated.

#### *Consequence of later lodgment 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
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- 
- (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 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 must vary the determination so that it has the effect that the CCB % is calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.

- (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 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

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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**

(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, in order to make a decision about the conditional eligibility 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 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
  - (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 recalculated under Schedule 2 to the  
Family Assistance Act using the minimum taxable income % as the  
taxable income %.
- (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;
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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.

*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
  - (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).

**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, 60C, 60E, 62A, 62B and 62C; 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;

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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.
- (2) If a determination of conditional eligibility, CCB %, a weekly limit of hours or schooling %, is varied, the Secretary must also give notice of the variation to the approved child care service providing care to the child of the claimant.
- (3) The variation is not ineffective by reason only that any, or all, of the requirements of subsection (1) or (2) are not complied with.

**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.

*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.

*Section 59F and 62C variations prevail*

(5) If:

- (a) when a variation under subsection (2) takes place, a variation is in force under section 59F or 62C; and
- (b) the variation under section 59F or 62C has effect for any period when the variation under this section would have effect;

the variation 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:
- (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.

*Section 59F and 62C variations prevail*

- (6) If:
- (a) when a variation under subsection (2) takes place, a variation is in force under section 59F or 62C; and
  - (b) the variation under section 59F or 62C has effect for any period when the variation under this section would have effect;
- the variation 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:
- (a) in force under section 50H in respect of a claimant who is an individual and a child; or

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- (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.

*Section 59F and 62C variations prevail*

- (5) If:
- (a) when a variation under this section takes place, a variation is in force under section 59F or 62C; and
  - (b) the variation under section 59F or 62C has effect for any period when the variation under this section would have effect;
- the variation under section 59F or 62C prevails over the variation under this section.

**64D Varying determination so that a limit of 20 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 20 hour limit*

- (2) A determination to which this section applies may be varied by the Secretary so that a limit of 20 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.

**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:
  - (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
  - (b) if the claimant is an individual—be given to the approved child care service providing care to the child; and
  - (c) state the effect of the variation, including in particular:
    - (i) if the variation is to have, or had, effect for a period of one or more weeks—the period of one or more weeks that the variation is to have, or had, the effect; and
    - (ii) if the variation is to have the effect indefinitely—a date from which the determination has the effect; and
    - (iii) if the variation is to have, or had, 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, or had, 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, or had, 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.



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**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 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 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;
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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 in a particular income year; or
  - (ii) is varied under section 60E; and
- (c) the claimant, at any time before or during that income year, provides the Secretary with a revised estimate of that amount that is attributable to the occurrence of an event other than an event to which paragraph 65A(3)(a) or (b) applies; 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.

- (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 %:
    - (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.

### **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

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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.

*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.

*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.

*Section 59F and 62C variations prevail*

- (4) If:
    - (a) when a variation under this section takes place, a variation is in force under section 59F or 62C; and
    - (b) the variation under section 59F or 62C has effect for any period when the variation under this section would have effect;
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the variation under section 59F or 62C 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 and to the approved child care service providing care to the child of 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.

**61 After Part 8**

Insert:

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

**Division 1—Obligations of approved child care services**

**219A Obligation to act on notices received or certificates given**

- (1) This section sets out the obligations that apply to an approved child care service in respect of care the service provides to the child of an individual in relation to whom a determination of conditional eligibility under section 50F for child care benefit by fee reduction for care provided by an approved child care service was made.
- (2) If the service:
  - (a) receives a notice as set out in column 1 of the table (see all items except items 2 and 6) in respect of the individual and the child; or
  - (b) gives a certificate applicable to the individual and the child (see items 2 and 6 of the table);

the service must act to do the things set out in column 2 of the table in respect of the notice or certificate. The service must do the thing required as soon as is practicable.

Penalty: 60 penalty units.

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**Schedule 2** Amendment of the A New Tax System (Family Assistance)  
(Administration) Act 1999

**Part 2** Amendments relating to child care benefit

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**Obligation to act on notices received and certificates given**

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	<b>Column 1</b>	<b>Column 2</b>
	<b>Notice or certificate</b>	<b>Action required to be done by service</b>
1	Notice under section 50M that the individual has been determined to be conditionally eligible	<p>The service must take the following action:</p> <p>(a) calculate the rate of fee reductions applicable to the individual and a session of care provided by the service to the child using:</p> <p style="padding-left: 40px;">(i) the CCB % and the schooling % applicable to the individual under determinations made under sections 50J and 50K; and</p> <p style="padding-left: 40px;">(ii) Schedule 2 to the Family Assistance Act as required by Division 4 of Part 4 of that Act;</p> <p>(b) using that rate and the weekly limit of hours applicable to the individual under a determination made under section 50H, calculate the amount of the fee reductions in respect of the individual, the child and the session;</p> <p>(c) reduce the fees to be paid for the session by the amount of the fee reductions;</p> <p>(d) charge only the reduced fees for the session;</p> <p>(e) reimburse the individual the amount of the fee reductions worked out in respect of the individual and the sessions provided by the service to the child during the period commencing on the day the determination of conditional eligibility comes into force and ending on the day the service starts reducing fees as a result of the notice.</p>
2	Service certifies a rate applicable to the individual and the child under subsection 76(1) of the Family Assistance Act in respect of a session of care provided by the service to the child	<p>The service must take the following action:</p> <p>(a) using the rate applicable to the individual, the child and the session, calculate the amount of the fee reductions in respect of the individual, the child and the session;</p> <p>(b) reduce the fees to be paid for the session by the amount of the fee reductions;</p> <p>(c) charge only the reduced fees for the session.</p>

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**Obligation to act on notices received and certificates given**

	<b>Column 1</b>	<b>Column 2</b>
	<b>Notice or certificate</b>	<b>Action required to be done by service</b>
3	Notice that the Secretary has determined a rate applicable to the individual and the child under subsection 81(2) or (3) of the Family Assistance Act in respect of a session of care provided by the service to the child	<p>If the service provides a session of care to the child on any day:</p> <p>(a) for which the service has not already charged the individual as at the day the service receives the notice; and</p> <p>(b) which occurs after the day the determination takes effect;</p> <p>the service must take the following action in respect of the session:</p> <p>(c) using the rate applicable to the individual, the child and the session, calculate the amount of the fee reductions in respect of the individual, the child and the session;</p> <p>(d) reduce the fees to be paid for the session by the amount of the fee reductions;</p> <p>(e) charge only the reduced fees for the session.</p>
4	Notice of a variation of the determination of conditional eligibility made under section 58A, 58B, 59, 59A, 59B, 61A, 62 or 65 with the effect that the individual is not conditionally eligible	<p>The service must cease to reduce fees, for a reason to do with child care benefit, for sessions of care provided by the service on any day:</p> <p>(a) for which the service has not already charged the individual as at the day the service receives the notice; and</p> <p>(b) which occurs after the day the variation takes effect.</p>
5	Notice under subsection 50L(8) that the determination of conditional eligibility in respect of the individual and the child has ceased to be in force	<p>The service must cease to reduce fees, for a reason to do with child care benefit, for sessions of care provided by the service on any day:</p> <p>(a) for which the service has not already charged the individual as at the day the service receives the notice; and</p> <p>(b) which occurs after the day the determination has ceased to be in force.</p>

**Schedule 2** Amendment of the A New Tax System (Family Assistance)  
(Administration) Act 1999

**Part 2** Amendments relating to child care benefit

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**Obligation to act on notices received and certificates given**

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	<b>Column 1</b>	<b>Column 2</b>
	<b>Notice or certificate</b>	<b>Action required to be done by service</b>
6	Notice of a variation of the determination of the weekly limit of hours applicable to the individual and the child made under section 59F, 62C, 62D, 64A, 64B, 64C, 64D or 65D	<p>If the service provides a session of care to the child on any day:</p> <p>(a) for which the service has not already charged the individual as at the day the service receives the notice; and</p> <p>(b) which occurs after the day the variation takes effect;</p> <p>the service must take the following action in respect of the session:</p> <p>(c) apply the limit as varied in calculating the individual's amount of fee reductions for the session;</p> <p>(d) reduce the fees to be paid for the session by the amount of the fee reductions;</p> <p>(e) charge only the reduced fees for the session.</p>
7	Service gives a certificate relating to a weekly limit of hours applicable to the individual and the child for sessions of care occurring in a week under subsection 54(10), 55(6) or 56(3) of the Family Assistance Act	<p>The service must take the following action:</p> <p>(a) apply the limit as certified in calculating the amount of fee reductions in respect of the individual, the child and the session;</p> <p>(b) reduce the fees to be paid for the session by the amount of the fee reductions;</p> <p>(c) charge only the reduced fees for the session.</p>

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**Obligation to act on notices received and certificates given**

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	<b>Column 1</b>	<b>Column 2</b>
	<b>Notice or certificate</b>	<b>Action required to be done by service</b>
8	Notice of a variation of the determination of CCB % applicable to the individual and the child made under section 58, 59D, 59E, 60B, 60C, 60E, 62A, 62D, 65A or 65B	<p>If the service provides a session of care provided to the child on any day:</p> <p>(a) for which the service has not already charged the individual as at the day the service receives the notice; and</p> <p>(b) which occurs after the day the variation takes effect;</p> <p>the service must take the following action in respect of the session:</p> <p>(c) apply the CCB % as varied in calculating the individual's rate of fee reductions for the session;</p> <p>(d) using that rate, calculate the amount of the fee reductions in respect of the individual, the child and the sessions;</p> <p>(e) reduce the fees to be paid for the session by the amount of the fee reductions;</p> <p>(f) charge only the reduced fees for the session.</p>
9	Notice of a variation of the determination of schooling % applicable to the individual and the child made under section 59C, 61, 62B, 62D or 65C	<p>If the service provides a session of care to the child on any day:</p> <p>(a) for which the service has not already charged the individual as at the day the service receives the notice; and</p> <p>(b) which occurs after the day the variation takes effect;</p> <p>the service must take the following action in respect of the session:</p> <p>(c) apply the schooling % as varied in calculating the individual's rate of fee reductions for the session;</p> <p>(d) using that rate, calculate the amount of the fee reductions in respect of the individual, the child and the sessions;</p> <p>(e) reduce the fees to be paid for the session by the amount of the fee reductions;</p> <p>(f) charge only the reduced fees for the session.</p>

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**Obligation to act on notices received and certificates given**

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	<b>Column 1</b>	<b>Column 2</b>
	<b>Notice or certificate</b>	<b>Action required to be done by service</b>
10	Notice under subsection 106(1) or (2), subsection 109B(2) or under section 141A of a review decision to vary a decision or substitute a new decision in respect of the individual or the service	<p>If the service provides a session of care to the child on any day:</p> <p>(a) for which the service has not already charged the individual as at the day the service receives the notice; and</p> <p>(b) which occurs after the day the review decision takes effect;</p> <p>the service must take the following action in respect of the session:</p> <p>(c) if the review decision is a determination of no entitlement under section 50G in respect of the individual because the individual is not conditionally eligible in respect of the child—cease to reduce fees for the session;</p> <p>(d) if the review decision affects the weekly limit of hours, the CCB %, the schooling % or the number of 24 hour care periods in a 24 hour care limit of hours:</p> <p>(i) apply the substituted percentage or limit in calculating the individual's or service's rate or amount (as required) for the session; and</p> <p>(ii) reduce the fees to be paid for the session by the amount; and</p> <p>(iii) charge only the reduced fees for the session;</p> <p>(e) if the review decision is that a rate determined under section 81 of the Family Assistance Act does not apply to a session of care provided by the service to the child after a specified day—cease to apply that rate for the session.</p>

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**219B Obligation to reduce fees of individuals when approved child care service is eligible for child care benefit**

- (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
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sessions of care provided by the service to a child at risk, the service must, within the time set out in subsection (3):

- (a) calculate, as set out in subsection (2), the amount of child care benefit in respect of the service, the child and the sessions; and
- (b) reduce the fees to be paid for the sessions by the amount of the child care benefit; and
- (c) charge only the reduced fees for the session.

Penalty: 60 penalty units.

- (2) In determining the amount under paragraph (1)(a), the service must use:
  - (a) the rate as certified under subsection 76(2) of the Family Assistance Act, or as determined under subsection 81(4) of that Act, in respect of the service, the child and the sessions of care; and
  - (b) the weekly limit of hours determined to be applicable to the service under section 54C in respect of the session of care.
- (3) The service must do the things required by subsection (1):
  - (a) if the service is required to use a weekly limit of hours that is 20 because the service has just become eligible in respect of the child under section 47 of the Family Assistance Act—as soon as practicable after becoming so eligible; or
  - (b) if the service is required to use a rate or weekly limit of hours determined by the Secretary—as soon as practicable after receiving notice of the rate or limit; or
  - (c) if the service is required to use a rate or weekly limit of hours that the service certifies—as soon as practicable after giving the certificate in respect of the rate or limit.

**219C Obligation to pass on further fee reductions to individuals if notice of service's entitlement shows entitlement is greater than the fee reductions originally passed on**

If:

- (a) an approved child care service is eligible under section 47 of the Family Assistance Act for sessions of care provided by the service to a child at risk; and

- (b) the person in whose care the child last was before the first session of care provided by the service is an individual; and
- (c) an amount is paid to the service under section 56B in respect of the child;

the service must, as soon as practicable after receiving the amount, pass the amount on to the individual.

Penalty: 60 penalty units.

#### **219D Obligation if the service receives notice that the service's approval has been suspended or cancelled**

*Obligation where service receives notice that service's approval is suspended or cancelled*

- (1) If an approved child care service receives notice under subsection 200(2) that the service's approval has been suspended or cancelled, the service must cease to reduce fees as provided for in sections 219A and 219B for sessions of care the service provides on or after the day the service receives the notice.

Penalty: 60 penalty units.

*Obligation where service receives notice that suspension of approval is revoked*

- (2) If an approved child care service receives notice that the service's suspension has been revoked under subsection 200(3), the service must reduce the fees of an individual in respect of whom a determination of conditional eligibility is in force, as provided for in sections 219A and 219B, for sessions of care it provides after the day the service receives the notice.

Penalty: 60 penalty units.

#### **219E Obligation to provide receipts**

- (1) If an approved child care service has reduced the fees to be paid by an individual in respect of a session of care the service provides to a child, as required by sections 219A and 219B, the service must issue a receipt as provided for in the rules (if any) made under subsection (2), at the time the service reduces the fee, stating the following in respect of the session of care:
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- (a) the fees paid;
- (b) the amount of the fee reductions made;
- (c) any other information the Secretary specifies in rules (if any) made under subsection (2).

Penalty: 60 penalty units.

*Secretary may make rules*

- (2) The Secretary may make rules dealing with any of the following matters:
  - (a) how receipts should be given;
  - (b) to whom receipts should be given;
  - (c) other information that must be provided in the receipt or other document.

*Rules disallowable instrument*

- (3) Rules made under subsection (2) are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**219F Obligation to keep records**

- (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).

Penalty: 60 penalty units.

*Records to be kept for 36 months*

- (2) The records must be kept by the service for 36 months from the end of the year in which the care was provided to which the information or event related.
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Penalty: 60 penalty units.

*Secretary must make rules*

- (3) The Secretary must 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.

*Rules are a disallowable instrument*

- (4) Rules made under subsection (3) are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **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.

Penalty: 60 penalty units.

*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.

## **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.



### **219J Identity cards**

The Secretary may issue an identity card to an authorised officer in the form approved by the Secretary. The identity card must contain a recent photograph of the authorised officer.

### **219K Power to enter premises 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 section 219G(2)—the premises of the former operator of an approved child care service at any time during business hours.
- (2) An authorised officer is not authorised to enter premises under subsection (1) unless the occupier of the premises, or another person who apparently represents the occupier, has consented to the entry and the officer has shown his or her identity card if required by the occupier.
- (3) The authorised officer must leave premises entered under this section if the occupier, or another person who apparently represents the occupier, asks the authorised officer to do so.
- (4) Approved child care services have a responsibility under subsection 196(2A) to cooperate with a person exercising powers under this section. An approved child care service that refuses:
  - (a) to consent to the entry of a person (after showing the person's 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. Failure to comply with the responsibility can result in a sanction being imposed under section 200.

**219L Occupier to provide authorised officer with access to records and assistance**

- (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).

Penalty: 60 penalty units.

- (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).

Penalty: 60 penalty units.

- (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 power to inspect the records.

Penalty: 10 penalty units.

- (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.

**219M Obligation to notify Secretary if operator intends to stop operating an approved child care service**

- (1) If a person who operates an approved child care service intends to cease operating the service, the operator must, in the manner provided for in subsection (2), notify the Secretary of that intention 30 days or more before the operator ceases to operate the service.

Penalty: 60 penalty units.

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- (2) The notice must be given in the manner set out in a written notice given to the service by the Secretary.

### **219N Obligation to give reports to Secretary**

#### *Approved child care service must give reports*

- (1) If, during an approved child care service's reporting period, the service provides care to a child, the service must give the Secretary a report in the manner provided for in subsection (2), containing the information set out in subsection (3), (4) or (5), depending on the circumstances of the child.

Penalty: 60 penalty units.

#### *When and how report must be given*

- (2) The report under subsection (1) must be given:
- (a) to the Secretary at some time during the next following reporting period whether or not the next following reporting period is the final reporting period (as defined in subsection 219P(4)) in respect of the service; and
  - (b) in the form and manner approved by the Secretary.

#### *Information to be provided on child if individual conditionally eligible*

- (3) If:
- (a) a determination under section 50F is made in respect of a claimant who is an individual that the claimant is conditionally eligible for child care benefit by fee reduction for care provided to a child; and
  - (b) the service provides care to the child while the determination is in force;
- the report must state the following matters in respect of the child and each week of the reporting period:
- (c) the number of hours of care in the sessions of care in respect of which the service is required, under section 219A, to reduce the claimant's fees, if the service has charged for those hours of care;
  - (d) the individual's rate of fee reductions in respect of the sessions of care charged for;
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- (e) the amount of the fee reductions made in respect of the sessions of care charged for;
- (f) any other information required by the Secretary in the form.

*Information to be provided on child if service eligible in respect of child*

- (4) If the service is eligible under section 47 of the Family Assistance Act for payment of child care benefit by fee reduction for care the service provides to a child, the report must state the following matters in respect of the child and each week of the reporting period:
  - (a) the number of hours of care in the sessions of care in respect of which the service is required, under section 219B, to reduce an individual's fees, if the service has charged for those hours of care;
  - (b) the rate of fee reductions in respect of the sessions of care charged for;
  - (c) the amount of the fee reductions made in respect of the sessions of care charged for;
  - (d) any other information required by the Secretary in the form.

*Information to be provided on child if no individual is conditionally eligible and the service is not eligible in respect of the child*

- (5) If, in respect of a child to whom the service provides care:
  - (a) a determination under section 50F that an individual is conditionally eligible for child care benefit by fee reduction for care provided to the child is not in force in respect of any individual and that child when the service provides the care; and
  - (b) the service is not eligible under section 47 of the Family Assistance Act for payment of child care benefit by fee reduction for the care;

the report must state the following matters in respect of the child and each week of the reporting period:

- (c) the name of the child;
  - (d) the number of hours of care in the sessions of care in respect of which the service would be required, under section 219A in item 1 of the table, to reduce fees if a determination of
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- conditional eligibility under section 50F was in force in respect of an individual and the child when the care was provided, if the service has charged for those hours of care;
- (e) any other information required by the Secretary in the form.

*Corrections of reports*

- (6) A report provided by the service may be corrected by the service at any time.

**219P Former operator of an approved child care service to report**

*Obligation to report*

- (1) A person who operated an approved child care service, immediately before the service ceased to be an approved child care service, must report to the Secretary as provided for in this section in respect of the service's final reporting period.

Penalty: 60 penalty units.

*Contents of report*

- (2) The information that the person is required to provide in the report is the information that the service would have been required to provide under section 219N, in respect of the service's final reporting period, if the service had not ceased to be an approved child care service during that period.

*When and how report must be given*

- (3) The report under subsection (1) must be given:
- (a) to the Secretary within 90 days of the service ceasing to be an approved child care service; and
  - (b) in the form and manner approved by the Secretary.
- (4) In this section:

***final reporting period***, in respect of an approved child care service that ceased to be an approved child care service, means the reporting period in which the service ceased to be an approved child care service.

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**Division 2—Advances to approved child care services**

**219Q Secretary may determine advances to be paid to approved child care services**

- (1) The Secretary may, in respect of an approved child care service and a reporting period, make one or more determinations that the service is to be paid a specified amount by way of advance to reimburse the service the amount of the fee reductions made by the service during the reporting period to:
  - (a) the children of individuals in respect of whom determinations of conditional eligibility are in force; and
  - (b) the children in respect of whom the service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction.
- (2) In respect of each determination, the Secretary may also determine:
  - (a) if the amount is to be paid in one payment only or in instalments; and
  - (b) if the amount is to be paid in one payment only, the date on which the payment will be made; and
  - (c) if the amount is to be paid in instalments, the dates on which each of the instalments will be paid and the amount of each instalment.

**219R Payment of advances**

- (1) If the Secretary has made a determination under section 219Q in respect of an approved child care service, the Secretary must pay to the service:
  - (a) if an amount of the difference referred to in subsection 219S(2) is required to be offset against an advance—the amount of the advance determined by the Secretary under section 219Q reduced by the amount referred to in subsection 219S(2); or
  - (b) if an amount of the difference referred to in subsection 219S(4) is required to be paid to the service in an advance—the sum of the amount of the advance determined by the Secretary under section 219Q and the amount referred to in subsection 219S(4); or

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(c) if neither paragraph (a) nor (b) applies—the amount of the advance determined by the Secretary under section 219Q.

(2) This section is subject to Part 4 (Overpayments and debt recovery).

### **219S Acquittal of advances paid to approved child care services**

- (1) When a report for a reporting period is received from an approved child care service under section 219N or 219P, the Secretary must compare the amount of the advance determined by the Secretary under section 219Q in respect of the service and the reporting period with the amount passed on by the service in reduced fees (see sections 219A and 219B) during the reporting period. (The amount of fee reduction is the amount reported by the service to the Secretary under section 219N.)
- (2) If the amount of the advance is more than the amount of the reduced fees, the Secretary may determine that the difference in the amounts is to be offset against an advance amount determined by the Secretary under section 219Q in respect of the service.
- (3) If the Secretary makes a determination under subsection (2), the difference must be offset as provided for in that subsection.
- (4) If the amount of the advance is less than the amount of the reduced fees, the Secretary may determine that the difference in the amounts is to be paid to the service in an advance amount determined in respect of the service under section 219Q.
- (5) If the Secretary makes a determination under subsection (4), the difference must be paid as provided for in that subsection.

### **219T Notice of determinations to pay and acquit advances**

- (1) The Secretary must give notice of a determination under section 219Q to pay an advance to an approved child care service to the service concerned stating:
  - (a) the amount of the advance determined under section 219Q in respect of the service; and
  - (b) if an amount of a difference referred to in subsection 219S(2) is offset against the advance, the amount of the offset; and

- (c) if an amount of a difference referred to in subsection 219S(4) is paid to the service in addition to this advance, the amount that is in addition; and
  - (d) the total amount that is to be paid after the amounts (if any) referred to in subsections 219S(2) and (4) have been taken account of; and
  - (e) the period in respect of which the amount is paid; and
  - (f) if the amount is to be paid in one payment only or in instalments; and
  - (g) if the amount is to be paid in one payment only, the date on which payment will be made; and
  - (h) if the amount is to be paid in instalments, the dates on which each of the instalments will be paid and the amount of each instalment.
- (2) The determination is not ineffective by reason only that any, or all, of the requirements of subsection (1) are not complied with.



## **Part 3—Common provisions relating to family assistance**

### **62 Subsection 3(1)**

Insert:

*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*.

### **63 Subsection 3(1)**

Insert:

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

### **64 Subsection 3(1) (paragraph (c) of the definition of *family assistance law*)**

Repeal the paragraph, substitute:

- (c) regulations under this Act;
- (d) Schedules 5 and 6 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*.

### **65 Subsection 3(1) (definition of *TFN claim person*)**

Repeal the definition, substitute:

*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.

**66 Subsection 3(1) (definition of *TFN determination person*)**

Repeal the definition, substitute:

*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.

**67 Subsection 3(1)**

Insert:

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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;

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

**68 Paragraph 66(1)(f)**

Repeal the paragraph, substitute:

- (f) payments of advances under section 219R.

**69 Paragraph 66(2)(a)**

Repeal the paragraph, substitute:

- (a) subsections 23(4), 47(2), 56(2) and 56A(2) (about payment of a person's family assistance to someone else on behalf of the person); and

**70 Paragraph 66(2)(b)**

Omit "assistance", substitute "tax benefit".

**71 After paragraph 66(2)(b)**

Insert:

- (ba) section 84A (about setting off a person's entitlement to arrears of family assistance against a debt of the person); and

**72 Paragraph 66(2)(c)**

Omit "assistance", substitute "tax benefit".

**73 After paragraph 66(2)(c)**

Insert:

- (ca) section 92A (about setting off arrears of family assistance of a person to repay the debt of another person); and

**74 Paragraph 66(2)(e)**

Omit “; and”, substitute “.”.

**75 Paragraphs 66(2)(f) and (g)**

Repeal the paragraphs.

**76 Subsection 68(1)**

Repeal the subsection, substitute:

- (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—received by the individual as fee reductions in respect of an income year; or
    - (ii) in the case of a service—received by the service, in respect of a financial year, from one or more payments of an amount of an advance paid to reimburse the service the amount of fee reductions made for care provided by the service to a child; 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).

**77 Section 69**

Repeal the section, substitute:

**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

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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.

## **78 Section 71**

Repeal the section, substitute:

### **71 Debts arising in respect of family assistance other than child care benefit and family tax benefit advance**

*No entitlement to amount—debt generally owed by person*

- (1) Subject to subsection (2), if:
- (a) an amount has been paid to a person by way of family tax benefit, maternity allowance or maternity immunisation allowance (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
  - (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**

- (1) If:
- (a) an individual receives an amount by way of family tax benefit advance; and

- (b) on a particular day, before the end of the family tax benefit advance period worked out in accordance with section 34:
  - (i) the individual ceases to be entitled to be paid family tax benefit by instalment; or
  - (ii) by virtue of the operation of subclause 5(2) or 25A(2) of Schedule 1 to the Family Assistance Act, the individual's Part A rate is no longer to be reduced by the FTB advance rate;

the amount by which the family tax benefit advance exceeds the reduction amount calculated in accordance with subsection (2) becomes a debt due to the Commonwealth by the person.

- (2) For the purposes of subsection (1), the reduction amount in relation to an individual is an amount calculated in accordance with the formula:

$$\frac{\text{FTB advance rate}}{365} \times \text{Number of reduction days}$$

where:

***number of reduction days*** means the number of days in the individual's family tax benefit advance period worked out under section 34 during which the individual's Part A rate was reduced under subclause 5(1) or 25A(1) of Schedule 1 to the Family Assistance Act.

### **71B Debts arising in respect of fee reductions or child care benefit where no entitlement**

If:

- (a) an amount:
  - (i) of fee reductions has been made under section 219A in respect of an individual in respect of a period; or
  - (ii) has been paid to a person by way of child care benefit in respect of a period; and
- (b) the person was not entitled to child care benefit in respect of that period;

the amount so paid is, subject to section 71F, a debt due to the Commonwealth by the person.

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**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.

**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.

*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 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
- (c) an amount of child care benefit is paid because of the certificate;



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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 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
- (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
- (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:

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- (a) a debt is due to the Commonwealth by an individual under section 71B or 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 section 71B or 71C that is also a debt owed by the service under section 71E is, despite the operation of section 71B or 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 section 71B or 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 section 71B or 71C that is also a debt owed by the individual under section 71D is, despite the operation of section 71B or 71C, not an amount of the debt owed by the service.

### **71G Debts arising in respect of child care benefit where advance paid to service—debt owed by service**

*Service's approval suspended or cancelled*

(1) If:

- (a) an amount by way of advance determined under section 219Q is paid to a person that is an approved child care service to reimburse the service the amount of the fee reductions made by the service for care provided by the service to a child; and
- (b) during, or after, the reporting period in respect of which the advance is paid, the service's approval is suspended or cancelled under section 200;

so much of the amount of the advance as has not been used by the service to reimburse itself for the care it provided to the child at reduced fees, by the day the service's approval is suspended or cancelled is a debt due to the Commonwealth by the service.

*Service ceases to operate—debts arising in respect of child care benefit advance*

(2) If:

- (a) an amount by way of advance determined under section 219Q is paid to a person that is an approved child care service to reimburse the service the amount of the fee reductions made by the service for care provided by the service to a child; and
- (b) during, or after, the reporting period in respect of which the advance is paid, the service ceases to operate;

so much of the amount of the advance as has not been used by the service to reimburse itself for the care provided to the child at reduced fees, by the day the service ceases to operate, is a debt due to the Commonwealth by the service.

#### **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.

#### **79 Paragraph 74(a)**

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Omit “instalment”, substitute “amount”.

## **80 Paragraphs 77(1)(b) and 78(1)(b)**

Repeal the paragraphs, substitute:

- (b) the person owing the debt is a person who is not receiving instalments of family tax benefit; and

## **81 Sections 82 and 83**

Repeal the sections, substitute in Division 3:

## **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 arrears of family assistance to which the person is entitled against the debt;
  - (c) repayment by instalments 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 arrears of family assistance—setting off the arrears 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.

However, a debt owed in relation to child care benefit is not recoverable by means of the application of an income tax refund under paragraph (f) or (g).

- (2) A debt owed by an approved child care 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 amounts of advances paid under section 219R;

- (b) legal proceedings;
- (c) garnishee notice.

(3) In this section:

*debt* means:

- (a) a debt due to the Commonwealth under section 71, 71A, 71B, 71C, 71D, 71E, 71G, 71H, 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.

## **82 Section 84**

Repeal the section, substitute:

### **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 a person to the Commonwealth under the *Social Security Act 1991*.
- (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
  - (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 the *Social Security Act 1991*, 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 arrears of family assistance against debt owed**

- (1) This section applies:
  - (a) to a person if the person is entitled to an amount by way of arrears 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 arrears of 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*.
- (2) The Secretary may determine that the whole or a part of the entitlement to arrears is to be set off against the debt.
- (3) Under subsection (2), the Secretary may set off a person's arrears of child care benefit only against a debt the person incurs in relation to child care benefit.
- (4) If the Secretary makes a determination under subsection (2), the amount of the entitlement to arrears and the amount of the debt are reduced accordingly.

**83 Section 85**

Repeal the section.

**84 Subsection 86(1)**

Omit "under this section, or section 84 or 85," substitute "under section 84, 84A or 87A".

Note: The heading to section 86 is altered by omitting "**and 85**" and substituting "**, 84A and 87A**".

**85 Subsection 86(2)**

After "section 84", insert ", 84A or 87A".

**86 Paragraph 86(3)(a)**

Omit "or 85", substitute ", 84A or 87A".

**87 Paragraph 86(4)(a)**

Omit "or 85", substitute ", 84A or 87A".

**88 Subsection 86(5)**

Omit "or 85" (first occurring), substitute ", 84A or 87A".

**89 Subparagraph 86(5)(b)(i)**

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Repeal the subparagraph, substitute:

- (i) action is taken under section 87, 88 or 89 for the recovery of the debt; or

**90 Subsection 86(5)**

Omit “or 85” (second occurring), substitute “, 84A or 87A”.

**91 After section 87**

Insert:

**87A Setting off debts of an approved child care service against advances to be paid to the service**

- (1) This section applies to a debt owed by an approved child care service if, under section 82, the debt is recoverable by the Commonwealth by means of setting off the debt against amounts of one or more advances to be paid to an approved child care service under section 219R.
- (2) The debt is to be set off, against advances paid to the service, in the following way:
  - (a) the Secretary is to determine the amount by which each advance to the service is to be reduced; and
  - (b) each advance to the service is to be reduced by the amount determined by the Secretary until the sum of those amounts is equal to the debt.

The Secretary may, from time to time, vary the amount by which the advances are to be reduced.

- (3) The amount of the debt and the amounts of the advances are reduced accordingly.

**92 Subsection 88(6)**

Omit “action under this section” (first occurring), substitute “action”.

**93 Subparagraph 88(6)(b)(i)**

Omit “85”, substitute “84A, 87, 87A”.

**94 Subsection 88(6)**

Omit “action under this section” (second occurring), substitute “action”.

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**95 Subparagraph 90(5)(b)(i)**

Repeal the subparagraph, substitute:

- (i) action is taken under section 84, 84A, 87, 87A or 88 for the recovery of the debt; or

**96 Subsection 91(1)**

Omit “The”, substitute “If, under section 82, a debt owed by a person is recoverable by the Commonwealth by one or more instalments, the”.

**97 Section 92**

Repeal the section, substitute:

**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 1992*, the *Social Security Act 1947*, the *Social Security Act 1991* or the *Student Assistance Act 1973*; 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 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 arrears of 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 1992*, the *Social Security Act 1947*, the *Social Security Act 1991* or the *Student Assistance Act 1973*; 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 by way of arrears of family assistance; 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 arrears;
- the Secretary may determine that the whole or a part of the entitlement to arrears is to be set off against the debt.
- (2) Subsection (1) does not apply to an entitlement to arrears of child care benefit.
- (3) If the Secretary makes a determination under subsection (1), the amount of the entitlement to arrears and the amount of the debt are reduced accordingly.
- (4) The consenting person may revoke the consent at any time.

**98 Paragraph 93(1)(a)**

Omit "incurs", substitute "has".

**99 Subparagraph 95(3)(a)(i)**

Repeal the subparagraph, substitute:

- (i) deductions under section 84; or
- (ia) setting off under section 84A arrears of family assistance; or

**100 After subparagraph 95(3)(a)(ii)**

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Insert:

- (iia) setting off under section 87A against advances; or

### **101 Subsection 95(4)**

Repeal the subsection, substitute:

- (4) For the purposes of paragraph (2)(b), if a debt is recoverable by means of:
  - (a) deductions under section 84; or
  - (b) setting off under section 84A arrears of family assistance; or
  - (c) application of an income tax refund under section 87; or
  - (d) setting off under section 87A against advances;the person is taken to have a capacity to repay the debt unless recovery by those means would cause the person severe financial hardship.

### **102 Subsection 99(2)**

Repeal the subsection, substitute:

- (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 arrears of family assistance; or
  - (c) by setting off under section 87A against advances.

### **103 Division 1 of Part 5**

Repeal the Division, substitute:

## **Division 1—Internal review**

### **Subdivision A—Review initiated by the Secretary**

#### **104 Decisions that may be reviewed by the Secretary on own initiative**

*Decisions that may and may not be reviewed under section 105*

- (1) 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
  - (c) a decision by the Secretary under Division 2 of Part 8A (advances to approved child care services).
- (2) Under section 105, the Secretary may also review a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* that is made on or after 1 July 2000.

#### **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.

*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.

*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.

## **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
  - (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);
  - (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) the applicant; and
- (e) the approved child care service, or services, providing care to the child concerned.

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*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 50K 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 50K to:
  - (i) vary an original decision; or
  - (ii) set aside an original decision and substitute a new decision; and
- (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:

- (c) if the original decision is a decision under the family assistance law—give notice of the review decision to the person whose entitlement, or possible entitlement, to family assistance is affected by the decision; and

- (d) if the original decision is a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about an agreement—give notice of the review decision to both parties to the agreement.

*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 Executive Director of the SSAT or to the Registrar of the AAT, as the case requires.

*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 subsection (3), if:
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- (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);
  - (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); 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 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
  - (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 before the end of the income year next following that year.
- (4) In this section:

**determination decision** means a decision that is a determination as originally made, or, if varied, the variation of the determination.

## **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) The following decisions must be reviewed on application under section 109A unless an exception set out in subsection (2) applies to the decision:
  - (a) a decision of any officer under the family assistance law; or

(b) a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* that is made on or after 1 July 2000.

(2) The exceptions to the rule in subsection (1) are:

- (a) a decision made by the Secretary personally or by another agency head himself or herself 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
- (d) a decision by the Secretary under Division 2 of Part 8A (advances to approved child care services); 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
- (f) except as mentioned in subsection (3) or (4), 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 operation 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.
- (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
    - (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.

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### **109 Persons affected by certain child support decisions**

- (1) If a decision is made under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about a particular agreement, then, for the purposes of the application of section 109A in relation to the decision:
  - (a) both of the parties to the agreement are taken to be persons affected by the decision; but
  - (b) only one of the parties is entitled to apply for a review of the decision.
- (2) If a party to an agreement that is the subject of a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* applies under section 109A for a review of the decision, the person reviewing the decision must:
  - (a) by notice in writing or in another manner approved by the Secretary:
    - (i) inform the other party of the making of the application; and
    - (ii) give the other party such of the information contained in the application as is reasonably necessary to enable the party to make a submission in connection with the review; and
  - (b) give both parties a reasonable opportunity to make a submission in connection with the review.
- (3) In this section:

**determination decision** means a decision that is a determination as originally made, or, if varied, the variation of the determination.

### **109A Review of certain decisions may be initiated by applicant**

- (1) A person affected by a decision (the **original decision**) that, under section 108, must be reviewed under this section, may apply to the Secretary for review of the decision.
- (2) If the person does so, the Secretary must either:
  - (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.
- (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 for review of a decision under subsection (1) has not done so; and
  - (b) the person applies to the SSAT for review of the decision (despite not being entitled to do so);the person is taken to have applied to the Secretary for review of the decision under subsection (1) 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

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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 (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);
    - (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) the applicant; and
  - (e) the approved child care service, or services, providing care to the child concerned.

*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:
  - (a) give the applicant written notice of his or her decision to affirm or vary the decision reviewed or to set it aside and substitute a new decision; and
  - (b) if the decision is a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about an agreement and the other party to the agreement has made a submission in relation to the review—also give the other party written notice of his or her decision.

*Meaning of determination decision*

- (4) In this section:

***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 an agency other than the Department unless the head of the agency 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 subsection 109A(1) 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 subsection 109A(1) 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 subsection 109A(1) for review of a decision (other than an excepted decision) may also be made after the 52



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weeks 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;
- (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 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 subsection 109A(1) for review of a decision (other than an excepted decision) relating to the payment to a person of family assistance 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 before the end of the next income year; 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 before the end of the next income year; and
      - (ii) within 13 weeks after the relevant person was notified by the Commissioner of the outcome of the review; or
    - (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.
  - (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, or CCB %; and
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- (b) so far as paragraph (4)(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.

- (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.

### **109E Date of effect of certain decisions relating to payment of family tax benefit by instalment**

- (1) If:

- (a) a person applies to the Secretary, under subsection 109A(1), 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  
(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 subsection 109A(1) 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 subsection 109A(1) 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 before the end of the next income year; 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 before the end of the next income year; 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:
    - (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.
- (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.
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**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 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 to the Secretary 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) or (d) 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 to the Secretary 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.

- (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.

## **109H Notification of further rights of review**

- (1) If the decision reviewer gives an applicant a notice under section 109B, the notice must include:
    - (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
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(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.

#### **104 After subsection 111(1)**

Insert:

(1A) If a decision has been made by the Secretary personally, or by another agency head himself or herself 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.

(1B) If a decision is made under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about a particular agreement, then, for the purposes of the application of subsection (1) or (1A) of this section to the decision, both of the parties to the agreement are taken to be persons whose interests are affected by the decision.

#### **105 Paragraph 111(2)(a)**

Omit "or 38(2) (form and manner of claim)", substitute ", 38(2) or 49C(1), or paragraph 50L(7)(b), or section 64F or paragraph 219N(2)(b) of this Act or subsection 57(6) or 81(5) of the Family Assistance Act (form and manner of claim etc.)".

#### **106 Paragraph 111(2)(b)**

Repeal the paragraph.

#### **107 Paragraph 111(2)(c)**

After "payment", insert "etc.".

#### **108 At the end of section 111**

Add:

(3) In this section:

*decision reviewer*, in relation to a decision that was the subject of an application under subsection 109A(1), means the person who, in accordance with subsection 109A(2), reviewed that decision.

## **109 After section 111**

Insert:

### **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;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:
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- (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.

#### **110 Paragraph 112(1)(a)**

Omit “(see subsection (4))”, substitute “referred to in paragraph (a) or (b) of the definition of *adverse family assistance decision* in subsection (4)”.

#### **111 After subsection 112(1)**

Insert:

(1A) If:

- (a) an adverse family assistance decision referred to in paragraph (c) or (d) 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;
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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 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.

Note: The heading to section 112 is altered by inserting “etc.” after “payment”.

### **112 Subsection 112(4)**

Repeal the subsection, substitute:

(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.

### **113 Subsection 113(2)**

Repeal the subsection, substitute:

(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):
  - (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.

#### **114 Section 115**

Repeal the section.

#### **115 Subsection 118(2)**

After “a decision”, insert “(other than a decision to which subsection (2A) applies)”.

#### **116 After subsection 118(2)**

Insert:

- (2A) If a party to an agreement that is the subject of a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* applies to the SSAT:
- (a) unless paragraph (b) applies—for a review of that decision; or
  - (b) if that decision has been affirmed or varied, or set aside and another decision substituted for it—for a review of the decision as so affirmed or varied or of the substituted decision;
- the Executive Director must order that the other party to the agreement be made a party to the review. This requirement does not apply if the other party to the agreement has given the Executive Director a written notice waiving his or her rights under section 111 and this subsection in relation to the review.

#### **117 At the end of section 122**

Add:

- (4) If a decision is made under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about a particular agreement, then, for the
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purposes of subsection (1) of this section, both of the parties to the agreement are taken to be parties whose interests are affected by the decision.

**118 Section 132**

Repeal the section.

**119 Paragraph 139(1)(a)**

Repeal the paragraph, substitute:

- (a) may give general directions as to the procedure to be followed by the SSAT in connection with the review of:
  - (i) decisions under the family assistance law; or
  - (ii) decisions under subsection 91A(3) of the *Child Support (Assessment) Act 1989*; and

**120 After paragraph 139(5)(a)**

Insert:

- (aa) subsection 91A(3) of the *Child Support (Assessment) Act 1989*; or

**121 After section 141**

Insert:

**141A Notice by Secretary of SSAT decision relating to a determination of conditional eligibility for child care benefit by fee reduction etc.**

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;
    - (iii) a determination of rate under subsection 81(2) or (3) of the Family Assistance Act; and
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(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 the effect that the individual is conditionally eligible;

the Secretary must give notice of the SSAT decision to the service.  
The notice must state the effect of the decision.

**122 At the end of section 142**

Add:

- (5) If a decision is made under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about a particular agreement, then, for the purposes of the application of the *Administrative Appeals Tribunal Act 1975* to, or to a matter arising out of, the decision, both of the parties to the agreement are taken to be persons whose interests are affected by the decision.

**123 At the end of paragraph 144(1)(a)**

Add “or to approve the service from a particular day”.

**124 At the end of paragraph 144(1)(d)**

Add “from a particular day”.

**125 At the end of section 154**

Add:

- (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 an officer 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 an officer 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, what weekly limit of hours, CCB % or schooling % would be, or is, applicable to the individual.

(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 an officer 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.

## **126 After section 154**

Insert:

### **154A Use of tax file numbers**

(1) This section applies to the tax file number of an individual that is provided to the Secretary:

- (a) by the individual; or
- (b) by the partner of the individual; or
- (c) by the Commissioner of Taxation on the authority of the individual;

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under a provision of this Act for the purposes of this Act.

- (2) The Secretary may provide to the Commissioner of Taxation a tax file number to which subsection (1) applies, or is taken to apply, for the purpose of being informed of the amount determined by the Commissioner to be the taxable income for that income year of the individual to whom the tax file number relates.

- (3) If:

- (a) a tax file number to which subsection (1) applies, or is taken to apply, is provided to the Commissioner of Taxation in respect of a particular income year; and
- (b) the Commissioner of Taxation determines the taxable income of the individual before the end of 2 years after the end of that income year;

the Commissioner may provide the Secretary with particulars of the income determined in respect of that individual and disclose that individual's TFN to the Secretary.

- (4) If a tax file number to which subsection (1) applies, or is taken to apply, is provided to the Commissioner of Taxation in respect of a particular income year, the Commissioner must, 2 years after the end of that income year, destroy the Commissioner's record of the tax file number so provided.

### **127 Paragraph 157(1)(b)**

After "eligibility", insert "conditional eligibility or the applicable weekly limit of hours".

### **128 Subsection 157(3)**

Repeal the subsection, substitute:

- (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.

**129 Subsection 161(1)**

Repeal the subsection, substitute:

- (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*.

**130 At the end of section 171**

Add:

- ; 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.

**131 Paragraph 173(a)**

After “officer”, insert “ or an approved child care service,”.

**132 At the end of section 173**

Add:

- ; or (d) affect conditional eligibility for child care benefit by fee reduction, a weekly limit of hours, a CCB % or a schooling % applicable to a person.

**133 Paragraph 174(a)**

After “officer”, insert “ or an approved child care service,”.

**134 Paragraph 174(b)**

After “officer”, insert “or an approved child care service”.

**135 Section 175**

Omit “or recklessly”.

**136 After section 175**

Insert:

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**175A Knowingly obtaining fee reductions where no conditional eligibility or eligibility**

- (1) An individual must not knowingly 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 knowingly 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, knowingly obtain an amount of an advance paid under section 219R, to reimburse the service the amount of the fee reductions made by the service for care provided by the service to the child.
- (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 knowingly obtain an incorrect amount of an advance, paid under section 219R, to reimburse the service the amount of the fee reductions made by the service for care provided by the service to the child.

**137 Section 176**

Repeal the section, substitute:

**176 Payment or fee reductions knowingly obtained by fraud**

A person must not knowingly obtain:

- (a) a payment of family assistance; or
- (b) fee reductions; or
- (c) in the case of an approved child care service—an amount of an advance paid under section 219R to reimburse the service the amount of the fee reductions made by the service for care provided to a child;

by any of the following means:

- (d) by means of a false or misleading statement made knowingly or recklessly;

- (e) by means of impersonation;
- (f) by fraudulent means.

**138 Paragraph 178(1)(b)**

After “family assistance”, insert “, fee reductions or advance”.

**139 Subsection 195(3)**

Repeal the subsection, substitute:

- (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 may be a day before the day the Secretary approves the service.

**140 After subsection 196(2)**

Insert:

- (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 and 219L.

**141 Subsection 221(3)**

Omit “paragraph 168(1)(b)”, substitute “subparagraph 168(1)(b)(i)”.

**142 Subsections 224(1) and (2)**

Repeal the subsections, substitute:

- (1) If a notice of a decision of an officer affecting:
    - (a) a person’s entitlement to be paid family assistance under the family assistance law; or
    - (b) a person’s conditional eligibility for child care benefit by fee reduction; or
    - (c) a weekly limit of hours, a CCB %, a schooling % or a rate under section 81 of the Family Assistance Act applicable to a person;
- 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 a matter referred to in paragraph (1) (a), (b) or (c) may be given to a person by properly addressing, prepaying and posting the document as a letter.

#### **143 Paragraph 226(2)(b)**

Repeal the paragraph, substitute:

- (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.

#### **144 Sections 227 and 228**

Repeal the sections.

#### **145 Subsection 235(5)**

Repeal the subsection.

## Schedule 3—Amendment of Social Security Law

### *Social Security Act 1991*

#### 1 Subsection 17(1) (definition of *income cut-out amount*)

Repeal the definition, substitute:

*income cut-out amount* is the amount worked out using the formula in subsection (8).

#### 2 At the end of section 17

Add:

- (8) For the purposes of the definition of *income cut-out amount* in subsection (1), the formula is as follows:

$$\frac{2 \left[ \begin{array}{c} \text{Maximum} \\ \text{basic rate} \end{array} + \begin{array}{c} \text{Pharmaceutical amount} \\ \text{for a single person} \end{array} \right] + \begin{array}{c} \text{Ordinary free} \\ \text{area limit} \end{array}}{52}$$

where:

*maximum basic rate* means the sum of the amount specified in column 3 of item 1 in Table B in point 1064-B1 and the amount of pension supplement worked out under point 1064-BA2 for a person who is not a member of a couple.

Note: Point 1064-BA2 refers to *maximum basic rate*. *Maximum basic rate* depends on a person's family situation. The rate used here is the rate for a person who is not a member of a couple.

*ordinary free area limit* means the amount specified in column 3 of item 1 in Table E-1 in point 1064-E4.

*pharmaceutical amount for a single person* means the amount specified in column 3 of item 1 in the Pharmaceutical Allowance Amount Table in point 1064-C8.

#### 3 Subsection 20(2)

Repeal the subsection.

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**4 Subsection 23(1) (paragraph (c) of the definition of *family assistance law*)**

Repeal the paragraph, substitute:

- (c) regulations under the Family Assistance Administration Act;
- (d) Schedules 5 and 6 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*.

**5 Subsection 23(1) (paragraph (a) of the definition of *payday*)**

Repeal the paragraph, substitute:

- (a) if the person is receiving a social security pension, a social security benefit, a carer allowance, a double orphan pension or a pensioner education supplement—a day on which an instalment of the pension, benefit, supplement or allowance is, or would normally be, paid to the person; or

**6 At the end of subsection 999(1)**

Add:

- ; and (d) the person:
  - (i) is an Australian resident; or
  - (ii) meets the requirements set out in subparagraph 729(2)(f)(ii), (iii), (iv) or (v) of this Act and is in Australia.

**7 Subsection 1061PZG(1)**

Omit “\$30.00”, substitute “\$31.20”.

**8 Point 1068B-A2 (method statement, step 7)**

After “plus”, insert “, except where the person is a CDEP Scheme participant in respect of the whole or part of the period for which the rate of payment is being worked out,”.

**9 Point 1068B-A3 (method statement, step 7)**

After “plus”, insert “, except where the person is a CDEP Scheme participant in respect of the whole or part of the period for which the rate of payment is being worked out,”.

**10 Point 1068B-C2 (first sentence)**

Repeal the sentence, substitute:

If a person is not a CDEP Scheme participant in respect of the whole or part of the period for which the rate of payment is being worked out, the person's maximum basic rate is worked out using Table C.

**11 Subsection 1188D(5)**

Omit "\$20", substitute "\$20.80".

**12 Subsection 1188F(10)**

Omit "\$20", substitute "\$20.80".

**13 Section 1206GA (table item 1, column 2)**

Omit "subsection 967(1)", substitute "subsection 974(2)".

**14 Section 1206GA (table item 1, column 3)**

Omit "child disability allowance", substitute "carer allowance".

**15 At the end of Schedule 1A**

Add:

**127 Seasonal work carried out in what would have been a seasonal work non-benefit period extending beyond 30 June 2000**

If:

- (a) a person was, before 1 July 2000, subject to a seasonal work non-benefit period under this Act; and
- (b) but for the amendments of this Act taking effect on that day, the seasonal work non-benefit period would have extended for a period (the *residual period*) starting on 1 July 2000 and ending at the end of that seasonal work non-benefit period;

then, for the purposes of this Act as in force on and after that day, the residual period is to be treated as if it were a seasonal work preclusion period.

***Social Security (Administration) Act 1999***

**16 Subsection 3(5)**

Repeal the subsection, substitute:

- (5) To the extent that a provision of this Act relates to a double orphan pension, a reference in the provision to a person includes a reference to an approved care organisation.

**17 Subsection 10(5)**

Repeal the subsection.

**18 Paragraphs 15(5)(e), (f), (g) and (h)**

Repeal the paragraphs.

**19 Sections 19 and 27**

Repeal the sections.

**20 Paragraphs 31(1)(b), (c), (d) and (e)**

Repeal the paragraphs.

**21 Subsection 39(1)**

Omit “subsections (2) and”, substitute “subsection”.

**22 Subsection 39(2)**

Repeal the subsection.

**23 Paragraphs 47(1)(g) and (h)**

Repeal the paragraphs.

**24 Section 71**

Repeal the section.

**25 Paragraph 72(3)(e)**

Repeal the paragraph.

**26 Subsection 72(4)**

Omit “(other than a notice under section 71)”.

**27 Subsection 72(5)**

Repeal the subsection.

**28 Subsection 72(7)**

Omit “, 68 or 71”, substitute “or 68”.

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**29 Subsections 81(3), (4), (5) and (6)**

Repeal the subsections.

**30 Subsections 110(6), (7), (8) and (12)**

Repeal the subsections.

**31 Section 113**

Repeal the section.

**32 Subsection 114(1)**

Omit “, section 110 nor 113”, substitute “nor 110”.

**33 Paragraph 118(1)(a)**

Repeal the paragraph.

**34 Section 119**

Repeal the section.

**35 Paragraph 126(1)(b)**

Repeal the paragraph.

**36 Paragraph 129(1)(b)**

Repeal the paragraph

**37 Subsection 129(2)**

Repeal the subsection

**38 Section 136**

Repeal the section, substitute:

**136 Notice of decision on review**

If a person makes a decision under subsection 135(1), the person must give the applicant written notice of the decision.

**39 Paragraph 140(1)(e)**

Repeal the paragraph.

**40 Subsection 142(3)**

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Repeal the subsection.

**41 Paragraph 144(r)**

Repeal the paragraph.

**42 Subsection 156(5)**

Repeal the subsection.

**43 Subsection 160(4)**

Repeal the subsection.

**44 Paragraph 175(1)(a)**

Omit “, the *Farm Household Support Act 1992* or subsection 91A(3) of the *Child Support (Assessment) Act 1989*”, substitute “or under the *Farm Household Support Act 1992*”.

**45 Paragraph 175(5)(c)**

Repeal the paragraph

**46 Paragraph 178(1)(a)**

Omit “, the *Farm Household Support Act 1992* or subsection 91A(3) of the *Child Support (Assessment) Act 1989*”, substitute “or under the *Farm Household Support Act 1992*”.

**47 Subsection 179(5)**

Repeal the subsection.

**48 Sections 202 and 207**

Omit “, the *Child Care Payments Act 1997*” (wherever occurring).

**49 Paragraph 208(1)(a)**

Omit “, the *Child Care Payments Act 1997*”.

**50 Clause 1 of Schedule 1 (paragraphs (d), (e) and (h) of the definition of *social security periodic payment*)**

Repeal the paragraphs.

**51 Paragraph 4(2)(b) of Schedule 2**

Repeal the paragraph, substitute:

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- (b) parenting payment is not a relevant social security payment in the case of a person who becomes qualified for the payment because of the birth of a child.

## **52 Clauses 20 to 27 (inclusive) of Schedule 2**

Repeal the clauses.

## **53 Clause 36 of Schedule 2**

Omit “family allowance”, substitute “family tax benefit”.

Note: The heading to clause 36 of Schedule 2 is altered by omitting “**family allowance**” and substituting “**family tax benefit**”.

## **54 Subclauses 19(2), (3), (5) and (7) of Schedule 3**

Omit “the *Student and Youth Assistance Act 1973* or the *Child Care Payments Act 1997*” (wherever occurring), substitute “the family assistance law or the *Student Assistance Act 1973*”.

## **55 Clause 20 of Schedule 3**

Omit “the *Student and Youth Assistance Act 1973*, the *Child Care Payments Act 1997*”, substitute “the family assistance law, the *Student Assistance Act 1973*”.

## ***Social Security (International Agreements) Act 1999***

## **56 Paragraphs 13(e), (f) and (g)**

Repeal the paragraphs, substitute:

- (e) if the person’s notional agreement pension rate is not nil, add the additional child amount or amounts (that are applicable in accordance with section 14A) to the person’s notional agreement pension rate. This new amount is the person’s ***total notional rate***;
- (f) multiply the person’s total notional rate by the person’s residence factor: the result is the person’s ***international agreement portability rate***.

## **57 After section 14**

Insert:

**14A Additional child amounts**

- (1) For the purpose of the step in the calculation of a person's international agreement portability rate that is described in paragraph 13(e), the additional child amounts that may be applicable are set out in the following table. They are annual amounts. The amount in item 3 is only applicable if an amount in item 1 or 2 is to be paid to a person without a partner.

<b>Additional child amounts</b>		
<b>Item</b>	<b>Family situation</b>	<b>Additional child amount</b>
1	For each dependent child under 13 years of age	\$1,957.80
2	For each dependent child who has reached 13, but is under 15, years of age	\$2,732.60
3	For a person without a partner	\$962.00

- (2) If, for the purposes of subsection (1), the Secretary determines in writing a higher amount in substitution for an amount set out in the table, the higher amount is taken, from the commencement of subsection (1), to be substituted for the amount so set out.
- (3) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## Schedule 4—Amendment of other Acts

### *A New Tax System (Bonuses for Older Australians) Act 1999*

#### 1 Section 19

Repeal the section, substitute:

#### 19 Application of social security law

- (1) Except to the extent the provision is made in this Part, the social security law applies to:
  - (a) the making of a determination about whether to grant a proper claim for a bonus payment under this Part; and
  - (b) the making of any payment as a result of such a determination; and
  - (c) any other matter relating to such a determination or payment; in the same way as that law applies in the making of determinations about, and payments of, pension bonus under that law.
- (2) For this purposes of so applying the social security law:
  - (a) references in that law to that law itself are taken to include references to this Act; and
  - (b) any modifications of that law that are prescribed by the regulations for the purposes of this section apply.
- (3) For the purposes of this section:

***social security law*** means:

- (a) the *Social Security Act 1991*; and
- (b) the *Social Security (Administration) Act 1999*; and
- (c) the *Social Security (International Agreements) Act 1999*; and
- (d) any other Act that is expressed to form part of the social security law.

Note: This section means that the provisions of the social security law dealing with matters such as the following will apply:

- review of determinations;
- recovery of overpayments;
- delegations;

- 
- information gathering;
  - offences relating to false statements;
  - evidentiary matters.

### ***Child Support (Assessment) Act 1989***

#### **2 Paragraph 39(2)(b) (definition of *base FTB rate*)**

After “means the base FTB child rate”, insert “for the child”.

#### **3 Paragraph 39(2)(b) (definition of *standard FTB rate*)**

Omit “standard rate”, substitute “FTB child rate for the child”.

#### **4 Paragraph 89(4)(b)**

Omit “at a rate”, substitute “at a Part A rate”.

#### **5 Paragraph 91A(1)(b)**

Omit “at a rate”, substitute “at a Part A rate”.

#### **6 Subsection 91A(3)**

Repeal the subsection, substitute:

- (3) The Secretary must decide if the eligible person has taken reasonable action to obtain maintenance for the child by applying clause 10 of Schedule 1 to the Family Assistance Act as if:
- (a) the Registrar had accepted the agreement; and
  - (b) if the eligible person is a claimant for family tax benefit for the child—the eligible person was entitled to be paid the benefit.

For the purposes of this Act and of the *A New Tax System (Family Assistance) (Administration) Act 1999*, the Secretary is said to make an adverse decision under this subsection if the Secretary decides under clause 10 of Schedule 1 to the Family Assistance Act that the FTB child rate for the child is the base FTB child rate for the child.

#### **7 Paragraph 92(4)(a)**

Omit “at a rate”, substitute “at a Part A rate”.

#### **8 Subsection 151(4)**

Repeal the subsection, substitute:

- (4) If:
- (a) a carer makes an election under subsection (1) in respect of a child; and
  - (b) the carer is entitled to be paid, or is a claimant for, family tax benefit for the child, the Part A rate of which is higher than the base rate for the carer under clause 4 of Schedule 1 to the Family Assistance Act;
- the election has no effect unless and until the Secretary approves the election under section 151A.

## **9 Subsections 151A(2), (3) and (4)**

Repeal the subsections, substitute:

- (2) The Secretary must, by applying clause 10 of Schedule 1 to the Family Assistance Act, decide whether the carer has taken reasonable action to obtain maintenance for the child if it were assumed that:
  - (a) the election were to take effect; and
  - (b) if the carer is a claimant for family tax benefit for the child—the carer were entitled to be paid the benefit.
- (3) The Secretary is taken to approve the election if the Secretary decides that the carer has taken reasonable action to obtain maintenance for the child.
- (4) The Secretary is taken not to approve the election if the Secretary decides that the carer has not taken reasonable action to obtain maintenance for the child.

Note: The heading to section 151A is altered by omitting “**more than the minimum rate of family allowance**” and substituting “**more than the base rate of family tax benefit Part A**”.

## ***Health Insurance Act 1973***

### **10 Paragraph 5EAA(b)**

Repeal the paragraph, substitute:

- (b) the person’s daily rate of family tax benefit consists of, or includes, a Part A rate that is worked out using Part 2 of Schedule 1 to the Family Assistance Act; and

- 
- (c) the person's income excess under Division 4 of Part 2 of that Schedule is nil.

### ***Income Tax Assessment Act 1936***

#### **11 Sub-subparagraph 23AB(7)(a)(ii)(AA)**

Omit "subsection 159L(3A)", substitute "subsections 159L(3A), (5A) and (5B)".

#### **12 Sub-subparagraph 23AB(7)(a)(ii)(BA)**

Omit "subsection 159J(1AA)", substitute "subsections 159J(1AA), (3AA) and (3AB)".

#### **13 Sub-subparagraph 23AB(7)(a)(ii)(D)**

Omit "subsection 159J(1AA)", substitute "subsections 159J(1AA), (3AA) and (3AB)".

#### **14 Subsection 23AB(7) (note 1)**

Omit "if the taxpayer is eligible for family tax benefit", substitute "if the taxpayer or the taxpayer's spouse is eligible for family tax benefit at the Part B rate".

#### **15 Subsection 79A(4) (paragraph (aa) of the definition of *relevant rebate amount*)**

Omit "subsection 159L(3A)", substitute "subsections 159L(3A), (5A) and (5B)".

#### **16 Subsection 79A(4) (paragraph (ba) of the definition of *relevant rebate amount*)**

Omit "subsection 159J(1AA)", substitute "subsections 159J(1AA), (3AA) and (3AB)".

#### **17 Subsection 79A(4) (paragraph (d) of the definition of *relevant rebate amount*)**

Omit "subsection 159J(1AA)", substitute "subsections 159J(1AA), (3AA) and (3AB)".

#### **18 Subsection 79A(4) (definition of *relevant rebate amount*, note 1)**

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Omit “if the taxpayer is eligible for family tax benefit”, substitute “if the taxpayer or the taxpayer’s spouse is eligible for family tax benefit at the Part B rate”.

**19 Subsection 79B(6) (paragraph (aa) of the definition of concessional rebate amount)**

Omit “subsection 159L(3A)”, substitute “subsections 159L(3A), (5A) and (5B)”.

**20 Subsection 79B(6) (paragraph (ba) of the definition of concessional rebate amount)**

Omit “subsection 159J(1AA)”, substitute “subsections 159J(1AA), (3AA) and (3AB)”.

**21 Subsection 79B(6) (paragraph (d) of the definition of concessional rebate amount)**

Omit “subsection 159J(1AA)”, substitute “subsections 159J(1AA), (3AA) and (3AB)”.

**22 Subsection 79B(6) (definition of concessional rebate amount, note 1)**

Omit “if the taxpayer is eligible for family tax benefit”, substitute “if the taxpayer or the taxpayer’s spouse is eligible for family tax benefit at the Part B rate”.

**23 Subsection 159J(1AA)**

Repeal the subsection, substitute:

(1AA) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant included in class 1 or 2 in the table in subsection (2), if, during the whole of that year of income:

- (a) the taxpayer, or the taxpayer’s spouse while being the taxpayer’s partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and
- (b) clause 31 of Schedule 1 to that Act did not apply to the Part B rate.

**24 Paragraphs 159J(3)(e) and (f)**

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Repeal the paragraphs, substitute:

- (e) a dependant, being a child included in class 3 in the table in subsection (2), a student or an invalid relative, is such a dependant during part only of the year of income;

## **25 After subsection 159J(3)**

Insert:

(3AA) If:

- (a) but for this subsection, a taxpayer would be entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant included in class 1 or 2 in the table in subsection (2); and
- (b) during part only of that year of income:
  - (i) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and
  - (ii) clause 31 of Schedule 1 to that Act did not apply in respect of the Part B rate;

then:

- (c) the taxpayer has no entitlement to a rebate under this section in respect of that dependant for that part of the year of income; and
- (d) the rebate allowable to the taxpayer in respect of that dependant for the remainder of that year of income is, subject to the operation of subsection (3AB), such part of the relevant rebate amount specified in column 3 of the table in subsection (2) as, in the opinion of the Commissioner, is reasonable in the circumstances.

(3AB) If:

- (a) but for this subsection, a taxpayer would be entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant included in class 1 or 2 of the table in subsection (2); and
- (b) during the whole or a part of the year of income concerned:
  - (i) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System*

(*Family Assistance*) Act 1999, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and

- (ii) clause 31 of Schedule 1 to that Act applied in respect of that Part B rate because of the determination of a particular specified percentage under subsection 59(1) of that Act;

the rebate allowable to the taxpayer for the year of income, or that part of the year of income, (the ***shared care period***) is to be worked out using the formula:

$$\left[ 1 - \frac{A}{B} \right] \times \text{Applicable rebate amount}$$

where:

**A** is the standard rate in respect of the taxpayer or the taxpayer's spouse worked out under clause 31 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*.

**applicable rebate amount** is the amount of rebate that would have been allowable under this section in respect of the shared care period but for the application of this subsection.

**B** is the rate that would be the standard rate in respect of the taxpayer or the taxpayer's spouse under clause 30 of Schedule 1 to that Act had clause 31 of that Schedule not applied and had the FTB child in respect of whom the standard rate was determined under clause 31 been the only FTB child of the taxpayer or the taxpayer's spouse, as the case requires.

## 26 Subsection 159L(3A)

Repeal the subsection, substitute:

- (3A) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a person wholly engaged in keeping house in Australia for the taxpayer if, during the whole of that year of income:
- (a) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and

- 
- (b) clause 31 of Schedule 1 to that Act did not apply to the Part B rate; and
  - (c) the taxpayer did not contribute to the maintenance of a dependant specified in paragraph (1)(c).

**27 After subsection 159L(5)**

Insert:

(5A) If:

- (a) but for this subsection, a taxpayer would be entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a person wholly engaged in keeping house in Australia for the taxpayer; and
- (b) during part only of that year of income:
  - (i) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and
  - (ii) clause 31 of Schedule 1 to that Act did not apply in respect of the Part B rate; and
  - (iii) the taxpayer did not contribute to the maintenance of a dependant specified in paragraph (1)(c);

then:

- (c) the taxpayer has no entitlement to a rebate under this section for that part of the year of income; and
- (d) the rebate allowable to the taxpayer for the remainder of that year of income is, subject to the operation of subsection (5B), such part of the rebate specified in subsection (2) in relation to the taxpayer as, in the opinion of the Commissioner, is reasonable in the circumstances.

(5B) If:

- (a) but for this subsection, a taxpayer would be entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a person wholly engaged in keeping house in Australia for the taxpayer; and
- (b) during the whole or a part of the year of income concerned:
  - (i) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System*

(*Family Assistance*) Act 1999, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and

- (ii) clause 31 of Schedule 1 to that Act applied in respect of that Part B rate because of the determination of a particular specified percentage under subsection 59(1) of that Act; and
- (iii) the taxpayer did not contribute to the maintenance of a dependant specified in paragraph (1)(c);

the rebate allowable to the taxpayer for the year of income, or that part of the year of income, (the ***shared care period***) is to be worked out using the formula:

$$\left[ 1 - \frac{A}{B} \right] \times \text{Applicable rebate amount}$$

where:

**A** is the standard rate in respect of the taxpayer or the taxpayer's spouse worked out under clause 31 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*.

**applicable rebate amount** is the amount of rebate that would have been allowable under this section in respect of the shared care period but for the application of this subsection.

**B** is the rate that would be the standard rate in respect of the taxpayer or the taxpayer's spouse under clause 30 of Schedule 1 to that Act had clause 31 of that Schedule not applied and had the FTB child in respect of whom the standard rate was determined under clause 31 been the only FTB child of the taxpayer or the taxpayer's spouse, as the case requires.

## 28 Subsection 251R(5)

Repeal the subsection, substitute:

- (5) If, in relation to a period, being the whole or a part of a year of income:
  - (a) the parents of a child referred to in paragraph (3)(b) lived separately and apart from each other; and

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- (b) the child would, but for this subsection, be taken, for the purposes of this Part, to be a dependant of each of his or her parents in respect of that period; and
  - (c) both of the parents or their spouses, being partners as defined in the *A New Tax System (Family Assistance) Act 1999*, are eligible for family tax benefit at the Part A rate under that Act for that child in respect of the period; and
  - (d) the Secretary of the Department whose Minister administers that Act has determined, under subsection 59(1) of that Act, that each parent is entitled to a specified percentage of that family tax benefit;

the child is to be taken to be a dependant of each parent for the purposes of Part VIIB of this Act, for so much only of that period as represents that percentage of the period.

## **29 Application**

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to assessments in relation to the 2000-2001 year of income and later years of income.

## ***Medicare Levy Act 1986***

### **30 Subsection 8H(2) (paragraph (b) of note 1)**

After “family tax benefit”, insert “at the Part B rate”.

## **31 Application**

The amendment of the *Medicare Levy Act 1986* made by this Schedule applies to assessments in relation to the 2000-2001 year of income and later years of income.

## **Schedule 5—Transitional and saving provisions associated with the establishment of a scheme for the payment of family tax benefit, maternity allowance and maternity immunisation allowance**

### **1 Definitions**

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

***approved care organisation*** means an organisation that is taken, by virtue of the operation of subitem (2), to be an approved care organisation for the purposes of the Family Assistance Act.

***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*** has the same meaning as in subsection 3(1) of the Family Assistance Administration Act.

***family benefit*** means payments of:

- (a) family allowance; or
- (b) family tax payment; or
- (c) parenting payment in the nature of non-benefit PP (partnered);

payable under the social security law.

***MAT*** means maternity allowance within the meaning of subsection 3(1) of the Family Assistance Administration Act.

***MIA*** means maternity immunisation allowance within the meaning of subsection 3(1) of the Family Assistance Administration Act.

***receiving***, in relation to family benefit, has the meaning given under subitem (3).

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**Secretary**, in relation to an act or thing done, or a decision or determination made, under particular legislation, means the Secretary of the Department administered by the Minister administering that legislation.

**social security law** means the *Social Security Act 1991* and the *Social Security (Administration) Act 1999*.

- (2) Any organisation that, immediately before 1 July 2000, was an approved care organisation for the purposes of the *Social Security Act 1991* is taken to have been approved under section 20 of the Family Assistance Act, with effect from that date, as an approved care organisation, for the purposes of the latter Act.
- (3) For the purposes of this Part, an individual or an approved care organisation is taken to be receiving payments of family benefit under the *Social Security Act 1991* from the earliest date on which such payments are payable to the individual or to the organisation, as the case requires, even if the first instalment of that benefit is not paid until a later day.

## **2 Individuals receiving family benefit treated as having lodged effective claim for family tax benefit by instalment**

- (1) If, immediately before 1 July 2000, an individual was receiving family benefit, then, with effect from that date, that individual is taken, subject to items 4 and 5, to have made an effective claim for family tax benefit by instalment under subsection 7(2) of the Family Assistance Administration Act as amended by this Act.
- (2) If, before 1 July 2000, an individual receiving family benefit had provided bank account details for the purposes of making the claim for, or receiving, such benefits, those details are taken to have been provided in the context of the effective claim that is taken to have been made under subitem (1).

## **3 Approved care organisations receiving family allowance treated as having lodged effective claim for family tax benefit by instalment**

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- (1) If, immediately before 1 July 2000, an approved care organisation was receiving family allowance, then, with effect from that date, that organisation is taken, subject to item 5, to have made an effective claim for family tax benefit by instalment under subsection 7(2) of the Family Assistance Administration Act as amended by this Act.
- (2) If, before 1 July 2000, the organisation had provided bank account details for the purposes of making the claim for, or receiving, such family allowance payments, those details are taken to have been provided in the context of the effective claim that is taken to have been made under subitem (1).

#### **4 Special rules relating to outstanding TFN requirements**

If:

- (a) an individual has been requested, before 1 July 2000, under section 75 of the *Social Security (Administration) Act 1999*, to provide a tax file number in relation to a claim for, or the receipt of, family benefit; and
- (b) the individual has not, before that date, provided that tax file number; and
- (c) as at 1 July 2000, less than 28 days have elapsed since the request to provide that number;

then, for the purposes of section 27 of the Family Assistance Administration Act as amended by this Act:

- (d) the Family Assistance Administration Act as so amended is treated as having been in force when the requirement to provide that tax file number was made; and
- (e) the requirement to provide that tax file number is taken to have been made, at the time when it was made, under section 26 of the Family Assistance Administration Act as so amended and as so in force.

#### **5 Special rules relating to outstanding bank account requirements**

If:

- (a) an individual or an approved care organisation has been requested, before 1 July 2000, under section 55 of the *Social*



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*Security (Administration) Act 1999* to nominate a bank account into which family benefit can be paid; and

- (b) the individual or organisation has not, before that date, nominated a bank account; and
- (c) as at 1 July 2000, less than 28 days have elapsed since the request to nominate an account;

then, for the purposes of section 27A of the Family Assistance Administration Act as amended by this Act:

- (d) the Family Assistance Administration Act as so amended is treated as having been in force when the requirement to nominate a bank account was made; and
- (e) the requirement to nominate a bank account is taken to have been made, at the time when it was made, under section 26A of the Family Assistance Administration Act as so amended and as so in force.

## **6 The making of determinations**

- (1) On, or as soon as practicable after, 1 July 2000, the Secretary will assess the eligibility for family tax benefit by instalment of each individual, and each approved care organisation, that is taken to have lodged an effective claim.
- (2) If, for the purposes of making a determination under section 16 of the Family Assistance Administration Act as amended by this Act in relation to an individual or approved care organisation to which subitem (1) refers:
  - (a) the Secretary has, before 1 July 2000, sought from an individual or an approved care organisation any information necessary for the purposes of making such a determination; and
  - (b) that information has not been provided;

the Secretary may make a determination under section 19 of the Family Assistance Administration Act as so amended to the effect that the individual or organisation is not entitled to be paid family tax benefit by instalment for each day while the determination is in force.

- (3) For the avoidance of doubt, such a determination does not prevent an individual or organisation that later provides information as required by

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the Secretary from claiming under the Family Assistance Administration Act as so amended:

- (a) family tax benefit by instalment when that information is so provided; and
- (b) family tax benefit for the past period between 1 July 2000 and the time when a determination of entitlement to family tax benefit by instalment is made.

## **7 Directions concerning payments to third parties**

If, immediately before 1 July 2000, there was in force a direction by the Secretary under subsection 44(3) of the *Social Security (Administration) Act 1999* to the effect that the whole or a part of a person's family benefit payment be paid to someone else on behalf of the person, that direction has effect, on and after that date, as if it were a direction to the same effect given by the Secretary under subsection 23(4) of the Family Assistance Administration Act as amended by this Act in relation to the payment of family tax benefit in respect of that person.

## **8 Instalment periods**

(1) If:

- (a) an individual or an approved care organisation was receiving family benefit by way of family allowance or family tax payment immediately before 1 July 2000; and
- (b) that individual or organisation received, or last received, a payment of that family allowance or family tax payment in respect of a period commencing less than 14 days before 1 July 2000; and
- (c) the Secretary makes a determination under section 16 of the Family Assistance Administration Act as amended by this Act in respect of the entitlement of that individual or organisation to family tax benefit with effect from that day;

then:

- (d) the first instalment of family tax benefit is to be for a period starting on 1 July 2000 and ending 14 days after the beginning of the last instalment of family benefit; and
- (e) instalments of family tax benefit thereafter, subject to any change that the Secretary may make under subsection 23(3)

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of the Family Assistance Administration Act as so amended, are to be for successive periods of 14 days.

(2) If:

- (a) an individual was not receiving family benefit by way of family allowance immediately before 1 July 2000 but was receiving family benefit by way of non-benefit PP (partnered) immediately before that date; and
- (b) that individual received, or last received, a payment of that non-benefit PP (partnered) in respect of a period commencing less than 14 days before 1 July 2000; and
- (c) the Secretary makes a determination under section 16 of the Family Assistance Administration Act as amended by this Act in respect of the entitlement of that individual to family tax benefit with effect from that day;

then:

- (d) the first instalment of family tax benefit is to be for a period starting on 1 July 2000 and ending 14 days after the beginning of the last instalment of non-benefit PP (partnered); and
- (e) instalments of family tax benefit thereafter, subject to any change that the Secretary may make under subsection 23(3) of the Family Assistance Administration Act as so amended, are to be for successive periods of 14 days.

## **9 Claims for family benefit that are undetermined as at 1 July 2000**

(1) If:

- (a) before 1 July 2000, a person lodged a claim for family benefit by way of family allowance or family tax payment; and
- (b) that claim was not determined before that date; and
- (c) the person was, at the time of the claim, or becomes, before 1 July 2000, qualified for family benefit of that kind;

the claim is to be determined under the social security law as in force before 1 July 2000, as if:

- (d) the social security law as so in force had continued in force; and

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(e) the claim related only to the period preceding 1 July 2000.

(2) If:

- (a) before 1 July 2000, a person lodged a claim for family benefit by way of family allowance or family tax payment in anticipation of becoming qualified for that benefit; and
- (b) the claim was not determined by that date; and
- (c) the person does not become qualified for the relevant family benefit before 1 July 2000;

the claim is to be taken to have lapsed on that date.

(3) If:

- (a) before 1 July 2000, a person has lodged a claim for parenting payment; and
- (b) the claim has not been determined before that date; and
- (c) the person was, at the time of the claim, or becomes, before 1 July 2000, qualified for family benefit of that kind;

then:

- (d) the claim is to be determined under the social security law as in force before 1 July 2000 as if the law as so in force had continued: and
- (e) if parenting payment would be paid under the law as so in force at the rate applicable for non-benefit PP (partnered)—the claim is to be determined as if it related only to the period preceding 1 July 2000.

(4) If:

- (a) before 1 July 2000, a person lodged a claim for parenting payment in anticipation of becoming qualified for that payment; and
- (b) the claim was not determined by that date; and
- (c) the person does not become qualified for parenting payment before 1 July 2000; and
- (d) if the person were to become qualified for parenting payment on or after that date—it would be parenting payment in the nature of non-benefit PP (partnered) and not some other form of parenting payment;

the claim is to be taken to have lapsed on that date.

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**10 Certain claims for family benefit will be admitted on or after 1 July 2000**

- (1) In this item:  
*backdated claim period* means a period after the occurrence of a particular event during which a claim for family benefit with effect from that event will be allowed.
- (2) If:
- (a) a person did not make a claim for family benefit before 1 July 2000; and
  - (b) but for the amendment of the social security law with effect from 1 July 2000, if the person had made such a claim after that date, the backdated claim period would have extended back to the occurrence of a particular event before that date;
- then:
- (c) the person may make such a claim on or after 1 July 2000 as if those amendments had not been made; and
  - (d) the claim can be dealt with in so far as the backdated claim period would permit a claim in respect of a period before 1 July 2000.

**11 Transfer of claims for maternity allowance or maternity immunisation allowance from social security law to family assistance law**

- (1) If:
- (a) a person claims maternity allowance or maternity immunisation allowance under the social security law before 1 July 2000; and
  - (b) the claim has not been determined as at that date;
- the claim is to be treated as if it were a claim for MAT or MIA under Division 3 of Part 3 of the Family Assistance Administration Act as amended by this Act and not as such a claim for the corresponding allowance under the *Social Security Act 1991*.
- (2) If a person purports to claim maternity allowance or maternity immunisation allowance under the social security law on or after 1 July 2000, that claim is to be treated as if it were a claim for MAT or MIA, as the case requires, under Division 3 of Part 3 of the Family Assistance

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Administration Act as amended by this Act and not as such a claim for the corresponding allowance under the social security law.

- (3) A person who has been paid maternity allowance or maternity immunisation allowance under the social security law in respect of a particular child cannot claim MAT or MIA for the same child under Division 3 of Part 3 of the Family Assistance Administration Act as amended by this Act.

## **12 Applications for family benefit, maternity allowance or maternity immunisation allowance made after 1 July 2000 on behalf of another person**

- (1) If:
- (a) an amount of family benefit is payable to a person; and
  - (b) the person dies before receiving that amount; and
  - (c) another person applies, on or after 1 July 2000, to receive the amount; and
  - (d) the application is made:
    - (i) within 26 weeks after the first person's death; or
    - (ii) within such further period as is allowed by the Secretary in the special circumstances of the case;

the Secretary may pay the amount to the person who, in the Secretary's opinion, is best entitled to it.

- (2) If:
- (a) an amount of maternity allowance or maternity immunisation allowance claimed under the social security law is payable to a person in respect of a particular child; and
  - (b) the person dies before receiving that amount; and
  - (c) another person applies, on or after 1 July 2000, to receive the amount; and
  - (d) the application is made:
    - (i) within 26 weeks after the first person's death; or
    - (ii) within such further period as is allowed by the Secretary in the special circumstances of the case;

the Secretary may pay the amount to the person who, in the Secretary's opinion, is best entitled to it.

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- (3) If the Secretary pays an amount under subitem (1) in respect of family benefit of a particular kind claimed under the social security law, the Commonwealth has no further liability to any person in respect of family benefit of that kind under the social security law or in respect of any family benefit of a like kind under the family assistance law.
- (4) If the Secretary pays an amount under subitem (2) in respect of a particular child, the Commonwealth has no further liability to any person in respect of maternity allowance or maternity immunisation allowance under the social security law, or in respect of MAT or MIA under the family assistance law, in respect of that child.
- (5) For the purpose of Part 5 of the Family Assistance Administration Act, a decision of the Secretary under subitem (1) or (2) has effect as if it were a decision of an officer under the family assistance law.

### **13 Claims for advance payment under Social Security Law**

- (1) If:
- (a) an individual had, under section 864A of the *Social Security Act 1991* as in force before 1 July 2000, requested a family allowance advance in respect of an advance period, within the meaning of that Act, that ended before 1 July 2000, and all subsequent advance periods; and
  - (b) that request had been granted;
- the grant has effect, in relation to the advance period commencing on 1 July 2000 and all subsequent advance periods as if:
- (c) it were a grant made under section 33 of the Family Assistance Administration Act as amended by this Act; and
  - (d) it related not to qualification for family allowance advance but rather to an entitlement to family tax benefit advance in relation to the individual's family tax benefit as determined by the Secretary in accordance with item 6.
- (2) For the avoidance of doubt, an individual who is treated, by virtue of the operation of subitem (1), as having made and been granted a request under section 33 of the Family Assistance Administration Act as amended by this Act, may on 1 July 2000, or at any time after that date, withdraw the request in so far as it is treated as relating to standard advance periods within the meaning of that Act as so amended for which the individual has not been paid a family tax benefit advance.
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## **14 Saving provision relating to information collection**

If:

- (a) family benefit, or maternity allowance or maternity immunisation allowance claimed under the social security law, is payable to a person; and
- (b) the Secretary decides, on or after 1 July 2000, to seek further information in relation to the benefit or allowance;

the Secretary may, under Division 1 of Part 5 of the *Social Security (Administration) Act 1999*, require the provision of information concerning that benefit or allowance, or concerning the person to whom it is payable, as if that benefit or allowance had continued, on and after 1 July 2000, to be a social security payment as defined for the purposes of the *Social Security (Administration) Act 1999*.

## **15 Portability**

(1) If:

- (a) immediately before 1 July 2000, an individual
  - (i) is receiving family benefit in the nature of family allowance in respect of another individual; or
  - (ii) is receiving family benefit in the nature of parenting payment because the individual has a PP child; and
- (b) the person in respect of whom, or because of whom, that benefit is received (the *child*) is absent from Australia immediately before that date because:
  - (i) having left Australia, the child has not returned before that date; or
  - (ii) having been born outside Australia, the child has not subsequently come to Australia before that date;

the child is not, if that absence extends for a period of 3 years beginning on the first day of the absence, an FTB child at any time after the period of 3 years ends.

(2) In determining whether the period of absence of the child extends for 3 years beginning on the first day of the child's absence:

- (a) any return or coming to Australia before 1 July 2000 that would have been disregarded under the *Social Security Act 1991* as in force before that date had that Act as so in force



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continued unamended after that date is to be disregarded for the purposes of subitem (1); and

- (b) any return or coming to Australia on or after 1 July 2000 that would have been disregarded under section 24 of the Family Assistance Act as amended by this Act if that section were to have applied to the person is also to be disregarded for the purposes of that subitem.

(3) If:

- (a) the child referred to in paragraph (1)(b) is absent from Australia for a continuous period of more than 26 weeks (whether or not that 26 weeks ends before 1 July 2000); and
- (b) an individual having an entitlement to family tax benefit in respect of the child is not an absent overseas recipient within the meaning of subsection 62(2) of the Family Assistance Act as amended by this Act during any part of the child's absence from Australia occurring after 26 weeks and after the individual becomes so entitled;

Schedule 1 to the Family Assistance Act as so amended applies in relation to that entitlement during that part of the child's absence that is referred to in paragraph (b) with the modifications set out in the table included in subsection 63(4) of that Act as so amended.

(4) If:

- (a) the child referred to in paragraph (1)(b) is absent from Australia for a continuous period of more than 26 weeks (whether or not that 26 weeks ends before 1 July 2000); and
- (b) the child comes to Australia; and
- (c) the child leaves Australia less than 26 weeks after coming to Australia; and
- (d) an individual having an entitlement to family tax benefit in respect of the child is not an absent overseas recipient within the meaning of subsection 62(2) of the Family Assistance Act as amended by this Act during any part of the child's absence from Australia referred to in paragraph (c) after the individual becomes so entitled;

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Schedule 1 to the Family Assistance Act as so amended applies in relation to that entitlement during that part of the child's absence that is referred to in paragraph (d) from Australia with the modifications set out in the table included in subsection 63(4) of that Act as so amended.

## **16 Lump sum bereavement payments for certain persons receiving non-benefit PP (partnered) at death of child**

(1) If:

- (a) a child died less than 4 weeks before 1 July 2000; and
- (b) at the time of the child's death, the child was the only PP child of a person; and
- (c) under section 512A of the *Social Security Act 1991* as in force immediately before 1 July 2000, if that section had continued in force after that date, the person would, but for this item, have qualified to continue to receive that parenting payment for the period of 4 weeks that starts on the day following the day of the child's death;

so much of the parenting payment as would have been payable in respect of each day in that 4 week period that occurs after 30 June 2000:

- (d) continues to be payable as if section 512A of that Act as so in force had not been repealed but had so provided; and
- (e) is payable as a single lump sum on, or as soon as practicable after, 1 July 2000.

(2) For the purposes of Part 4 of the *Social Security (Administration) Act 1999*, a decision made for the purposes of section 512A of the *Social Security Act 1991* as continued in force for the purposes of subitem (1) has effect as a decision of an officer under the social security law.

## **17 Lump sum bereavement payments for certain persons receiving family tax payment at death of child**

(1) If:

- (a) a child died less than 4 weeks before 1 July 2000; and
- (b) at the time of the child's death, a person was receiving family tax payment in respect of that child or of children including that child; and
- (c) under section 900AZZC of the *Social Security Act 1991* as in force before 1 July 2000, if that section had continued in

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force after that date, the person would, but for this item, have qualified to continue to receive family tax payment for the period of 4 weeks that starts on the day following the day of the child's death at the rate that would have been applicable if the child had not died;

so much only of the amount of family tax payment that would have been payable in respect of each day in that 4 week period that occurs after 30 June 2000 and that is attributable to that child:

- (d) continues to be payable to the person as if section 900AZZC of that Act as so in force had not been repealed but had so provided; and
- (e) is payable as a single lump sum on, or as soon as practicable after, 1 July 2000.

- (2) For the purposes of Part 4 of the *Social Security (Administration) Act 1999*, a decision made for the purposes of section 900AZZC of the *Social Security Act 1991* as continued in force for the purposes of subitem (1) has effect as a decision of an officer under the social security law.

## **18 Lump sum bereavement payments for certain persons receiving family allowance at death of child**

- (1) If:

- (a) a child died before 1 July 2000; and
- (b) at the time of the child's death a person was receiving family allowance in respect of that child or of children including that child; and
- (c) under Subdivision A or B of Division 10 of Part 2.17 of the *Social Security Act 1991* as in force before 1 July 2000, if those Subdivisions had continued in force after that date, the person would, but for this item, have qualified to continue to receive family allowance for a period (the ***bereavement period***) that starts on the day following the day of the child's death at the rate that would have been applicable if the child had not died;

so much only of the amount of family allowance that would have been payable in respect of each day of the bereavement period that occurs after 30 June 2000 and that is attributable to that child:

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- (d) continues to be payable to the person as if that Subdivision of that Act as so in force had not been repealed but had so provided; and
  - (e) is payable as a single lump sum on, or as soon as practicable after, 1 July 2000.
- (2) For the purposes of Part 4 of the *Social Security (Administration) Act 1999*, a decision under Subdivision A or B of Division 10 of Part 2.17 of the *Social Security Act 1991* as continued in force for the purposes of subitem (1) has effect as a decision of an officer under the social security law.

## **19 Set-offs**

- (1) If:
- (a) a child dies before 1 July 2000; and
  - (b) before the Secretary learns of the death of the child, an individual has begun to receive family tax benefit in respect of the child in accordance with a determination under section 16 of the Family Assistance Administration Act as amended by this Act in respect of any period after 30 June 2000;
- the Secretary must, as soon as practicable after learning of the child's death, review that determination in accordance with section 104 of the Family Assistance Administration Act as so amended.
- (2) If the person continued to receive non-benefit PP (partnered) after 30 June 2000 in respect of the deceased child—the Secretary can set off the amount of any single lump sum due by the Commonwealth under item 16 against any debt arising on a review of family tax benefit conducted in accordance with subitem (1).
- (3) If the person continued to receive family tax payment after 30 June 2000 and the rate of the payment was attributable, in whole or in part, to the deceased child—the Secretary can set off the amount of any single lump sum due by the Commonwealth under item 17 against any debt arising on a review of family tax benefit conducted in accordance with subitem (1).
- (4) If the person continued to receive family allowance after 30 June 2000 and the rate of the allowance was attributable, in whole or in part, to the deceased child—the Secretary can set off the amount of any single lump

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sum due by the Commonwealth under item 18 against any debt arising on a review of family tax benefit conducted in accordance with subitem (1).

## **20 Bereavement payments in relation to the death of a recipient**

- (1) Despite the repeal of section 513A of the *Social Security Act 1991* as in force before 1 July 2000, that section is taken to continue in force, on and after that date, so as to facilitate any claim by the partner of a person qualified for parenting payment in respect of a child who has died, for a period of 13 weeks after the death of that child.
- (2) For the purposes of subitem (1), section 513A of the *Social Security Act 1991* as so continued in force has effect as if the reference in the section to the amount of parenting payment that would have been payable includes a reference to any lump sum that would have been payable because of the operation of item 16.
- (3) Despite the repeal of section 900 of the *Social Security Act 1991* as in force before 1 July 2000, that section is taken to continue in force, on and after that date, so as to facilitate any claim by the partner of a person qualified for family allowance in respect of a child who has died, for a period of 13 weeks after the death of that child.
- (4) For the purposes of subitem (3), section 900 of the *Social Security Act 1991* as so continued in force has effect as if the reference:
  - (a) in subsection (1) of that section to the sum of the amounts referred to in paragraphs (f), (g) and (h) of that subsection; and
  - (b) in subsection (2) of that section to the sum of the amounts referred to in paragraphs (e), (f) and (g) of that subsection;each includes a reference to any lump sum that would have been payable because of the operation of item 18.
- (5) For the purposes of Part 4 of the *Social Security (Administration) Act 1999*, a decision made for the purposes of section 513A, or section 900, of the *Social Security Act 1991* as continued in force for the purposes of this item has effect as if it were a decision of an officer under the social security law.

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**21 Provision of TFNs in certain circumstances under *Social Security Act 1991* taken to be provision under Family Assistance Administration Act**

If the tax file number of an individual has been provided to the Secretary:

- (a) by the individual; or
- (b) by the partner of the individual; or
- (c) by the Commissioner of Taxation on the authority of the individual;

under a provision of the *Social Security Act 1991* for a purpose related to a claim for, or to entitlement to, family allowance, family tax payment or parenting payment in the nature of non-benefit PP (partnered), that tax file number is taken, for the purposes of subsection 154A(1) of the Family Assistance Administration Act as amended by this Act, to have been so provided under a provision of that Act as so amended for the purposes of that Act as so amended.

**22 Saving provision—Part A rate of family tax benefit for families with children not subject to family allowance income test**

- (1) This item applies to an individual who, immediately before 1 July 2000:
  - (a) was receiving family allowance under the *Social Security Act 1991* in respect of a child; and
  - (b) by virtue of the operation of subclause 52(2) or 53(2) of Schedule 1A to that Act—did not have to satisfy the requirements of paragraph 838(1)(c) of that Act in order to be qualified for family allowance for that child; and
  - (c) was also receiving either carer allowance or double orphan pension under that Act in respect of that child.
- (2) If, on or after 1 July 2000, an individual to whom this item applies has at least one FTB child in relation to whom the individual continues to receive either carer allowance or double orphan pension under the *Social Security Act 1991*, the Part A rate of family tax benefit payable under the Family Assistance Act as amended by this Act to the individual from time to time on or after that date is a rate equal to:

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- (a) unless paragraph (b) applies—the Part A rate of family tax benefit that would be payable to the individual under that Act as so amended; or
  - (b) if the rate referred to in paragraph (a) is less than the rate (the ***saved rate***) that would have been the individual’s minimum family allowance rate under the *Social Security Act 1991* immediately before 1 July 2000 if that rate were worked out having regard only to those FTB children of the individual in respect of whom the individual continues to receive either carer allowance or double orphan pension under that Act—the saved rate.
- (3) If, at any time, an individual begins to receive a Part A rate of family tax benefit calculated in accordance with paragraph (2)(a), the person ceases, with effect from that time, to have any entitlement, at any time thereafter, to a Part A rate of family tax benefit at the saved rate.

## **Schedule 6—Transitional provisions associated with the establishment of a scheme for the payment of child care benefit**

### **1 Definitions**

In this Schedule, unless the contrary intention appears:

***approved child care service*** has the meaning given in subsection 3(1) of the Family Assistance Administration Act.

***childcare assistance*** means fee reductions made in respect of care provided before:

- (a) 1 July 2000; or
- (b) on or after 1 July 2000, as provided for in this Schedule;

in compliance with:

- (c) the fee relief guidelines; or
- (d) a Commonwealth program, administered by the Commonwealth Department of Family and Community Services or the Commonwealth Services Delivery Agency, that provided for fee reductions, generally known as “childcare assistance” or “fee relief”.

***childcare assistance agreement*** means an agreement, to which the Commonwealth is a party:

- (a) entered into under section 20 of the *Child Care Act 1972*; or
- (b) any other agreement, not being an agreement entered into under that Act;

that is made to provide grants to reimburse the costs of fee reductions.

***childcare assistance scheme*** means the Commonwealth program under which childcare assistance is paid.

***child care rebate*** means child care rebate payable under the *Childcare Rebate Act 1993*.

***data collection form*** means a written request to an individual from the Secretary for information relating to matters associated with the establishment of a scheme for payment of child care benefit.



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**family allowance** means family allowance payable under the *Social Security Act 1991*.

**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** has the same meaning as in subsection 3(1) of the Family Assistance Administration Act.

**fee relief guidelines** means the Childcare Assistance (Fee Relief) Guidelines made under section 12A of the *Child Care Act 1972* as in force on 30 June 2000.

**Secretary**, in relation to an act or thing done, or a decision or determination made, under particular legislation, means the Secretary of the Department administered by the Minister administering that legislation.

## **2 Special rules relating to individual entitled to childcare assistance before 1 July 2000**

(1) If, before 1 July 2000:

- (a) a decision has been made in respect of an individual and a child with the effect that the individual is entitled to childcare assistance in respect of the child; and
- (b) the individual has returned a completed data collection form to the Secretary by the date specified in the form;

then:

- (c) section 42 of the Family Assistance Act as amended by this Act and in force on 1 July 2000, is treated as being in force when the completed data collection form was returned; and
- (d) the individual is taken to be conditionally eligible under that section, as so in force, at the time that the form was returned.

(2) If:

- (a) determinations of conditional eligibility, CCB %, a weekly limit of hours and schooling %, would, apart from this subitem, come into force on 1 July 2000 in respect of the individual and the child; and
- (b) the individual has not remained entitled to childcare assistance in respect of the child for the period commencing

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on the day the data collection form is returned to the Secretary and ending on 30 June 2000;

the determinations do not come into force on 1 July 2000.

Note: Determinations of conditional eligibility, a weekly limit of hours, CCB % and schooling % are made under sections 50F, 50H, 50J and 50K respectively of the Family Assistance Administration Act as amended by this Act and in force on 1 July 2000.

(3) If:

- (a) a requirement has been imposed before 1 July 2000 under the childcare assistance scheme in respect of the child of the individual; and
- (b) the requirement is that the child comply with the immunisation requirement; and
- (c) the child does not meet the requirement by 1 July 2000; and
- (d) immediately before 1 July 2000, less than 63 days have elapsed since the requirement was imposed;

then, for the purposes of the Family Assistance Administration Act as amended by this Act and the Family Assistance Act as so amended:

- (e) section 57E of the Family Assistance Administration Act as so amended, and paragraph 42(1)(c) of the Family Assistance Act as so amended, are treated as having been in force when the requirement was imposed; and
- (f) the requirement is taken to have been imposed, at the time when it was imposed, under section 57E of the Family Assistance Administration Act as so amended and as so in force; and
- (g) the requirement is taken to have been imposed, at the time when it was imposed, for the purposes of paragraph 42(1)(c) of the Family Assistance Act as so amended and as so in force.

(4) If, immediately before 1 July 2000, the child is meeting the immunisation requirements set out in the childcare assistance scheme, then, on 1 July 2000, the child is taken to meet the immunisation requirements in section 6 of the Family Assistance Act, as amended by this Act and in force on that day.

### **3 Special rules if individual claiming child care rebate and receiving family allowance returns data collection form**

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(1) If:

- (a) an individual makes a claim for childcare rebate in respect of a child within the period commencing on 1 January 1998 and ending on 30 June 2000; and
- (b) immediately before 1 July 2000, the individual is receiving family allowance in respect of the child; and
- (c) the individual returns a completed data collection form to the Secretary by the date specified in the form;

then, for the purposes of the Family Assistance Administration Act as amended by this Act and the Family Assistance Act as so amended:

- (d) paragraph 49B(a) of the Family Assistance Administration Act, as so amended is treated as being in force when the completed data collection form is returned; and
- (e) the individual is taken to have made an effective claim under that paragraph, as so in force, at the time that the form was returned.

(2) If, immediately before 1 July 2000, the child is meeting the immunisation requirements set out in the *Childcare Rebate Act 1993*, then, on 1 July 2000, the child is taken to meet the immunisation requirements in section 6 of the Family Assistance Act as amended by this Act and in force on that day.

#### **4 Individuals may make a claim for child care benefit by fee reduction before 1 July 2000**

If an individual makes a claim for child care benefit by fee reduction before 1 July 2000, then, for the purposes of the Family Assistance Administration Act as amended by this Act and the Family Assistance Act as so amended:

- (a) paragraph 49B(a) of the Family Assistance Administration Act, as so amended is treated as being in force when the claim is made; and
- (b) the claim is taken to have been made, at the time that it was made, under that paragraph of that Act as so amended and in force.

#### **5 Minimum CCB % if individual objects to use of tax file number given previously**

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- (1) This item applies to an individual referred to in subitems 2(1) and 3(1).
- (2) If:
- (a) the tax file number of an individual to which this item applies has been provided to the Secretary:
    - (i) by the individual; or
    - (ii) by the partner of the individual; or
    - (iii) by the Commissioner of Taxation on the authority of the individual;under:
    - (iv) a provision of the *Social Security Act 1991* for a purpose related to a claim for, or entitlement to, family allowance; or
    - (v) the childcare assistance scheme for a purpose related to a claim for, or entitlement to, childcare assistance; and
  - (b) the individual returns to the Secretary a completed data collection form by the date specified in the form; and
  - (c) in that form, the individual objects to the use of the tax file number previously provided to the Secretary;
- a determination of CCB % under section 50J of the Family Assistance Administration Act as amended by this Act and that would come into force on 1 July 2000 in respect of the individual, is to be calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %.

## **6 Special rules relating to status of a child**

- (1) If:
- (a) immediately before 1 July 2000, a decision is in force under the childcare assistance scheme that a child is taken to be a dependent child; and
  - (b) either:
    - (i) under item 2, an individual is taken to be conditionally eligible for child care benefit by fee reduction in respect of the child; or
    - (ii) under item 3, an individual is taken to have made an effective claim for child care benefit by fee reduction in respect of the child; or

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- (iii) under item 4, an individual makes a claim for child care benefit by fee reduction in respect of the child;

then, for the purposes of the Family Assistance Administration Act as amended by this Act and the Family Assistance Act as so amended:

- (c) the Family Assistance Act as so amended is treated as having been in force when the decision under paragraph (a) was made; and
- (d) the decision that the child is taken to be a dependent child is taken to have been a determination that the child is an FTB child of the individual made, at the time referred to in subitem (2), under subsection 42(2) of the Family Assistance Act as so amended and in force.

- (2) The determination referred to in paragraph (1)(d) is taken to have been made on:

- (a) in the case of subparagraph (b)(i)—the day the individual is taken to be conditionally eligible immediately before the time the individual is taken to be so conditionally eligible; and
- (b) in the case of subparagraph (b)(ii)—the day the effective claim is taken to have been made; and
- (c) in the case of subparagraph (b)(iii)—the day the claim is made.

## **7 Special rules relating to residence**

- (1) If:

- (a) immediately before 1 July 2000, a decision is in force under the childcare assistance scheme that an individual is taken to be a resident for childcare assistance purposes with effect that the individual is a resident on 1 July 2000; and
- (b) either:
- (i) under item 2, the individual is taken to be conditionally eligible for child care benefit by fee reduction; or
- (ii) under item 3, the individual is taken to have made an effective claim for child care benefit by fee reduction;  
or
- (iii) under item 4, an individual makes a claim for child care benefit by fee reduction;

then, for the purposes of the Family Assistance Administration Act as amended by this Act and the Family Assistance Act as so amended:

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- (c) the Family Assistance Act as so amended is treated as having been in force when the decision under paragraph (a) was made; and
  - (d) the decision that the individual is a resident is taken to have been a determination made, at the time referred to in subitem (2), under section 8 of the Family Assistance Act as so amended and in force.
- (2) The determination is taken to have been made on:
  - (a) in the case of subparagraph (b)(i)—the day the individual is taken to be conditionally eligible, immediately before the time the individual is taken to be so conditionally eligible; and
  - (b) in the case of subparagraph (b)(ii)—the day the effective claim is taken to have been made; and
  - (c) in the case of subparagraph (b)(iii)—the day the claim is made.

## **8 Special rules relating to tax file numbers provided for another purpose**

If:

- (a) the tax file number of an individual has been provided to the Secretary:
  - (i) by the individual; or
  - (ii) by the partner of the individual; or
  - (iii) by the Commissioner of Taxation on the authority of the individual;
- under:
  - (iv) a provision of the *Social Security Act 1991* for a purpose related to a claim for, or entitlement to, family allowance; or
  - (v) the childcare assistance scheme; and
- (b) the individual returns to the Secretary a completed data collection form by the date specified in the form; and
- (c) in that form, the individual does not object to the use of the tax file number previously so provided to the Secretary;

that tax file number is taken to have been provided for the purposes of section 50B of the Family Assistance Administration Act, as amended by this Act and in force on 1 July 2000.

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## **9 Special rules relating to TFN requirements**

(1) If:

- (a) an individual has been requested, before 1 July 2000, under section 75 of the *Social Security (Administration) Act 1999* or under the childcare assistance scheme, to provide a tax file number in relation to a claim for, or the receipt of, family allowance or childcare assistance; and
- (b) the individual has not, before that date, provided that tax file number; and
- (c) immediately before 1 July 2000, less than 28 days have elapsed since the request to provide that number;

then, for the purposes of the Family Assistance Administration Act as amended by this Act and the Family Assistance Act as so amended:

- (d) the Family Assistance Act as so amended is treated as having been in force when the request was made; and
- (e) the request is taken to have been made, at the time when it was made, under section 57B of the Family Assistance Act as so amended and in force.

(2) If, under a decision made under the childcare assistance scheme, an individual has been exempted, before 1 July 2000, from having to meet the tax file number requirements of the scheme, then, for the purposes of the Family Assistance Administration Act, as amended by this Act:

- (a) that Act as so amended is treated as having been in force when the decision that the individual is exempt was made; and
- (b) the decision is taken to have been made, at the time the exemption under the childcare assistance scheme was given, under subsection 57B(6) of that Act as so amended and in force.

## **10 Special rules relating to a childcare assistance agreement in force immediately before 1 July 2000**

*Agreement to which this item relates*

(1) This item applies to a childcare assistance agreement that was in force immediately before 1 July 2000.

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*Agreement ceases to operate for grants for fee reductions after 1 July 2000 except in certain circumstances*

- (2) Except in the limited circumstances set out in subitem (3) or (4), on and after 1 July 2000, an agreement to which this item applies does not operate, in respect of a grant to reimburse the costs of fee reductions, in relation to care provided on or after 1 July 2000.

*Matters in respect of which agreement continues to operate*

- (3) An agreement to which this item applies does operate, in respect of a grant to reimburse the costs of fee reductions, in relation to a session of care that started before 1 July 2000 and continued on that date.

Note 1: Item 17 continues access to fee reductions under the childcare assistance scheme for care provided during a session of care that started immediately before 1 July 2000 and continued on that date.

Note 2: In respect of care provided on 1 July 2000, this provision continues the agreement and, in particular, continues the obligations and responsibilities imposed under the agreement, in relation to that care.

- (4) An agreement to which this item applies does operate, in respect of a grant to reimburse the costs of fee reductions, in relation to care provided on or after 1 July 2000, if the care is provided by an outside school hours care service during the period of a school vacation that starts before 1 July 2000 and continues on and after that day.

Note 1: Item 18 continues access to fee reductions under the childcare assistance scheme for vacation care provided on and after 1 July 2000 if the vacation started before 1 July 2000.

Note 2: In respect of care provided on and after 1 July 2000, this provision continues the agreement and, in particular, continues the obligations and responsibilities imposed under the agreement, in relation to that care.

- (5) On and after 1 July 2000, an agreement to which this item applies does operate, in respect of a grant to reimburse the costs of fee reductions, in relation to care provided before 1 July 2000.

Note: In respect of care provided before 1 July 2000, this provision continues the agreement and, in particular, continues the obligations and responsibilities imposed under the agreement, in relation to that care.

- (6) On and after 1 July 2000, an agreement to which this item applies operates for the purposes of other grants (if any) provided for in the agreement.



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*Commonwealth under no obligation to make further grants under agreement*

- (7) The operation of an agreement to which this item applies is limited in that the Commonwealth is under no obligation, on or after 1 July 2000, to make any further grants under the agreement to reimburse the costs of fee reductions.

*Child Care Act, guidelines etc. to be treated as in force*

- (8) For the purposes of an agreement to which this item applies in so far as it relates to a grant to reimburse the costs of fee reductions, in relation to care provided as mentioned in subitems (3), (4) and (5):
- (a) on and after 1 July 2000, the *Child Care Act 1972* is treated as being in force as if the amendments made by Schedule 3 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999* had not been made; and
  - (b) if:
    - (i) a handbook, guidelines or other document that relates to fee reductions created by a Commonwealth Department with the responsibility for administering the agreement is referred to in the agreement; and
    - (ii) the handbook, guidelines or other document operates on 30 June 2000;the handbook, guidelines or other document is treated as operating on and after 1 July 2000.

**11 Childcare assistance agreement services to become approved child care services under section 195 of the Family Assistance Administration Act**

*Long day care services*

- (1) If:
- (a) a childcare assistance agreement is in force in respect of a long day care service immediately before 1 July 2000; and
  - (b) the service is not, immediately before 1 July 2000, subject to a suspension under paragraph 4E(1)(d) of the *Child Care Act 1972*;

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the service is treated as being an approved centre based long day care service under section 195 of the Family Assistance Administration Act as amended by this Act with effect from 1 July 2000.

*Family day care services*

- (2) If a childcare assistance agreement is in force in respect of a family day care service immediately before 1 July 2000, the service is treated as being an approved family day care service under section 195 of the Family Assistance Administration Act as amended by this Act with effect from 1 July 2000.

*Occasional care services*

- (3) If a childcare assistance agreement is in force in respect of an occasional care service immediately before 1 July 2000, the service is treated as being an approved occasional care service under section 195 of the Family Assistance Administration Act as amended by this Act with effect from 1 July 2000.

*Outside school hours care services*

- (4) If a childcare assistance agreement is in force in respect of an outside school hours care service immediately before 1 July 2000, the service is treated as being an approved outside school hours care service under section 195 of the Family Assistance Administration Act as amended by this Act with effect from 1 July 2000.

*Requirement of subsection 195(3) of the Family Assistance Administration Act need not be complied with*

- (5) For an approved child care service referred to in subitems (1) to (4) (inclusive), the Secretary does not have to comply with the requirement in subsection 195(3) of the Family Assistance Administration Act as amended by this Act to give a certificate in respect of the service.

*If long day care services subject to a sanction (other than suspension) on 30 June 2000, sanction carries over to child care benefit scheme*

- (6) If a long day care service is, immediately before 1 July 2000, subject to a sanction, other than suspension, under section 4E of the *Child Care Act 1972*, the service is treated, on and after 1 July 2000, as being

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subject to the sanction under section 200 of the Family Assistance Administration Act as amended by this Act .

## **12 Special condition of continuing approval of approved child care services referred to in item 11**

If:

- (a) a service is treated, under item 11, as an approved child care service; and
- (b) item 10 applies to an agreement in respect of the service;

it is a condition for the continued approval of the approved child care service under section 195 of the Family Assistance Administration Act, as amended by this Act and in force on 1 July 2000, that the service not contravene an obligation imposed on the service under the agreement in respect of a grant to reimburse the costs of fee reductions, in relation to care mentioned in subitems 10(3), (4) and (5).

## **13 Debts under childcare assistance agreements to be recoverable under the Family Assistance Administration Act**

(1) If:

- (a) an amount (the *debt*), whether described as a debt or not, is to be repaid:
  - (i) under a childcare assistance agreement to which item 10 applies; or
  - (ii) under section 20B of the *Child Care Act 1972* as in force immediately before 1 July 2000 in respect of an advance on account of a grant to reimburse the costs of fee reductions made for children; and
- (b) the debt relates to a grant to reimburse the costs of fee reductions for care mentioned in subitem (10)(3), (4) or (5);

the debt, whether it arises before, or on or after, 1 July 2000 is recoverable on or after 1 July 2000 under subsection 82(2) of the Family Assistance Administration Act as amended by this Act and in force on 1 July 2000.

(2) If the debt has been partially recovered under the childcare assistance scheme before 1 July 2000, the balance of the debt may be recovered under subsection 82(2) of the Family Assistance Administration Act as amended by this Act and in force on and after 1 July 2000.

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#### **14 Minister may terminate childcare assistance agreements**

(1) If:

- (a) a childcare assistance agreement was in force immediately before 1 July 2000; and
- (b) the agreement relates solely to a grant to reimburse the costs of fee reductions;

the Minister may, on or after 1 July 2000, determine, in writing, that the agreement is ended from a date specified in the determination.

(2) The determination has effect accordingly.

#### **15 Old sanctions to be taken into account by Secretary when considering applications under section 194 of the Family Assistance Administration Act**

If:

- (a) a person applies under section 194 of the Family Assistance Administration Act as amended by this Act for approval of a child care service as an approved child care service for the purposes of the family assistance law; and
- (b) the person, when operating a child care service under the childcare assistance scheme, was subject to sanctions in respect of the service;

the Secretary may refuse to approve the service under subsection 195(2) of that Act as amended by this Act.

#### **16 Special rules relating to claims for childcare assistance**

*Claims for childcare assistance that are undetermined as at 1 July 2000*

(1) If:

- (a) a person lodged a claim for childcare assistance in respect of care provided before 1 July 2000; and
- (b) that claim was not determined before that date;

the claim is to be determined after 1 July 2000 under the childcare assistance scheme as in force immediately before 1 July 2000 as if the scheme, as so in force, had continued in force.

*Claims lodged after 1 July 2000*

- (2) Despite the termination of the childcare assistance scheme on 1 July 2000, a person may lodge a claim for childcare assistance before 8 July 2000 if the claim relates to care provided no more than 7 days before the claim is lodged. The claim is to be determined after 1 July 2000 under the childcare assistance scheme as in force immediately before 1 July 2000 as if the scheme, as so in force, had continued in force.

**17 Special rules relating to sessions of care**

If a session of care, within the meaning of the childcare assistance scheme, provided by a child care service starts before 1 July 2000 and continues on 1 July 2000, a claim for childcare assistance in respect of the session is to be determined under the childcare assistance scheme as in force immediately before 1 July 2000 as if the scheme, as so in force, had continued in force.

**18 Special rules relating to vacation care**

If a period of vacation care, within the meaning of the childcare assistance scheme, provided by a child care service starts before 1 July 2000 and continues on and after 1 July 2000, a claim for childcare assistance in respect of this care is to be determined under the childcare assistance scheme as in force immediately before 1 July 2000 as if the scheme, as so in force, had continued in force.

**19 Special rules relating to registered carers under section 49 of the Childcare Rebate Act**

*Most registered carers to be treated as registered carers under the child care benefits scheme*

- (1) If:
- (a) an individual was a registered carer under section 49 of the *Childcare Rebate Act 1993* immediately before 1 July 2000; and
  - (b) the individual did not do any of the following things immediately before 1 July 2000:
    - (i) operate a child care service that was the subject of a childcare assistance agreement;
    - (ii) operate a child care service that was receiving financial assistance from the Commonwealth in connection with
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its operational costs, where the provision of that assistance is administered by the Commonwealth Department of Family and Community Services;

- (iii) provide child care under a contract with a family day care service that was the subject of a childcare assistance agreement;

the individual is to be treated as being approved as a registered carer under section 210 of the Family Assistance Administration Act, as amended by this Act and in force on 1 July 2000, with effect from that date.

*Applications for registration as a carer under section 49 of the Childcare Rebate Act that are undetermined as at 1 July 2000*

(2) If:

- (a) a person or body lodged an application for registration as a carer under section 49 of the *Childcare Rebate Act 1993* before 1 July 2000; and  
(b) that application was not determined before that date;

then:

- (c) the application is to be determined under the *Childcare Rebate Act 1993* as in force before 1 July 2000 as if that Act, as so in force, had continued in force; and  
(d) if the registration (if any) relates to a person who is not an individual, the registration remains in force only in relation to care provided before 1 July 2000, or on or after 1 July 2000 as mentioned in subitems 20(3) and (4); and  
(e) for the purposes of subitem (1), if the registration (if any) relates to a person who is an individual, the individual is to be treated as being a registered carer before 1 July 2000.

*Applications for registration as a carer under section 49 of the Childcare Rebate Act lodged after 1 July 2000*

- (3) Despite the repeal of the *Childcare Rebate Act 1993* on 1 July 2000, a person or body may apply, on or after 1 July 2000 and before 1 January 2001, for registration as a carer under section 49 of that Act if the application relates to care provided as mentioned in subitem 20(2), (3) or (4). The application is to be determined under the *Childcare Rebate Act 1993* as in force before 1 July 2000 as if the Act, as so in force, had continued in force.
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## **20 Special rules relating to claims for child care rebate**

### *Claims for child care rebate that are undetermined as at 1 July 2000*

- (1) If:
- (a) a person lodged a claim for child care rebate before 1 July 2000; and
  - (b) that claim was not determined before that date;
- the claim is to be determined under the *Childcare Rebate Act 1993* as in force before 1 July 2000 as if the Act, as so in force, had continued in force.

### *Claims for child care rebate made after 1 July 2000 for care provided before 1 July 2000*

- (2) Despite the repeal of the *Childcare Rebate Act 1993* on 1 July 2000, a person may lodge a claim for child care rebate on or after 1 July 2000 and before 1 January 2001 if the claim relates to care provided during a period commencing 2 years before the claim was lodged and ending on 30 June 2000. The claim is to be determined under the *Childcare Rebate Act 1993* as in force before 1 July 2000 as if the Act, as so in force, had continued in force.
- (3) If a session of care provided by a child care service starts before 1 July 2000 and continues on 1 July 2000, a claim for child care rebate in respect of the session is to be determined under the *Childcare Rebate Act 1993* as in force immediately before 1 July 2000 as if the Act, as so in force, had continued in force.
- (4) If a period of vacation care provided by an outside school hours care service starts before 1 July 2000 and continues on and after 1 July 2000, a claim for child care rebate in respect of this care is to be determined under the *Childcare Rebate Act 1993* as in force immediately before 1 July 2000 as if the Act, as so in force, had continued in force.

## **21 Special rules relating to registration of families**

### *Applications for registration of a family under section 19 of the Childcare Rebate Act that are undetermined as at 1 July 2000*

- (1) If:
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- (a) an individual lodged an application for registration of a family under section 19 of the *Childcare Rebate Act 1993* before 1 July 2000; and
  - (b) that application was not determined before that date;
- the application is to be determined under the *Childcare Rebate Act 1993*, as in force before 1 July 2000, as if that Act, as so in force, had continued in force.

*Applications for registration of a family under section 19 of the Childcare Rebate Act lodged after 1 July 2000*

- (2) Despite the repeal of the *Childcare Rebate Act 1993* on 1 July 2000, an individual may apply, on or after 1 July 2000 and before 1 January 2001, for a family to be registered under section 19 of that Act if the application relates to care provided as mentioned in subitem 20(2), (3) or (4). The application is to be determined under the *Childcare Rebate Act 1993* as in force before 1 July 2000 as if the Act, as so in force, had continued in force.

**22 Health Insurance Commission's functions and powers in relation to child care rebate to continue for certain matters**

- (1) The Health Insurance Commission must deal with the following matters:
  - (a) applications referred to in item 19;
  - (b) claims referred to in item 20;
  - (c) applications referred to in item 21;
  - (d) matters arising in respect of those applications and claims (for example, applications for review);under the *Health Insurance Commission Act 1973* and the *Childcare Rebate Act 1993* as if the following amendments to those Acts had not occurred:
  - (e) the amendments of the *Health Insurance Commission Act 1973* by Schedule 8 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*;
  - (f) the repeal of the *Childcare Rebate Act 1993*.
- (2) In respect of the Commission's powers under subitem (1), the Commission may, under subsection 55(3) of the *Childcare Rebate Act*



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1993 as continued in force, extend the period in which an application may be made for reconsideration of a decision listed in section 53 of that Act, but only until 30 June 2001.

## **23 Other transitional matters may be provided for in regulations**

The Governor-General may make regulations, not inconsistent with this Schedule, the Family Assistance Administration Act and the Family Assistance Act prescribing other transitional matters, apart from transitional matters provided for in this Schedule, that are necessary or convenient for carrying out or giving effect to the introduction of child care benefit under the family assistance law.

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*[Minister's second reading speech made in—  
House of Representatives on 9 March 2000  
Senate on 5 April 2000]*

(20/00)

