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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY ASSISTANCE LEGISLATION AMENDMENT (EARLY CHILDHOOD EDUCATION AND CARE CORONAVIRUS RESPONSE AND OTHER MEASURES) BILL 2021

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education and Youth, the Honourable Alan Tudge MP)

FAMILY ASSISTANCE LEGISLATION AMENDMENT (EARLY CHILDHOOD EDUCATION AND CARE CORONAVIRUS RESPONSE AND OTHER MEASURES) BILL 2021

OUTLINE

The purpose of the Family Assistance Legislation Amendment (Early Childhood Education and Care Coronavirus Response and Other Measures) Bill 2021 (the Bill) is to respond to the impacts of the COVID-19 pandemic on the early childhood education and care (ECEC) sector and families, by expanding the circumstances in which the Commonwealth can pay business continuity payments (BCPs) to approved child care providers, ameliorating the child care subsidy (CCS) debt consequences of tax return lodgement deadlines on families, and supporting the ECEC Relief Package.

To extend the range of strategies available to the Government to respond to emergencies and disasters that adversely affect the delivery of child care to children of essential workers and others, the Bill will expand the circumstances in which business continuity payments (BCPs) can be paid to approved child care providers.

Amendments to the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act) in Part 1 of Schedule 1 to the Bill allow the Secretary to make payments of BCPs where a child care service has been adversely affected by an emergency or disaster that has been declared for the purposes of payment of Disaster Recovery Allowance or Australian Government Disaster Recovery Payments, or that has been specified in the *Child Care Subsidy Minister's Rules 2017* (Minister's Rules). The Minister's Rules will be able to specify any additional requirements relating to those emergency BCPs, including whether CCS is or is not payable in addition to the BCPs, the period during which the BCPs are payable, and the way in which the BCPs are calculated.

The amendments in Part 7 of Schedule 1 to the Bill will allow the amount of CCS that an individual was entitled to for a financial (income) year to be reconciled by reference to their adjusted taxable income (ATI) for that year, where they finally have their ATI assessed after the 'second deadline' of that year (normally, 2 years after the end of the relevant income year). Currently, this reconciliation process can only occur before the second deadline, and if it is not done by that time, the individual is taken never to have been entitled to CCS for the relevant income year – resulting in the individual owing a debt for the entire year's worth of CCS.

This post-second deadline reconciliation process will enable the individual's debt to be reduced, including to nil, although it will not entitle the individual to any additional payments of CCS for the relevant income year.

To address the threat to the ECEC sector posed by the COVID-19 pandemic, the Government instituted an emergency relief payments scheme under the ECEC Relief Package in place of the normal CCS and additional child care subsidy (ACCS). The emergency relief payments scheme operated from 6 April to 12 July 2020. Payments were paid as BCPs under Division 6 of Part 8A of the Family Assistance Administration Act, and during this period no CCS or ACCS was payable.

Payment of CCS and ACCS resumed from 13 July 2020, and the Government put in place additional temporary measures to provide additional support to the ECEC sector and assist families to access affordable child care.

The provisions in Part 6 of Schedule 1 will support the operation of the ECEC Relief Package, by:

- ensuring that BCPs paid during the period of the package (6 April to 12 July 2020 – the "relevant period") do not need to be automatically recovered from approved providers by setting them off against future CCS payments to those providers;

- allowing the Minister's Rules to specify circumstances in which BCPs paid to providers during the relevant period are to be debts (for example, where they were overpayments or paid to providers who were ineligible);

- ensuring that the relevant period does not count towards the 14-week period of non-attendance after which the enrolment of a child at a service automatically ceases; and

- relieving approved providers of the obligation under the Family Assistance Administration Act to provide weekly session reports during the relevant period.

Finally, the Bill will make minor amendments to the family assistance law to:

- clarify that debts are raised against providers whose approvals are cancelled and who are subsequently paid amounts of CCS (fee reduction amounts) during external review of the cancellation decisions that are ultimately unsuccessful;

- clarify that all decisions under the family assistance law in relation to approved providers are subject to single review by the Administrative Appeals Tribunal (AAT);

- enable the Secretary to delegate their powers to administer child care grant agreements to the departments administering the Australian Government's Grants Hubs;

- address minor drafting errors in amendments made by the *Family Assistance Legislation Amendment (Improving Assistance for Vulnerable and Disadvantaged Families) Act 2020* that will commence on 1 July 2021; and

- enable the Secretary to back-date the start of child care provider approvals to a date before the provider made a valid application for approval, in special circumstances.

FINANCIAL IMPACT STATEMENT

The Bill expands the power to make BCPs for disasters and emergencies prescribed by Minister's Rules, which do not need to be offset against future CCS payments. It is not possible to quantify the financial impact of this expanded power as the parameters for future BCPs (e.g. amount, rate and period and eligible recipients) will be determined by future Minister's Rules (being a disallowable instrument).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

FAMILY ASSISTANCE LEGISLATION AMENDMENT (EARLY CHILDHOOD EDUCATION AND CARE CORONAVIRUS RESPONSE AND OTHER MEASURES) BILL 2021

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

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- clarify that debts are raised against providers whose approvals are cancelled and who are subsequently paid amounts of CCS (fee reduction amounts) during external review of the cancellation decisions that are ultimately unsuccessful;

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- enable the Secretary to delegate their powers to administer child care grant agreements to the departments administering the Australian Government's Grants Hubs;

- address minor drafting errors in amendments made by the *Family Assistance Legislation Amendment (Improving Assistance for Vulnerable and Disadvantaged Families) Act 2020* that will commence on 1 July 2021; and

- enable the Secretary to back-date the start of child care provider approvals to a date before the provider made a valid application for approval, in special circumstances.

Analysis of human rights implications

The rights of parents and children

Article 3 of the Convention on the Rights of the Child (CRC) recognises that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 19 of the CRC requires that appropriate measures are taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.

Early learning and child care play a vital role in the development of Australian children. Their preparation for school and access to this care is also one of the most effective early intervention strategies to break the cycle of poverty. The Bill promotes the rights of parents and children by allowing families to access affordable and quality child care in a range of circumstances, including when adversely affected by disaster or emergency.

Right to adequate standard of living

Article 27 of the CRC requires that State Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The Bill advances this right through amendments, such as those that support the operation of the ECEC Relief Package, that help ensure children have access to an adequate amount of child care to aid socialisation and development.

Conclusion

The Bill is compatible with human rights as the amendments in this Bill advance human rights under the CRC.

FAMILY ASSISTANCE LEGISLATION AMENDMENT (EARLY CHILDHOOD EDUCATION AND CARE CORONAVIRUS RESPONSE AND OTHER MEASURES) BILL 2021

NOTES ON CLAUSES

Clause 1 – Short title

This clause provides for the Act to be the *Family Assistance Legislation Amendment (Early Childhood Education and Care Coronavirus Response and Other Measures) Act 2021.*

Clause 2 – Commencement

The table in subclause 2(1) sets out when the Bill's provisions will commence. The Bill will commence on the day after it receives the Royal Assent, except:

- Part 4 of Schedule 1 will commence immediately after the commencement of items 1 to 6 of Schedule 1 to the *Family Assistance Legislation Amendment (Improving Assistance for Vulnerable and Disadvantaged Families) Act 2020* commence, on 1 July 2021; and
- Item 44 of Schedule 1 will be taken to have commenced on 1 July 2020.

Item 44 of Schedule 1 repeals and replaces a provision that renders individuals who do not meet certain requirements ineligible for CCS, with effect from 1 July 2020. The date for meeting those requirements has since been extended to 1 April 2021. The amendments made by item 44 therefore need to be made retrospective to continue certain individuals' entitlements to CCS until the new deadline. The retrospective commencement of item 44 is beneficial to those individuals.

A note to subclause 2(1) states that the table relates only to the provisions of the Act as originally enacted. It will not be amended to deal with any later amendments of the Act.

Subclause 2(2) provides that information in column 3 of the table at subclause 2(1) is not part of the Act and information may be inserted into column 3 or information in it may be edited in any published version of the Act.

Clause 3 – Schedules

This clause provides that any legislation that is specified in a schedule is amended or repealed as set out in the applicable items in the schedule and that any other item in a schedule has effect according to its terms.

ABBREVIATIONS USED IN THIS EXPLANATORY MEMORANDUM

AAT means the Administrative Appeals Tribunal.

ACCS means additional child care subsidy.

ATI means adjusted taxable income.

BCPs means business continuity payments.

CCS means child care subsidy.

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.*

FF(SP) Act means the *Financial Framework (Supplementary Powers) Act 1997*.

Improving Assistance for Vulnerable and Disadvantaged Families Act means the *Family Assistance Legislation Amendment (Improving Assistance for Vulnerable and Disadvantaged Families) Act 2020.*

Minister's Rules means the *Child Care Subsidy Minister's Rules 2017* (being the rules made by the Minister under subsection 85GB(1) of the Family Assistance Act).

PGPA Act means the *Public Governance, Performance and Accountability Act 2013*.

Schedule 1 - Amendments

DETAILED EXPLANATION

Part 1—Emergencies and disasters

A New Tax System (Family Assistance) Act 1999

Item 1 – Eligibility for CCS during periods of emergency or disaster

Item 1 inserts new subsection (2A) into section 85BA of the Family Assistance Act to clarify that Minister's Rules can be made for the purposes of subparagraph 85BA(1)(c)(iii) (circumstances in which sessions of care are provided that will not result in eligibility for CCS) to specify circumstances relating to an emergency or disaster (as defined in subsection 205C(2) of the Family Assistance Administration Act – see **item 17**).

This is so that during periods of, and in locations affected by, emergencies or disasters, it is open for the Minister's Rules to provide that individuals will not be eligible for CCS, and emergency BCPs under the new section 205C of the Family Assistance Administration Act can be substituted for CCS. The power is intended to complement the BCP provisions by allowing the Minister to decide whether CCS is to be paid concurrently with BCPs, or whether CCS will be suspended for the period of the emergency and disaster while BCPs are being paid.

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

Item 17 – Business continuity payments to providers adversely affected by an emergency or disaster

Item 17 adds new section 205C to the Family Assistance Administration Act to enable BCPs to be paid to a provider of an approved child care service where the Secretary is satisfied that service has been adversely affected by an emergency or disaster, and where this has caused a material adverse financial effect on the provider.

An ***emergency or disaster*** is an emergency or disaster prescribed by the Minister's Rules, a major disaster within the meaning of the *Social Security Act 1991* (during which Disaster Recovery Allowance may be payable) or a Part 2.23B major disaster within the meaning of the *Social Security Act 1991* (during which Australian Government Disaster Recovery Payments may be payable).

Payment of these emergency BCPs is discretionary, and section 205C provides that additional eligibility criteria (if any), the period for which the emergency BCPs are payable, and the amount of the BCPs (or the way in which they are calculated) will be set out in the Minister's Rules.

Item 6 – Overpayments of emergency BCPs to be debts

Typically, BCPs are not debts, but must be fully recovered from child care payments paid to providers when those payments recommence after a period during which BCPs were payable (see section 205B of the Act). BCPs only become debts of a provider when they

are not able to be recovered from subsequent child care payments to that provider, under the current section 71H of the Family Assistance Administration Act.

However, BCPs payable for emergencies or disasters under the new section 205C will not be offset against later payments to providers. In that case, it is important that where an amount of emergency BCPs is paid to a provider that exceeds the amount the provider was eligible for, the excess amount is a debt.

Consequently, **item 6** inserts a new subsection (1A) into section 71H to provide that the whole of part of an amount of BCP paid for a period of emergency or disaster paid under section 205C will become a debt if the provider is not eligible for the whole or a part of the BCP payment.

Item 14 – Periods of emergency or disaster not included when determining when a child's enrolment has ceased

Paragraph 200B(1)(b) of the Family Assistance Administration Act sets out when a child who is enrolled at an approved child care service (a requirement for eligibility for CCS) ceases to be enrolled. Subparagraph (iii) of that paragraph provides that a child automatically ceases to be enrolled 14 weeks after the last day that they attended care at the service.

Item 14 inserts a new subsection (1A) to section 200B to provide that the Minister's Rules may prescribe circumstances in which weeks during a period of emergency or disaster will not count towards the 14-week period mentioned in subparagraph 200B(1)(b)(iii). **Item 14** helps ensure that where children are unable to attend a service affected by an emergency or disaster for an extended period, they will be able to maintain their enrolment at their service and hence maintain eligibility for CCS.

Items 2 to 5, 7 to 13, 15 and 16 – Consequential amendments

Item 2 inserts a new signpost definition of ***emergency or disaster*** into subsection 3(1) of the Family Assistance Administration Act, pointing to the definition given by new subsection 205C(2) (see **item 17**).

Items 3, 4, 5, 7, 8, 11, 12 and 13 ensure that relevant provisions that refer to section 205A (Business continuity payments – reports not given) also refer to new section 205C (Business continuity payments – emergency or disaster), to ensure BCPs (whether in relation to a period when reports about children for whom care is provided have not been given, or periods of emergency or disaster) are treated consistently. However, BCPs paid under section 205C do not need to be offset against child care payments to the provider (see section 205B).

Items 9, 10 and 15 add the words '– reports not given' to references to section 205A to distinguish between BCPs paid under section 205A (which concerns BCPs where there is a requirement to report about children for whom care is provided and this requirement has not been met) and BCPs paid under new section 205C (which concerns BCPs in relation to providers adversely affected by emergency or disaster).

Item 16 repeals the heading of section 205B to clarify that the section, which concerns setting off BCPs against child care service payments, only applies to BCPs made under section 205A (and does not apply to BCPs made under section 205C for periods of emergency or disaster).

Part 2—AAT review

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

Items 20 and 21 – Debts arising during unsuccessful AAT proceedings

The Administrative Appeals Tribunal (AAT) is able to stay the operation of a decision under the family assistance law, pending the outcome of its review of that decision. If the AAT does so, but then subsequently affirms the original decision, section 73 of the Family Assistance Administration Act is intended to operate such that payments of CCS made during the period of the AAT's stay order become debts.

However, due to a drafting oversight, payments of amounts of CCS made to approved child care providers (as opposed to individuals) are not subject to section 73 – because they are, technically, not payments of CCS, but payments called "fee reduction amounts" (which are not captured by section 73).

In addition, the *Administrative Appeals Tribunal Act 1975* provides that when the AAT makes a stay order, after it makes its decision on review, the AAT's decision is also stayed until the person affected by the decision has had the opportunity to seek judicial review of the AAT's decision by the Federal Court.

This means that even after the AAT has affirmed an original decision that has cancelled a provider's approval, CCS (in the form of fee reduction amounts) can continue to be paid to the provider. Section 73 of the Family Assistance Administration Act also does not operate to make such payments debts.

Amounts of CCS paid to a provider (i.e. fee reduction amounts) for the duration of a multi-tier review process through the AAT and Federal Court can amount to hundreds of thousands or millions of dollars, and presently none of this is recoverable by the Commonwealth where the provider's appeals are unsuccessful. This is an unintended consequence of the limited scope of section 73 of the Family Assistance Administration Act as currently drafted.

Accordingly, **items 20 and 21** amend section 73 to ensure that it operates to raise debts against approved providers who have had their approvals cancelled, but then had the benefit of receiving payments of CCS (fee reduction amounts) while they have sought to seek review of those decisions, and been ultimately unsuccessful in those appeals.

Items 22 to 25 – Provider debt decisions to be subject to AAT single review

Decisions under Part 8 of the Family Assistance Administration Act in relation to the approval of providers (including decisions to refuse to approve, to suspend or cancel approval, to impose conditions etc.) are subject to AAT single review under Division 2 of Part 5 of the Act. That is, once those decisions have been subject to internal review, they are only subject to review by the AAT once before being appealable to the Federal Court.

However, decisions in relation to raising debts against approved providers are subject to both AAT first review and AAT second review, before being appealable to the Federal Court.

Again, this is an unintended outcome, and results in inconsistency of review processes for different decisions affecting approved providers. The process of AAT first review and AAT second review is intended to replicate previous arrangements under which most Centrelink decisions were first appealed to the Social Security Appeals Tribunal, before they would

then be reviewable by the AAT, i.e. a two-stage external merits review process. This was, and is, intended to assist in review of family assistance decisions affecting individuals, not businesses.

In order that all decisions under the family assistance law affecting providers are subject to a single tier of external merits review by the AAT, **items 22 to 25** amend the Family Assistance Administration Act to ensure that all decisions affecting approved providers, including debt decisions, are subject to single AAT review.

Item 22 repeals and replaces paragraph 111(2)(f) with a new paragraph that specifies 'a child care provider decision' (defined in subsection 138(4) – see **item 25**) as a decision that may only be reviewed once by the AAT. This ensures that all decisions under the family assistance law that affect providers are subject to a single tier of external merits review by the AAT.

Items 23 and 24 omit and substitute the reference to 'a decision made under Part 8 (approval of providers of child care services) in relation to a provider' with a reference to 'a child care provider decision', which includes decisions made under Part 8 in relation to a provider, as well as decisions made under Part 4 in relation to a debt of an approved provider (see **item 25**). **Item 23** ensures that providers may apply to the AAT for review of a child care provider decision made by the Secretary or authorised review officer. **Item 24** ensures that providers may apply to the AAT for review of a child care provider decision that is personally made by the Secretary, another agency head, the Chief Executive Centrelink or the Chief Executive Medicare.

Item 25 adds subsection (4) to section 138 to add a definition of ***child care provider decision***. A ***child care provider decision*** is a decision under Part 4 (overpayments and debt recovery) in relation to a debt of an approved provider, a decision under Part 8 (approval of provider) in relation to a provider and a decision under section 205C (business continuity payments – emergency or disaster).

Item 26 – Amendments apply prospectively

Item 26 is an application provision which provides that section 73, as in force immediately after this Part commences, applies in relation to amounts paid under the family assistance law on or after that commencement. **Item 26** also provides that sections 111 and 138, as in force immediately after this Part commences, apply in relation to decisions made on or after that commencement.

Items 18 and 19 – Consequential amendments

Item 18 inserts a new signpost definition of ***child care provider decision*** pointing to the definition in subsection 138(4) (see **item 25**).

Item 19 inserts "(the ***AAT Act***)" after "*Tribunal Act 1975*".

Part 3—Delegation of funding agreement powers

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

Items 27 to 29 – Secretary able to delegate power to enter into and administer child care funding agreements to Grants Hubs

Section 85GA of the Family Assistance Act empowers the Secretary to enter into, vary and administer written agreements under which the Commonwealth makes one or more grants of money for child care-related purposes. This power is analogous, but more limited in scope, to general powers of Secretaries (as 'accountable authorities') to enter into and administer grant agreements in section 23 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and section 32B of the *Financial Framework (Supplementary Powers) Act 2013* (FF(SP) Act). Secretaries are able to delegate their powers under those provisions to 'officials of non-corporate Commonwealth entities'.

The Australian Government has centralised grant administration in two 'Grants Hubs', the Community Grants Hub (which is administered by the Department of Social Services) and the Business Grants Hub (which is administered by the Department of Industry, Science, Energy and Resources). Where a grants program established by a portfolio department needs to be administered by a Grants Hub, it is necessary for the Secretary of that department to delegate their powers under section 23 of the PGPA Act or section 32D of the FF(SP) Act to the employees of the Department of Social Services or the Department of Industry, Science, Energy and Resources, as the case requires.

However, under section 221 of the Family Assistance Administration Act, the Secretary of the Department of Education, Skills and Employment is unable to delegate their power under section 85GA of the Assistance Act to employees of the Department of Social Services or the Department of Department of Industry, Science, Energy and Resources. This means that the Grants Hubs are not able to administer grants programs that rely on section 85GA as their source of authority.

Accordingly, **items 28 and 29** amend section 221 of the Family Assistance Administration Act to enable the Secretary to delegate his or her powers under section 85GA of the Family Assistance Act to an official of a non-corporate Commonwealth entity (within the meaning of the PGPA Act); and in exercising powers under a delegation, the delegate must comply with any directions of the Secretary.

Item 27 inserts into subsection 3(1) definitions of ***non-corporate Commonwealth entity*** and ***official,*** which have the same meaning as in the *Public Governance, Performance and Accountability Act 2013.*

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

The Improving Assistance for Vulnerable and Disadvantaged Families Act 2020 makes several amendments to the family assistance law with effect from 1 July 2021. However, there are some minor technical errors in those amendments that should be corrected prior to commencement.

A New Tax System (Family Assistance) Act 1999

Item 30 amends subsection 85CE(5C) to replace "12 months" with "52 weeks" to ensure subsection (5C) is consistent with subsections (5A) and (5B), as well as existing provisions in the Family Assistance Act which refer to "weeks" rather than "months".

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

Section 85CA of the Family Assistance Act sets out the requirements that must be met for an individual or an approved provider to be eligible for ACCS (child wellbeing) for a session of care provided to a child. One requirement is that either:

- a certificate given under section 85CB of the Family Assistance Act; or
- a determination made under section 85CE of the Family Assistance Act,

must be in effect in relation to the child for the week in which the session of care occurred.

Under section 85CB, a provider may give the Secretary a certificate if it considers a child under the care of its service is or was at risk of serious abuse or neglect on a day. Under section 204K, a provider who gives the Secretary a certificate under section 85CB must, no later than 6 weeks after a certificate takes effect, notify an appropriate State or Territory support agency that the provider considers the child is at risk. Failure to do so is a strict liability offence.

Amendments to section 85BA of the Family Assistance Act, due to commence on 1 July 2021, enable 85CB certificates to be backdated by up to 13 weeks, meaning it may not be practicable for the provider to give notice to a support agency within 6 weeks of the (backdated) certificate commencing.

Item 31 repeals subsection 204K(1) and replaces it with a new subsection (1) to ensure that when the date of effect of a certificate under section 85CB of the Family Assistance Act is back-dated more than 6 weeks by the Secretary, and the provider has not at that time given notice to an appropriate State or Territory body, the provider does not inadvertently commit an offence.

Part 5—Amendments relating to coronavirus response measures

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

Item 32 – Extension of first deadline for the 2018-19 income year

As part of the ECEC Relief Package, the Government decided to extend the first deadline for the 2018-19 income year to 31 March 2021 for all persons who had not met the reconciliation conditions by 30 June 2020. This has the effect of ensuring families' access to CCS is not impacted by their inability to lodge their tax returns during the COVID-19 pandemic. In order to do this, the Secretary of the Department of Education, Skills and Employment issued the *Child Care Subsidy (Extension of First Deadline) Instrument 2020*. However, the Secretary's power to extend deadlines is exercised for individuals on a case-by-case basis by Services Australia, and a general extension of the deadline for everyone is more appropriately placed in the primary legislation.

Consequently, **item 32** in Part 5 of Schedule 1 to the Bill amends section 103B of the Family Assistance Administration Act to expressly make the first deadline for the 2018-19 income year 31 March 2021.

Part 6—Arrangements relating to coronavirus response measures

Item 33 provides definitions for this Part. Namely, ***Family Assistance Administration Act*** means the *A New Tax System (Family Assistance) (Administration) Act 1999*, and ***relevant period*** means the period beginning on 6 April 2020 and ending on 12 July 2020. The relevant period is the period when the ECEC Relief Package was implemented to support child care providers and families.

Item 34 provides that the relevant period is not included in determining cessation of enrolment under subparagraph 200B(1)(b)(iii), which provides that a child ceases to be enrolled at a child care service 14 weeks after the child last attended a session of care at the service.

Item 35 provides that an approved provider is not required to provide reports under section 204B of the Family Assistance Administration Act for a week if the week occurred in the relevant period. **Item 35** also provides that the approved provider is taken to have been required to give the report for the purposes of subsection 205A(1).

Item 36 provides a mechanism to recover BCPs paid in relation to the relevant period in specified circumstances. Accordingly, **item 36** will enable the Minister to make rules, by legislative instrument, that will specify the circumstances in which a BCP is taken to be a debt under Part 4 of the Family Assistance Administration Act. It is intended that the Minister will amend the Minister's Rules to set out these circumstances. Such debts will then be managed in accordance with the usual processes for raising and recovering debts under the family assistance law.

Item 37 provides that BCPs made under section 205A in relation to a period within the relevant period do not need to be automatically recovered from approved providers by setting them off against future CCS payments to those providers. Currently, under section 205B of the Family Assistance Administration Act, where a provider receives BCPs, those BCPs must be recovered by setting the payment off against future payments of CCS and ACCS to the provider. However, BCPs paid under the ECEC Relief Package were paid as a complete alternative to CCS and ACCS during that period, and were not paid in place of CCS and ACCS that would otherwise be payable. Accordingly, a requirement to set off payments of BCPs against payments of CCS would defeat the Government's policy intention to support the recovery of the ECEC sector during this challenging period. This amendment ensures that the mandatory set off of BCPs paid during the relevant period does not apply.

Item 38 clarifies that paragraphs 8(1)(h) and (i), and section 47AA, of the Minister's Rules are, and always were, valid exercises of the power to make those rules. During the ECEC Relief Package, these provisions gave effect to measures to switch off eligibility for CCS and prevent providers from charging fees for care, in return for being paid BCPs.

Item 39 provides that if the operation of this Part acquires a person's property on other than just terms, the Commonwealth is liable to pay the person a reasonable amount of compensation.

Part 7—CCS reconciliation deadlines

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

Reconciliation of CCS entitlements

Child care subsidy is an income-tested entitlement; the amount of CCS that an individual is entitled to is dependent on their adjusted taxable income (ATI) for a financial (income) year (which includes the ATI of their partner/s).

CCS is paid during a year based on an individual's estimate of their ATI, and then when the individual and their partner/s have their ATI assessed after the end of that year, their entitlement is reviewed and adjustments made (either to pay them any shortfall or to raise a debt if they have been overpaid during the year).

This process is known as 'reconciliation'; and when an individual has had their ATI assessed they have 'met the reconciliation requirements'.

Because meeting the reconciliation requirements is essential to proper calculation of CCS entitlements, the family assistance law operates to motivate people to have their ATIs assessed promptly. If an individual fails to meet the reconciliation requirements for an income year within 12 months after the end of that income year (the 'first deadline'):

- the individual ceases to be entitled to CCS and ACCS going forward;
- all entitlement determinations of the individual to CCS or ACCS for weeks in the income year are reviewed and substituted for no entitlement determinations; and
- the individual incurs a debt in relation to all of the amounts of CCS and ACCS paid to the individual for those weeks, but the Secretary is not required to recover that debt until after the second deadline.

If the individual subsequently meets the reconciliation requirements for the income year within 24 months of the end of the income year (the 'second deadline'):

- the individual becomes entitled to CCS and ACCS going forward;
- all no entitlement determinations of the individual to CCS and ACCS for weeks in the income year are reviewed and substituted for determinations having regard to the individual's assessed or determined ATI; and
- the new determined amounts are compared against the amounts paid to the individual for the income year, and the difference is paid to the individual (if they were underpaid) or becomes a debt of the individual (if they were overpaid) recoverable in the usual way.

Currently, if an individual does not meet the reconciliation requirements for the income year before the second deadline for that income year – whether they meet those reconciliation requirements after the second deadline, or never meet those reconciliation requirements:

- the no entitlement determinations made after the first deadline stand, and cannot be reviewed; and
- the Secretary must commence recovery of the debt that arose because of those no entitlement determinations.

Items 41, 44, 45, and 48 to 50 – Reconciliation to occur when an individual meets the reconciliation requirements after the second deadline

The amendments in Part 7 of Schedule 1 to the Bill ameliorate the consequences of meeting the reconciliation requirements after the second deadline. If an individual meets the reconciliation requirements for an income year after the second deadline for that income year, all no entitlement determinations of the individual to CCS and ACCS for weeks in the income year are reviewed having regard to the individual's ATI, just as if the individual had met the reconciliation requirements between the first and second deadlines.

However, the individual will not be entitled to any more CCS and ACCS for the income year following this review than they were originally entitled to. Nevertheless, the review should result in the individual being entitled to more CCS and ACCS for the income year than they were under the no entitlement determinations, which will affect the debt that they now owe, and in some cases, will entitle them to a refund of some amount of the debt already recovered.

The substantive amendments to the Family Assistance Administration Act to give effect to this policy:

- remove references to the second deadline preventing review of CCS entitlement decisions (i.e. undergoing the reconciliation process) – **items 48 and 50**; and
- remove limits on an individual being able to meet the reconciliation requirements after the second deadline – **items 41 and 45**.

Item 49 inserts a new subsection (2A) into section 105D, which has the effect of limiting the amount of CCS that an individual can be entitled to for an income year when the individual meets the reconciliation requirements after the second deadline for that year.

Following review of all of the individual's entitlement determinations for the relevant income year (i.e. reconciliation), the total amount of CCS that the individual can be entitled to for the year cannot exceed the amount of CCS that they were originally entitled to under determinations made for that year (i.e. based on their estimated ATI), less the amount of CCS that was withheld from their child care providers during the year (the withholding amount as set out in subsection 67EB(3) of the Act).

Item 44 repeals and substitutes paragraph 67CD(10)(d) of the Family Assistance Administration Act, which sets out when an individual "meets the information requirements" in order to be entitled to CCS for a week. The current paragraph (d) provides that (amongst other things) an individual meets the information requirements if they have met the reconciliation requirements for the year that is two years before the year in which the week (for which entitlement is now being determined) occurs.

This paragraph does not accommodate the fact that an individual could meet the reconciliation requirements for the year that was two years ago, but not meet the reconciliation requirements for a year that was three or more years ago – which should still result in the individual not meeting the information requirements (and hence not being entitled to CCS for the current week).

The paragraph also does not accommodate the fact that the individual may have been given more than a year to meet the reconciliation requirements for a particular year, by the Secretary deciding to extend the individual's first deadline under subsection 103B(2) of the Act.

The amendment makes it clear that an individual meets the information requirements (and hence is entitled to CCS for the current week) if the individual met the reconciliation requirements for any year before the first deadline for that year has passed.

This item needs to commence retrospectively to 1 July 2020, as technically individuals who have not met the reconciliation requirements in relation to the 2018-19 income year ceased to meet the information requirements on 1 July 2020, even though the first deadline for 2018- 19 has been extended to 31 March 2021. The retrospective commencement will maintain those individuals' eligibility to CCS from 1 July 2020, and is therefore beneficial.

Items 40, 42, 43, 46 and 47 – Consequential amendments

Items 40, 42, 43, 46 and 47 are amendments to outlines and notes as a consequence of the substantive amendments noted above.

Item 51 – Reconciliation can occur after second deadline for the 2018-19 income year and later years

This measure will apply to individuals who meet the second deadline for the 2018-19 income year (30 June 2021), and thereafter (**item 51**).

Part 8—Provider applications and approvals

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

Item 52 – Date a provider approval takes effect

Item 52 amends subsection 194B(5) to enable, in special circumstances, the date of effect for a provider approval to be earlier than the day the application for provider approval was made.

Subsection 194B(5) of the Family Assistance Administration Act provides that the day a provider approval takes effect must not be earlier than the day the application was made. However, there are some cases in which it would be appropriate for the approval to take effect earlier than the day the application was made (that is, the day the application was made in compliance with subsection 194A(2)). These circumstances relate to instances where there is evidence that an applicant has delayed making or been unable to make an application through no fault of their own, such as because of technical errors with the Provider Entry Point, or because of incorrect information provided to the applicant by the department.

Item 53 – Effect of voluntary suspension under the National Law on provider approval

Under the Education and Care Services National Law (as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Vic.)) (**National Law**), approved providers may, upon request, have their provider or service approvals voluntarily suspended for a defined period. This suspension of approval allows the provider to cease operating one or more of its child care services for a period of time without being in breach of the requirements for approval under the National Law. These types of voluntary suspensions are commonly granted so that providers may carry out building improvements or other capital works on their premises.

To ensure consistency with the National Law, section 197AA was inserted into the Family Assistance Administration Act to allow provider or service approvals under the family assistance law to be voluntarily suspended. It was originally intended that providers that voluntarily suspended their approvals under the National Law would also request their approvals under the family assistance law to be voluntarily suspended under section 197AA of the Family Assistance Administration Act. However, providers do not always do this, and in these cases providers technically cease to comply with the condition of approval under the family assistance law to hold all approvals and licences required under State or Territory law to operate a child care service (see subsection 195A(1) of the Family Assistance Administration Act, by reference to paragraphs 194C(a) and 194D(b) of that Act).

Item 53 repeals subsection 197AB(2) so that a provider's approval under the Family Assistance Law is taken to suspended if the provider's approval under the National Law is voluntarily suspended. **Item 53** also repeals subsection 197AB(4) so that if an approved provider holds a service approval under the National Law, and that approval is voluntarily suspended under the National Law, the provider's approval is taken to be suspended under the family assistance law in relation to that service for the same period that the suspension under National Law is in effect.