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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE
BUDGET AND OTHER MEASURES) BILL 2008**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education the Honourable Julia Gillard MP)

FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE BUDGET AND OTHER MEASURES) BILL 2008

OUTLINE

Budget measures

Amendments are made to the family assistance law to give effect to the Budget 2008-09 measure to remove, from 7 July 2008, the minimum rate of child care benefit (CCB) for care provided to a child by an approved child care service, with the effect that an individual's rate may be reduced to nil.

Amendments are also made to make child care tax rebate (CCTR) available in respect of child care expenses incurred in a week by an individual or individual's partner if the individual who claims CCB for that care, is eligible but is not entitled to be paid CCB due to nil rate.

CCTR election commitments

The Bill gives effect to three measures related to CCTR announced by the Prime Minister as election commitments. The first measure increases, from 1 July 2008, the percentage of allowable out-of-pocket child care expenses that an individual can be paid as CCTR in an income year from 30 per cent to 50 per cent. The second measure increases the annual CCTR limit for a child from \$4,354 to \$7,500 starting from the income year 2008-09.

The third measure provides for CCTR to be paid quarterly to those individuals who have claimed CCB by fee reduction and either are receiving CCB as fee reductions or who would be receiving fee reductions but for nil rate. The quarterly payments will not be available to individuals claiming CCB for a past period.

The quarterly payments will be calculated after the end of a quarter, starting from the first quarter of 2008-09 and paid directly to eligible individuals. The total amount of quarterly payments made for an individual during an income year will be compared with the amount of the individual's CCTR entitlement for the year. If the amount received in quarterly payments is less than the entitlement amount for the income year, a top-up will be paid, if the amount received in quarterly payments is more than the entitlement amount for the income year, the difference will be a debt to be paid by the individual.

Debt recovery provisions

Further amendments are made to debt recovery provisions, clarifying the nature of family assistance amounts that can be set off against debts, the responsibility of an

approved child care service's operator for payment of the service's debt arising under the family assistance law and the circumstances in which a debt due by an approved child care service is created. Amendments are also made to ensure that CCB amounts, which are available only for recovery of CCB debts, are also available for recovery of CCTR debts.

New civil penalties scheme

The Bill will amend the Family Assistance Administration Act to establish a civil penalties scheme which will regulate approved child care services and former approved child care services, to ensure that they comply with a range of obligations under the family assistance law.

Civil penalties for the child care compliance program were introduced on 1 July 2007 and currently only apply to the approved child care service providers' obligation to report information to the Child Care Access Hotline.

Under the new scheme the Minister will be able to seek a civil penalty order from the Federal Court of Australia or the Federal Magistrates Court, where an approved child care service (or former approved child care service where required) contravenes a civil penalty provision. The civil penalty order will determine that a monetary amount to a specified maximum must be paid by either an individual or a body corporate where relevant.

The civil penalties scheme is intended to operate in conjunction with an improved infringement notice scheme, and the current criminal offence provisions. The extension of the civil penalties scheme is intended to provide the Government with a wider range of options to encourage compliance with obligations under the family assistance law.

Expanded entry powers

The Bill will expand the purposes for which authorised officers may enter premises of approved child care services.

In undertaking on-site compliance reviews of approved child care services, officers authorised to do so under the family assistance law operate within the framework of monitoring powers in the Act. Authorised officers may only enter with the consent of the service provider or occupier of the premises. A number of offences apply if records are not provided or the occupier fails to provide an authorised officer with all reasonable facilities and assistance.

However the current powers of entry for authorised officers under the Act do not adequately support monitoring of approved child care services for compliance with the conditions for continued approval, as they are empowered to enter only 'for purposes of inspection of records' and nothing more. There are many obligations under the Act that services must meet for continuing approval which cannot be monitored by only inspecting records. For example, it would be unlikely that services subject to rules for the allocation of places would, if in breach of the rules, keep records evidencing the breach.

The Bill will therefore broaden the entry powers to allow authorised officers to enter the premises of an approved child care service for the purposes of monitoring whether the service is operating in accordance with the conditions for continued approval. This includes the power to inspect documents that presently exist, as well as make observations and generally monitor the activities being undertaken in the service in order to determine if the service is complying with the requirements of the family assistance law. The provisions in relation to acquiring requisite consent from the occupier before entering the premises have not been altered.

Other amendments

CCTR eligibility provisions are clarified to ensure that eligibility of an individual for CCTR for a week arises when the individual meets the conditions for the weekly limit of hours of 50, more than 50 or 24 hour care limit, regardless of whether the determination of the weekly limit of hours in force in respect of the individual for CCB purposes specifies this limit.

Provisions relating to variations of determination of the weekly limit of hours are clarified so that a variation made in particular circumstances has the same effect regardless of whether it is made under Subdivision U or V.

Amendments are made to align the indexation provisions for CCB and CCTR amounts, to provide for inalienability of CCTR amounts in line with the protection afforded to other family assistance payments and to ensure that an individual's CCTR entitlement determination is reviewed automatically if the individual's CCB entitlement amount is affected as a result of review.

Amendments are also made to provide the Secretary with a discretionary power to publicise information related to decisions under the family assistance law to sanction a service for non-compliance with conditions for continued approval or to immediately suspend the service's approval in the specified circumstances.

As a result of the introduction of the Child Care Management System, the current requirement of the legislation that approved child care services issue receipts when they charge individuals for care provided to the children is replaced with the requirement to provide periodic (four-weekly) statements specifying the amount of fee reduction calculated by the Secretary for the individuals and other relevant CCB information.

Minor amendments are made in relation to the giving of infringement notices under the family assistance law and to authorise delegation of the Secretary's powers.

Minor clarifying amendments are also made to the provisions relating to the allocation of child care places.

FINANCIAL IMPACT STATEMENT

Financial impact:	Total resourcing	
(CCTR election commitments)	2008-09	\$340.2m
	2009-10	\$375.9m
	2010-11	\$410.2m
	2011-12	\$444.7m
(Removal of minimum CCB rate)	2007-08	\$ 1.8m
	2008-09	\$- 43.8m
	2009-10	\$- 51.1m
	2010-11	\$- 61.1m
	2011-12	\$- 68.1m

**FAMILY ASSISTANCE LEGISLATION AMENDMENT
(CHILD CARE BUDGET AND OTHER MEASURES)
BILL 2008**

NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the *Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Act 2008*.

Clause 2 provides a table that sets out the commencement dates of the various sections to the Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

This explanatory memorandum uses the following abbreviations:

‘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*;

‘CCMS Act’ means the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*;

‘CCMS’ means Child Care Management System;

‘CCB’ means child care benefit; and,

‘CCTR’ means child care tax rebate.

Schedule 1 – Removing minimum rate of CCB

Summary

Amendments made in this Schedule give effect to the Budget 2008-09 measure to remove the minimum rate of CCB for care provided to a child by an approved child care service, with the effect that an individual's CCB rate calculated under the Child Care Benefit Rate Calculator in Schedule 2 to the Family Assistance Act may be reduced to nil.

Amendments are also made to make CCTR available in respect of child care expenses incurred in a week by an individual or individual's partner if the individual claims CCB for that care, is eligible but is not entitled to be paid CCB due to nil rate.

These measures apply in respect of CCB and CCTR entitlements relating to child care occurring on or after 7 July 2008.

Background

Currently, CCB rate for care provided by an approved child care service is income tested, but there is a minimum rate, which an individual who is eligible for CCB is entitled to be paid regardless of income. This means that high income earners are entitled to the minimum rate of CCB.

As a result of the Budget announcement, the minimum rate will no longer apply and the CCB rate of an individual will be able to be reduced to nil. Therefore, individuals with income above a certain level, who currently are entitled to be paid CCB, will not be so entitled.

Currently an individual's CCTR entitlement for an income year in respect of out-of-pocket expenses for care provided to a child is linked to the individual's entitlement for CCB for that year for the child. The CCTR entitlement of the individuals who claim CCB and are eligible but are not entitled to CCB due to nil rate will be preserved.

CCB rate for care provided by a registered carer is not affected by this measure.

Explanation of the changes

To give effect to this measure, a number of amendments are made to the family assistance law as it relates to CCB and CCTR.

Part 1 – Amendments

A New Tax System (Family Assistance) Act 1999

CCB amendments

Schedule 2 to the Family Assistance Act includes the CCB Rate Calculator (clauses 1 – 12) relevant to the calculation of rate for CCB for care provided by an approved child care service. It does not specify any particular ‘minimum rate’. The minimum CCB rate for an individual is achieved by working out the individual’s ‘minimum taxable income %’ (under clause 12) and using this value for the purposes of working out the individual’s ‘taxable income %’ (under clause 8), which in turn is used to arrive at the individual’s ‘CCB%’ (under subclause (2)(2)) needed to calculate the individual’s ‘adjustment percentage’ (subclause 2(1)) which, under the method statement in clause 1, is applied to the ‘standard rate’ relevant to the individual’s situation to arrive at the ‘individual’s CCB rate’.

CCB Rate Calculator (items 7, 8, 9 and 10)

The element of the calculator that turns on the minimum rate is the ‘taxable income %’ in clause 8. Clause 8 operates to the effect that if a ‘taxable income %’ calculated in accordance with that clause is higher than the ‘minimum taxable income %’ worked out under clause 12, the ‘minimum taxable income %’ applies.

The following amendments are made to the CCB Rate Calculator to remove the mechanisms for the application of the minimum CCB rate.

Item 10 repeals clause 12 providing for the ‘minimum taxable income %’. As a consequence, steps 7 and 8 in the method statement for calculation of ‘taxable income %’ in clause 8 are no longer required and are repealed by **item 9**.

Item 8 amends step 6 in the method statement in clause 8 so that the result in this step constitutes the individual’s ‘taxable income %’. The amended step 6 provides that if the result of this step is less than zero the individual’s taxable income % is zero. A zero taxable income % will result in the nil rate.

Item 7 amends the definition of ‘taxable income %’ in subclause 2(3) to correct cross-reference in this definition to clause 12 repealed by **item 10**.

CCB rate for care provided by a registered carer (item 2)

Item 2 amends section 83 providing for working out CCB rate for care provided by a registered carer. The formula for calculating this rate includes a reference to the ‘minimum hourly amount’, which is defined in this section as the amount specified in the numerator in the formula in clause 12 of Schedule 2. As clause 12 is repealed by **item 10**, **item 2** substitutes a new definition of the ‘minimum hourly amount’. The new definition specifies that ‘minimum hourly amount’ is \$0.581.

Items 11, 12 and 13 make amendments to Schedule 4 – Indexation and adjustment amounts, clause 2, table item 21 and clause 3, table item 21 to ensure that this ‘minimum hourly amount’ is indexed on each 1 July (taking effect the first Monday in July each year), taking into account the December reference quarter and the highest December quarter before reference quarter as the base quarter (not earlier than December quarter 2007). The first indexation of this amount is to occur on 1 July 2009.

CCTR amendments (items 1, 3, 4, 5 and 6)

Item 1 amends section 57F, which specifies conditions of eligibility for CCTR for an income year.

One of the conditions of an individual’s eligibility for CCTR for an income year in respect of a child is that a determination of entitlement for CCB for the child and the income year is in force in respect of the individual (either for CCB by fee reduction under section 51B or for CCB for a past period under section 52E of the Family Assistance Administration Act). Amendments made by **item 1** ensure that eligibility for CCTR also arises if a determination of no entitlement to CCB by fee reduction was made under subsection 51C(1) (as amended by **item 25**) or a determination of no entitlement to CCB for a past period was made under subsection 52G(1) (as amended by **item 29**), that is, if the individual was eligible for CCB but the individual’s rate was zero.

CCTR calculation

Item 3 makes a small consequential amendment to step 2 in the method statement in section 84A providing for the calculation of the CCTR amount to reflect the fact that the total amount of fee reduction applicable to each base week in the income year for which CCTR applies may be nil.

Item 4 amends section 84B dealing with the ‘approved child care fees’ component of the formula in the method statement in section 84A. **Item 4** makes a minor stylistic amendment.

Item 5 amends section 84C dealing with the ‘base week’ component of the formula in the method statement in section 84A. Under this section, a base week for which CCTR is calculated for an individual and a child is the week of care in respect of which a determination of entitlement for CCB for the individual and the child is made (either for CCB by fee reduction under section 51B or for CCB for a past period under section 52E of the Family Assistance Administration Act). Amendments made by **item 5** ensure that a week is also a base week for CCTR if a determination of no entitlement to CCB by fee reduction was made under subsection 51C(1) (as amended by **item 25**) or a determination of no entitlement to CCB for a past period was made under subsection 52G(1) (as amended by **item 29**), that is, if the individual was eligible for CCB but the individual’s rate was nil.

Item 6 amends section 84D dealing with the ‘amount of the individual’s CCB entitlement’ component of the formula in the method statement in section 84A. For a base week, the relevant amount of CCB is the amount determined in the determination of entitlement for CCB for the individual and the child made either for CCB by fee reduction under section 51B or for CCB for a past period under section 52E of the Family Assistance Administration Act and attributable to that week. Amendments made by **item 6** ensure that the CCB amount attributable to a base week is zero in the situation where in respect of that week a determination of no entitlement to CCB by fee reduction is made under subsection 51C(1) (as amended by **item 25**) or a determination of no entitlement to CCB for a past period is made under subsection 52G(1) (as amended by **item 29**); that is, if the individual was eligible for CCB but the individual’s rate was nil.

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

CCB amendments

Determinations relating to a claim for CCB by fee reductions – overview

If an effective claim is made for CCB by fee reduction in respect of care provided to a child by an approved child care service and the individual is conditionally eligible for CCB by fee reduction (under section 42 of the Family Assistance Act), the Secretary must make a determination that the individual is conditionally eligible for CCB by fee reduction (section 50B of the Family Assistance Administration Act). If the conditions of conditional eligibility are not met, the Secretary makes a determination of no entitlement to CCB by fee reduction for the individual and the child (section 50B).

If a determination of conditional eligibility is made for an individual and the child, the Secretary must also make a determination of the weekly limit of hours applicable to CCB eligibility (section 50H), a determination of CCB% (section 50J) and a determination of schooling % (section 50K). These determinations serve as a basis for calculation of the rate and amount of fee reductions, by which the individual’s child care fees are reduced during an income year.

After the end of any income year during which a determination of conditional eligibility is in force for an individual and a child, the Secretary determines whether the individual is entitled to CCB by fee reduction for the income year. If the individual is eligible for CCB by fee reduction during this year under section 43 of the Family Assistance Act, a determination of entitlement for CCB by fee reduction for the income year is made (section 51B). The amount of the entitlement is reduced by the total amount of fee reduction made during the year. If the individual is not eligible for CCB by fee reduction during this year, a determination of no entitlement for CCB by fee reduction for the income year is made (section 51C) – in this case the total amount of fee reduction made during the year constitutes a debt due to the Commonwealth by the individual.

The CCB% determined under section 50J is an element of the CCB rate calculation, that depends, among other things, on the individual's adjusted taxable income ('adjusted taxable income', defined in section 3 by reference to Schedule 3, includes the partner's income). CCB% is calculated under Schedule 2 of the Family Assistance Act.

In certain specified situations, the CCB% is calculated without any reference to the individual's taxable income %, using the minimum taxable income % specified in Schedule 2, clause 12 of the Family Assistance Act, resulting in the minimum CCB rate. This may occur at the time when a determination of CCB% is made in the claim, if a claimant opts in the claim for the application of the minimum taxable income %, or if information needed for the calculation of CCB% is not provided in the claim, or if estimate of income provided by the claimant is not considered to be reasonable. It may also occur later as a result of a variation of the CCB% determination to the effect that the minimum taxable % applies in the circumstances specified in Subdivisions M to V, Division 4, Part 3 of the Family Assistance Administration Act.

Determinations relating to a claim for CCB for a past period or for CCB in substitution - overview

If an effective claim is made for CCB for a past period in respect of care provided to a child by an approved child care service and the individual is eligible for CCB for that period (under section 44 of the Family Assistance Act), the Secretary must make a determination that the individual is entitled to be paid CCB for that period at the rate and amount specified in the determination (section 52E of the Family Assistance Administration Act). If the conditions of eligibility are not met, the Secretary makes a determination of no entitlement to CCB for the past period (section 52G).

If an effective claim is made for CCB by single payment/in substitution because of the death of another individual in respect of care provided to a child by an approved child care service and the individual is eligible for that CCB (under section 46 of the Family Assistance Act), the Secretary must make a determination that the individual is entitled to be paid CCB for that period at the rate and amount specified in the determination (section 53D of the Family Assistance Administration Act). If the conditions of eligibility are not met, the Secretary makes a determination of no entitlement to CCB by single payment/in substitution (section 53E).

If a determination of entitlement is made for CCB for a past period or for CCB by single payment /in substitution, CCB% calculation forms a part of the rate calculation leading to the determination of the amount of the entitlement (there is no separate determination of CCB%).

Effect of the measure on CCB% determination, the CCB eligibility and entitlement to be paid

Generally, amendments made in this Schedule, provide for zero CCB% being calculated under the CCB Rate Calculator in Schedule 2 of the Family Assistance Act as a result of a high income, or in the situations where currently the legislation would provide for the minimum taxable % to apply (if a determination of CCB% is made in the claim, a claimant opts in the claim for the application of the minimum taxable income %, information needed for the calculation of CCB% is not provided in the claim, or if estimate of income provided by the claimant is not considered to be reasonable). Similarly, where currently a variation of the CCB% would result in the minimum taxable % being applied, zero CCB% will apply. Zero CCB% will lead to a nil CCB rate.

Currently, if an individual is conditionally eligible for CCB for a session of care and is subsequently eligible for CCB, the individual is entitled to be paid CCB for the session at least at the minimum rate determined by the Secretary. The fact that an individual's rate may be nil will not affect the individual's conditional eligibility or eligibility for CCB by fee reduction. However, if an individual is eligible for CCB by fee reduction in respect of an income year but the applicable rate is nil, the Secretary will make a determination of no entitlement to CCB by fee reduction for a particular income year.

Currently, if an individual is eligible for CCB for a past period or for CCB by single payment/in substitution, the individual is entitled to be paid an amount determined by the Secretary. Under the amendments made in this Schedule, the fact that an individual's rate may be nil will not affect the individual's eligibility for that CCB but if an individual is eligible for CCB for an income year but the applicable rate is nil, the Secretary will make a determination of no entitlement to CCB by fee reduction for a particular income year.

Items 14 to 62 amend various provisions relating to CCB claims, determinations, variations and other relevant provisions to provide for the effect as described above.

Item 14 amends the definition of 'CCB%' in subsection 3(1) to specify that CCB% is the percentage as determined under Division 4 of Part 3 (Payment of family assistance – child care benefit) or, if varied, as varied; or as applicable under specific CCB% provisions of Division 4 of Part 3; or otherwise – as calculated under subclause 2(2) of Schedule 2 (CCB Rate Calculator) to the Family Assistance Act.

Item 15 repeals the definition of the 'minimum taxable income %' as a consequence of the repeal by **item 10** of clause 12 in Schedule 2 (CCB Rate Calculator) to the Family Assistance Act specifying the minimum taxable income %.

Item 16 inserts new interpretational section 4A clarifying, for the purposes of the Family Assistance Act and the Family Assistance Administration Act, that a rate of fee reduction calculated by the Secretary under subsection 50Z(1) or 50ZA(1) may be zero and that the amount calculated under these subsections may be nil. The intention behind this provision is to ensure that other provisions of the family assistance law which refer to the rate or amount calculated operate as provided for in these provisions regardless of even if the rate is zero or the amount is nil.

Effective claim – no information about amount required to calculate CCB%

Section 49C deals with form of effective claim for CCB. Generally, if the provision of information/document is required as part of a claim, the lack of information/document makes the claim ineffective (it is taken not to have been made – section 50(2) refers).

There is a current exemption in subparagraph 49C(2)(e)(ii) relating to the lack of information in the claim whether the claimant is opting for the CCB% being calculated using the minimum taxable income % – it does not cause the claim to be ineffective. **Item 17** amends subparagraph 49C(2)(e)(ii) to ensure that a CCB claim is effective if the claimant does not provide information whether the claimant is opting for having CCB% of zero % applicable to him or her.

Effective claim – tax file number requirement

Section 49E requires that the specified tax file number requirements be satisfied for a CCB claim for a past period to be effective. Subsection 49E(8) provides exemption from the tax file number requirement if the claimant opts in the claim for having CCB% calculated using the minimum taxable %. **Item 18** amends subsection 49E(8) to provide exemption from the tax file number requirement if the claimant opts in the claim for having CCB% of zero % applicable to him or her.

Section 49F requires that the specified tax file number requirements be satisfied for a CCB claim by single payment/in substitution to be effective. Subsection 49F(9) provides exemption from the tax file number requirement if the claimant opts in the claim for having CCB% calculated using the minimum taxable %. **Item 19** amends subsection 49F(9) to provide exemption from the tax file number requirement if the claimant opts in the claim for having CCB% of zero % applicable to him or her.

Claim for CCB by fee reduction - determination of conditional eligibility or no entitlement

Section 50B provides that, in the specified circumstances, if an effective claim was made for CCB by fee reduction, and a determination of conditional eligibility, or no entitlement (as the case may be) must be made as soon as practicable (no restrictions on determining the claim apply). One of the circumstances in which a determination of the claim is made as soon as practicable is if the claimant opts in the claim for having CCB% calculated using the minimum taxable % (paragraph 50B(1)(c)). **Item 20** amends paragraph 50B(1)(c) to ensure that it applies when the claimant opts in the claim for having CCB% of zero % applicable to him or her.

Claim for CCB by fee reduction - determination of CCB%

Subsection 50J(2) provides that while determining CCB% for a conditionally eligible individual, the Secretary must use the provisions of Schedule 2 to the Family Assistance Act as if the references there to ‘eligible’ person were references to a ‘conditionally’ eligible person. While preserving the current content, **item 21** amends subsection 50J(2) to clarify that in certain situations, the Secretary must determine a percentage of zero %. These situations are specified in subsection 55(2), 55(B(1) and 55C and explained further in the context of amendments made by **items 36 and 38**.

Calculating amount of fee reduction and revising the amount

Sections 50Z and 50ZA require the Secretary to calculate and revise, as prescribed, fee reduction rate and amount for a conditionally eligible individual, and to notify the relevant approved child care service. **Items 22 and 23** insert a note at the end of subsection 50Z(1) and 50ZA(1) respectively to draw the reader’s attention to the fact that the rate may be zero and that the amount may be nil.

Claim for CCB by fee reduction - determination of entitlement

Subsection 51B(1) provides that if sessions of care occurred in an income year while a determination of conditional eligibility was in force in respect of an individual, and the individual is eligible under section 43 of the Family Assistance Act for CCB by fee reduction, the Secretary must determine that the individual is entitled to CCB by fee reduction for the income year. **Item 24** amends subsection 51B(1) to the effect that the individual will be so entitled only if the CCB rate of the individual would be more than a zero rate.

Claim for CCB by fee reduction - determination of entitlement

Section 51C provides that if the Secretary is not satisfied that the claimant is eligible under section 43 of the Family Assistance Act for CCB by fee reduction, the Secretary must determine that the individual is not entitled to CCB by fee reduction for the income year. **Item 25** amends section 51C to provide that no entitlement determination must be made in two situations: when an individual is not eligible under section 43 of the Family Assistance Act for CCB by fee reduction (new subsection 51C(2)) and when the individual is so eligible but the CCB rate would be zero (new subsection 51C(1)).

Claim for CCB for a past period – restriction on determining where tax assessment not made

Section 52D operates to the effect that if the tax assessment is not made at the time of the claim and the claimant did not opt in the claim for having CCB% calculated using the minimum taxable %, the claim cannot be determined until after the tax assessment has been made. **Item 26** amends paragraph 52D(b) to ensure that this provision operates in the same way if the claimant did not opt in the claim for having CCB% of zero % applicable to him or her.

Claim for CCB for a past period - determination of entitlement

Section 52E provides that if the Secretary is satisfied that the claimant is eligible under section 44 of the Family Assistance Act for CCB for a past period, the Secretary must determine that the individual is entitled to CCB for the past period. **Items 27 and 28** amend section 52E to provide that an entitlement determination must only be made if the individual is so eligible and the amount of the entitlement would be more than nil (new paragraph (c)).

Claim for CCB for a past period - determination of no entitlement

Section 52G operates to the effect that if the Secretary is not satisfied that the claimant is eligible under section 44 of the Family Assistance Act for a past period for care provided by an approved child care service or under section 45 for care provided by a registered carer, the Secretary must determine that the individual is not entitled to CCB for the past period. **Item 29** substitutes a new section 52G to provide that no entitlement determination relating to a CCB claim for past period must be made in three situations: if the claimant is eligible under section 44 but the amount of the entitlement would be nil (new subsection 52G(1)), if the claimant is not eligible under section 44 (new subsection 52G(2)) and if the claimant is not eligible under section 45 (new subsection 52G(3)).

Items 30 and 31 make consequential amendments to paragraphs 52H(2)(b) and 52H(3)(b) to adjust cross-references in those paragraphs to the redrafted subsections of section 52G.

Claim for CCB by single payment/in substitution - determination of entitlement

Section 53D provides that if the Secretary is satisfied that the claimant is eligible under section 46 of the Family Assistance Act for CCB by single payment/in substitution, the Secretary must determine that the individual is entitled to CCB by single payment/in substitution. **Item 32** substitutes new section 53D to provide that an entitlement determination must only be made if the individual is so eligible and the amount of the entitlement would be more than nil.

Claim for CCB by single payment/in substitution - determination of no entitlement

Section 53E operates to the effect that if the Secretary is not satisfied that the claimant is eligible under section 46 of the Family Assistance Act for CCB by single payment/in substitution, the Secretary must determine that the individual is not entitled to CCB by single payment/in substitution. **Item 33** substitutes a new section 53E to provide that no entitlement determination relating to a CCB claim by single payment/in substitution must be made in two situations: if the claimant is eligible under section 46 but the amount of the entitlement would be nil (new subsection 53E(1)) or if the claimant is not eligible under section 46 (new subsection 53E(2)).

Items 34 and 35 make consequential amendments to paragraphs 53F(2)(b) and 53E(3)(b) to adjust cross-references in those paragraphs to the redrafted subsections of section 53E.

Matters relating to determinations - determination of CCB%

Subsection 55(2) provides the authority to calculate the CCB% using the minimum taxable % if the claimant for CCB by fee reduction does not give the Secretary an estimate of the amount needed to calculate the CCB% that the Secretary considers reasonable. **Item 36** repeals this subsection and substitutes it with new subsection (2) specifying that the subsection applies if the claimant does not give the Secretary an estimate of the amount needed that the Secretary considers reasonable. A note inserted at the end of section 55 informs the reader that this means that the Secretary must determine the CCB% of the claimant to be zero %.

Determination of rate for CCB by single payment/in substitution

Subsection 55A(2) provides the authority to calculate the rate of CCB by single payment/in substitution using the minimum taxable % if the claimant does not give the Secretary an estimate of the amount needed to calculate the CCB% that the Secretary considers reasonable. **Item 37** amends this subsection so, if the claimant does not give the Secretary an estimate of the amount needed that the Secretary considers reasonable, the CCB% is to be zero %.

CCB% applicable when certain other information not provided in a claim

Section 55B mandates the calculation of CCB% using the minimum taxable income % for the purposes of the calculation of CCB% on a claim for CCB by fee reduction or for the purposes of the calculation of entitlement for CCB for a past period for care provided by an approved child care service or for CCB by single payment/in substitution. The requirement applies if the claimant does not give the Secretary the information required to work out the number of children the individual had in care of a particular kind or the claimant opted for having CCB% calculated using the minimum taxable %.

Item 38 substitutes new sections 55B and 55C.

New section 55B - CCB% applicable to individual is zero% when certain other information not provided

New subsection 55B(1) relates to a claim for CCB by fee reduction; it specifies that this subsection applies if the claimant does not give the Secretary the information required to work out the number of children the individual had in care of a particular kind or the claimant opted for having CCB% of zero % applicable to him or her. A Note inserted at the end of section 55B directs the reader to new subsection 50J(2) amended by **item 21** and informs that this means that the Secretary must determine the CCB% of the claimant to be zero %.

New subsection 55B(2) relates to a claim for CCB for a past period for care provided by an approved child care service and to a claim for CCB by single payment/in substitution; it specifies that if the claimant does not give the Secretary the information required to work out the number of children the individual had in care of a particular kind or the claimant opted for having CCB% of zero % applicable to him or her, the CCB% is zero %.

New section 55C - CCB% applicable to individual when tax file number information not given

Section 55C mandates the calculation of CCB% using the minimum taxable income % for the purposes of the calculation of CCB% on a claim for CCB by fee reduction if the conditional eligibility determination was made under section 50F in the circumstances referred to in subparagraphs 50D(1)(d)(ii) – to (v) or in subsection 50D(4) (when tax file number required to be given was not given within the specified time). A note inserted at the end of section 55C directs the reader to new subsection 50J(2) amended by **item 21** and informs that this means that the Secretary must determine the CCB% of the claimant to be zero %.

Secretary's power to request tax file numbers in a claim

Section 57B authorises the Secretary to request in the claim form for CCB by fee reduction the provision of tax file numbers of specified persons. A claimant opting for the calculation of CCB% using the minimum taxable income % is exempt from this requirement. **Item 39** amends section 57B to substitute this exemption with the exemption for a claimant who opts for having CCB% of zero % applicable to him or her.

Secretary's power to request tax file numbers of certain persons

If a claimant for CCB by fee reduction did not opt in the claim for the calculation of CCB% using the minimum taxable income %, and the claimant failed to meet specified tax file number requirements, section 57C authorises the Secretary to request the provision of tax file numbers of specified persons within 28 days from the request. **Item 40** amends section 57C so it operates to the same effect if the claimant did not opt for having CCB% of zero % applicable to him or her.

Variation of CCB% - CCB by fee reduction and CCB for a past period

Section 58 authorises a variation of a determination of CCB% for a conditionally eligible individual (subsection 58(5)), or a variation of the amount of the CCB entitlement for a past period (paragraph 58(7)(a)), so that it is calculated using the minimum taxable income %, if the Secretary made a tax file number request under subsection 57D(1) and the claimant failed to comply with the request (as described in section 58). **Item 41** amends subsection 58(5) so a CCB% of zero % applies in this situation.

Item 42 amends subsection 58(7) relating to a CCB determination for a past period to specify that a variation under this section has the effect that the claimant is only entitled to be paid a nil amount in respect of the period. This contrasts with the concept in section 52E under which a nil amount of entitlement results in the individual having no entitlement to CCB for the relevant period. In both situations, however, the intention is that the individual, whether entitled with nil amount because of zero rate, or whether not entitled because of zero rate, will be eligible for CCTR for the weeks falling within that period, subject to other eligibility conditions being met.

Variation of CCB% determination for failure to provide data verification form

Section 59D authorises a variation of a CCB% determination so that CCB% is calculated using the minimum taxable income % if the conditionally eligible individual fails to provide a data verification form requested by the Secretary under section 57F or provides in the form an estimate of the amount needed to calculate the CCB% that the Secretary considers is not reasonable. **Item 43** amends section 59D so that, in the situation referred to in this section, the CCB% determination may be varied with the effect that the CCB% is zero %.

Variation of entitlement determination for CCB for a past period where CCB% originally calculated using minimum taxable income %

In the situations specified in section 55B (no information provided in the claim form concerning the number of children in care of a particular kind or claimant opted for having CCB% calculated using the minimum taxable income %) the CCB% of the claimant for CCB for a past period is calculated using the minimum taxable income %. If the claimant subsequently provides the information about the children or requests the change of the calculation and provides the tax file numbers as required, section 60 requires that the entitlement determination is varied so that CCB% is worked out under Schedule 2 (which may result in the percentage higher than the minimum).

As a result of the amendment made to section 55B by **item 38**, when, at the time of claiming CCB for a past period, the claimant opts for having CCB% of zero % applicable to him or her or does not provide the information concerning the number of children in care of a particular kind, the applicable CCB% is zero %.

Items 44, 45 and 46 make amendments to section 60, including the amendments consequential on redrafting section 55B. The amendments ensure that, in the situation referred to in section 60, the claimant's entitlement determination for the relevant past period must be varied; that is, the CCB% must be recalculated under Schedule 2 of the Family Assistance Act. A recalculated CCB% may result in a higher percentage than zero% - if so, the claimant will be entitled to be paid for the particular income year, the difference between the recalculated amount of the entitlement and the previously determined amount. If the effect of the recalculation is that the CCB% continues to be zero % due to the individual's adjusted taxable income that reduces the CCB% to zero, no additional entitlement will result from the recalculation.

A note made in **item 44** informs the reader of the change to the heading to section 60.

Variation of entitlement determination for CCB in substitution where CCB% calculated using minimum taxable income %

In the situation specified in section 55A (claimant gives an estimate of income that the Secretary does not consider reasonable), the CCB% of the claimant for CCB by single payment/in substitution is calculated using the minimum taxable income %. In the situations specified in section 55B (no information provided in the claim form concerning the number of children in care of a particular kind or claimant opted for having CCB% calculated using the minimum taxable income %), the CCB% of the claimant for CCB by single payment/in substitution is calculated using the minimum taxable income %.

If the claimant subsequently provides the information about children or requests the change of the calculation and provides the tax file numbers as required, section 60A requires that the entitlement determination be varied so that the relevant CCB% is worked out under Schedule 2 (which may result in the percentage higher than the minimum).

As a result of the amendment made by **item 37** to section 55A, if a claimant gives an estimate of income that the Secretary does not consider reasonable, the applicable CCB% used to calculate the entitlement is zero%. As a result of the amendment made to section 55B by **item 38**, if, at the time of claiming CCB by single payment/in substitution, the claimant opts for having CCB% of zero % applicable to him or her or does not provide the information concerning the number of children in care of a particular kind, the applicable CCB% used to calculate the entitlement is zero %.

Items 47, 48 and 49 make amendments to section 60A, including the amendments consequential on redrafting sections 55A and 55B. The amendments ensure that, in the situation referred to in section 60A, the claimant's determination of entitlement for CCB by single payment/in substitution is varied; that is the CCB% must be recalculated under Schedule 2 of the Family Assistance Act. A recalculated CCB% may result in a higher percentage than zero % - if so, the claimant will be entitled to be paid in respect of the claim the difference between the recalculated amount of the entitlement and the previously determined entitlement amount. If the effect of the recalculation is that the CCB% continues to be zero % due to the relevant adjusted taxable income that reduces the CCB% to zero, no additional entitlement will result from the recalculation.

A note made in **item 47** informs the reader of the change to the heading to section 60A.

Variation of CCB% determination from minimum taxable income % to the income-tested taxable income %

Section 60B provides for a variation of a CCB% determination, from that calculated using the minimum taxable income % to that calculated under Schedule 2 to the Family Assistance Act (which may result in the percentage higher than the minimum), in the following situations.

- Where, at the time of claiming CCB by fee reduction, a conditionally eligible individual does not give the Secretary an estimate of income the Secretary considers reasonable, the Secretary determines CCB% using the minimum taxable income %, as provided for in subsection 55(2). If the individual subsequently provides a reasonable estimate of income, section 60B requires that the CCB% be varied to the percentage resulting from the calculation under Schedule 2 ;
- Where, at the time of claiming CCB by fee reduction, a conditionally eligible individual does not give the Secretary information required to work out the number of children in the same kind of care, the Secretary determines CCB% using the minimum taxable income %, as provided for in subsection 55B(c)(i). If subsequently the individual provides the information, section 60B requires that the CCB% be varied to the percentage resulting from the calculation under Schedule 2.
- Where, at the time of claiming CCB by fee reduction, a conditionally eligible individual opts for having CCB% calculated using the minimum taxable income %, the Secretary determines CCB% using the minimum taxable income %, as provided for in subsection 55B(c)(ii). If subsequently the individual requests the change of the calculation, provides a reasonable estimate of income and the tax file numbers required, section 60B requires that the CCB% be varied to the percentage resulting from the calculation under Schedule 2.
- Where, at the time of claiming CCB by fee reduction, a conditionally eligible individual does not provide the tax file number information required, the Secretary determines CCB% using the minimum taxable income %, as provided for in subsection 55C. If subsequently the individual provides the tax file numbers required, section 60B requires that the CCB% be varied to the percentage resulting from the calculation under Schedule 2.

As a result of the amendments made by **item 36** to subsection 55(2) and by **item 38** to section 55B and 55C, in the situations specified in these sections (as described above), the CCB% is zero %.

Items 50, 51, 52, 53 and 54 amend section 60B to ensure that when the circumstances occur which trigger the application of section 60B (as described above), the Secretary varies the CCB% calculated using the minimum taxable income % to that calculated using Schedule 2 to the Family Assistance Act (which may produce a higher percentage).

Variation of CCB% determination from the income-tested taxable income % to the minimum taxable income %

If CCB% for an individual conditionally eligible for CCB by fee reduction was worked out under Schedule 2 (which may be higher than the minimum) in the situation referred to in paragraph 50D(1)(e) (no tax file number information provided by the Commissioner for Taxation within 28 days from the claim) and subsequently the Commissioner provides a negative information, section 60C requires that the CCB% determination be varied so that CCB% is calculated using the minimum taxable income %. This variation may be undone by the end of the following income year if the Secretary finds out the tax file numbers required.

Item 55 amends section 60C so that, in the situation to which this section refers, the CCB% is varied to zero %.

Variation of entitlement determination for CCB by fee reduction where income tax return not lodged

Section 60D requires to vary the determination of entitlement for CCB by fee reduction for a particular income year so that the entitlement is recalculated using the CCB% based on the minimum taxable income % if the individuals who are required to lodge tax returns for that income year for which the entitlement is calculated have not done so by the end of the second year following the entitlement year and the tax assessment has not been made by that time. Once the tax assessments are made, the CCB% is varied again based on the income as assessed.

Item 56 amends section 60D so that, in the situation to which this section refers, the entitlement determination is varied using a CCB% of zero %.

Variation of CCB% determination - to the CCB% based on the minimum taxable income %

Section 60E requires to vary the determination of CCB% of a conditionally eligible individual, so that the CCB% is calculated using the minimum taxable income %, if the individual provides an estimate of income that is not reasonable. This variation may be undone if the Secretary finds out the actual amount needed to calculate CCB% by the end of the following income year.

Item 57 amends section 60E so that, in the situation to which this section refers, the CCB% determination is varied with the effect that CCB% is zero %.

Variation of CCB% determination for failure to provide information - to the CCB% based on the minimum taxable income %

Section 62A requires varying the determination of CCB% of a conditionally eligible individual, so that the CCB% is calculated using the minimum taxable income %, if the individual is requested to provide information relevant to the decision about CCB% of the individual or the partner and the individual or the partner refuses to comply with the request. This variation may be undone if the Secretary finds out the actual amount needed to calculate CCB% by the end of the following income year.

Item 58 amends section 62A so that, in the situation to which this section refers, CCB% determination is varied with the effect that CCB% is zero %.

Amendments to CCTR for an income year

As a result of amendments made by **item 1** to section 57 of the Family Assistance Act, eligibility for CCTR arises if, among other things, a determination of entitlement for CCB for the child and the income year is in force in respect of the individual (either for CCB by fee reduction under section 51B or for CCB for a past period under section 52E of the Family Assistance Administration Act) or a determination of no entitlement to CCB by fee reduction was made under subsection 51C(1) (as amended by **item 25**) or a determination of no entitlement to CCB for a past period was made under subsection 52G(1) (as amended by **item 29**), that is, if the individual was eligible for CCB but the individual's rate was nil.

Sections 65EA, 65EB and 65EC of the Family Assistance Administration Act provide for the making of determinations of entitlement for CCTR for an individual and a child in respect of an income year.

Entitlement for CCTR for an income year – entitlement for CCB by fee reduction for the income year has been determined (section 65EA)

Section 65EA requires the Secretary to make a determination of entitlement for CCTR for an income year if the individual's CCB entitlement has been determined under section 51B of the FA Admin Act for CCB by fee reduction for that income year and the Secretary is satisfied that the individual is eligible for CCTR for the income year under section 57 of the Family Assistance Act. A determination of a CCTR entitlement cannot be made under this section if a CCTR entitlement determination for the same income year has already been made under section 65EB or 65EC.

As a consequence of the amendments made to section 57 of the Family Assistance Act by **item 1** extending eligibility for CCTR to the situations when there is no CCB entitlement due to nil rate, **item 59** amends section 65EA of the Family Assistance Administration Act to trigger the making of a determination of CCTR entitlement for an income year under this section if a determination of entitlement for CCB by fee reduction is in force in respect of that income year (a determination under section 51B as amended by **item 24**), the individual and the child or a determination of no entitlement for CCB by fee reduction is in force under subsection 51C(1) as amended by **item 25**, where the individual is eligible but the rate is zero.

If a determination of no entitlement to CCB by fee reduction is in force under subsection 51C(2) as amended by **item 25** in respect of the income year, the individual and the child, for reasons other than a zero rate (the individual is not eligible for CCB by fee reduction), a determination of no entitlement for CCTR for the income year is made under section 65EA on respect of the individual and the child.

Notes at the end of **item 59** inform the reader about the change to the heading to section 65EA and insertion of subheadings to subsections 65EA(2) and 65EA(3).

Entitlement for CCTR for an income year – entitlement for CCB for a past period year has been determined (section 65EB)

Section 65EB requires the Secretary to make a determination of entitlement for CCTR for an income year if the individual's CCB entitlement has been determined under section 52E of the Family Assistance Administration Act for CCB for a past period falling in this income year and the Secretary is satisfied that the individual is eligible for CCTR for the income year under section 57 of the Family Assistance Act. A determination of a CCTR entitlement cannot be made under this section if a CCTR entitlement determination for the same income year has already been made under section 65EA or 65EC.

As a consequence of the amendments made to section 57 of the Family Assistance Act by **item 1** extending eligibility for CCTR to the situations when there is no CCB entitlement due to nil rate, **item 60** amends section 65EB of the Family Assistance Administration Act to trigger the making of determination of CCTR entitlement for an income year under this section if a determination of entitlement for CCB for a past period within this income year is in force (a determination under section 52E as amended by **item 28**), the individual and the child or a determination of no entitlement for CCB for a past period falling on this income year is in force under subsection 52G(1) as amended by **item 29**, where the individual is eligible for CCB but the rate is zero.

If a determination of no entitlement to CCB for a past period is in force under subsection 52G(2) as amended by **item 29** in respect of the income year the individual and the child, for reasons other than a zero rate (the individual is not eligible for CCB for the past period), a determination of no entitlement to CCTR for the income year is made under subsection 65EB(3) in respect of the individual and the child.

Notes at the end of **item 60** inform the reader about the change to the heading to section 65EB and the insertion of subheadings to subsections 65EB(2) and 65EB(3).

Entitlement for CCTR for an income year – replacement CCTR entitlement determination for an income year following an additional CCB entitlement determination for the same income year (section 65EB)

If there is a CCTR entitlement determination in force in respect of the individual, child and income year, made under section 65EA or 65EB and a subsequent CCB entitlement determination is made under section 51B or 52E (not as a result of a review) relating to the same year, as a result of which the CCTR entitlement for the year would increase, section 65EC requires that a replacement CCTR determination (including the additional period of CCB entitlement) is made for the year.

The first CCTR entitlement determination for an income year made under section 65EC may occur as a result of a subsequent CCB determination of no entitlement due to a zero rate (for example, for a part of the income year) relating to the same income year. There may then be a subsequent CCB no entitlement determination due to zero rate (for another period in the same year) – in that situation a replacement CCTR entitlement determination would need to be made in respect of the income year as the additional periods of CCB eligibility with zero rate would increase the overall CCTR entitlement for this income year. To achieve this effect, **item 61** amends paragraphs 65EC(1)(a) and (b) to include references to CCB no entitlement determinations under sections 51C and 52G of the Family Assistance Administration Act where the individual was eligible for CCB but not entitled due to a zero rate.

A note in **item 61** informs the reader about the change to the heading to section 65EC.

Decisions that may be reviewed under section 109A (internal review on application)

Item 62 makes a minor stylistic amendment to subparagraph 108(2)(f)(i), consequential on the amendments made to subsection 55(2) by **item 36**.

Part 2 – Application and transitional provisions

Item 63 is an application provision. It provides that amendments made by this Schedule apply in relation to care provided by an approved child care service to a child on or after 7 July 2008.

Item 64 is a transitional provision that authorises the Secretary to vary a determination of CCB% under section 50J in force in respect of an individual and a child on the commencement of this provision if the Secretary considers that, as a result of the amendments made by Schedule 1, from 7 July 2008, the CCB% of the individual would be different to the CCB% at the commencement (**subitem 64(1)**).

The Secretary may make this variation after the commencement of this transitional provision (it commences on Royal Assent) with effect from 7 July 2008 (**subitem 64(2)**).

A variation under this provision cannot be made after 6 July 2008 (**subitem 64(3)**). After that day, the variation of CCB% may be made under section 65A of the Family Assistance Administration Act.

A variation under this provision is reviewable under Part 5 of the Family Assistance Administration Act (**subitem 64(4)**).

Schedule 2 – Election commitments

Summary

This Schedule gives effect to three measures related to CCTR payments announced by the Prime Minister as election promises.

The first measure increases the percentage of allowable out-of-pocket child care expenses that an individual can be paid as CCTR in an income year from 30 per cent to 50 per cent from 1 July 2008.

The second measure increases the annual CCTR limit from \$4,354 for the income year ending 30 June 2008 to \$7,500 for the year ending 30 June 2009 with the first indexation to occur on 1 July 2009.

The third measure provides CCTR as a quarterly payment, from 1 July 2008, to those eligible individuals who claim CCB by fee reductions.

Part 1 – Increasing allowable percentage and annual limit

Amendments to the Family Assistance Act

Background

CCTR is currently delivered as a family assistance annual lump sum payment after the end of the income year in which the individual incurred the child care expenses. It allows individuals to be paid an amount equal to 30 per cent of out-of-pocket child care expenses. The out-of-pocket child care expenses represent the difference between the amount of child care fees incurred by the individual for care provided to a child by one or more approved child care services and the amount of CCB entitlement that the individual and child has for an income year and the Jobs Education and Training (JET) Child Care fee assistance (if any) that the individual is entitled to receive for the child. The maximum amount is limited to \$4,354 for the income year ending 30 June 2008. This limit is indexed annually in line with movements in the Consumer Price Index.

These amendments commence on 1 July 2008.

Explanation of the changes

Item 1 amends the formula in step 4 of the method statement in section 84A, which provides for the calculation of the amount of the rebate, by increasing the percentage of allowable out-of-pocket child care expenses that an individual can be paid from 30 per cent to 50 per cent.

Item 2 amends subsection 84F(1), which provides for the definition of the formula component relating to the child care tax rebate limit for a child for an income year and sets the annual limit for the income year ending on 30 June 2009 at \$7,500.

Item 3 amends subsection 84F(2), which deals with the indexation of the child care tax rebate annual limit and provides for the first indexation to commence on 1 July 2009.

Item 4 amends subclause 3(6) of Schedule 4, which specifies that the first indexation of this amount is to take place on 1 July 2009.

Item 5 is an application provision relating to the amendment made by **item 1**, dealing with the increase of the percentage of allowable out-of-pocket child care expenses. It specifies that the amendment applies to care provided by an approved child care service to a child on or after 1 July 2008.

Part 2 – Paying child care tax rebate quarterly

Division 1 – Amendments

Amendments to the Family Assistance Act

Background

Eligibility for CCTR for an income year is linked to the entitlement to CCB by fee reduction or for a past period. A determination of entitlement to CCTR for an individual, a child and an income year is made after the CCB entitlement determination has been made in respect of that income year, the individual and the child, whether it is an entitlement to CCB by fee reduction or to CCB for a past period. This results in a CCTR lump sum amount relating to expenses incurred for child care in a particular income year being paid sometime in the following year as the CCB entitlement determination cannot be made until a tax assessment has been issued for the individual for the particular income year. The out-of-pocket child care expenses, to which the rebate applies, relate to weeks of care during which the individual and the individual's partner meet either the work/training/study test or other requirements, such as being entitled to grandparent CCB or special CCB.

Amendments made in this Part provide for paying quarterly CCTR amounts to individuals who made a claim for CCB by fee reduction in respect of care provided by one or more approved child care services to a child and in respect of whom a determination of conditional eligibility for CCB by fee reduction is in force. The quarterly payments will not be available to individuals claiming CCB for a past period.

The quarterly CCTR payments are to be made in lieu of the individual's CCTR entitlement for the income year, the individual and the child determined after the end of the income year and after the individual's entitlement to CCB by fee reduction for the child for that income year has been determined.

The quarterly payments will be calculated after the end of a quarter, starting from the first quarter of 2008-09, and paid directly to eligible individuals. The total amount of quarterly payments made to an individual during an income year will be compared with the amount of the individual's CCTR entitlement for the year. If the amount received in quarterly payments is less than the entitlement amount for the income year, a top-up will be paid; if the amount received in quarterly payments is more than the entitlement amount for the income year, the difference will be a debt to be paid by the individual.

The quarterly CCTR payments are to be calculated with reference to the amount of fee reduction applicable to the individual and the child in the week for which eligibility for quarterly payments arise. As a result of the amendments made to the CCB rate in Schedule 1 (removal of the minimum CCB rate), an amount of fee reductions for the week may be nil. Generally, in this case, the CCTR amount for the eligible weeks of care starting from 7 July 2008 will be 50% of all child care fees for which the individual was liable to pay during this week.

The quarterly CCTR amounts are to be calculated by the Secretary. Generally, the trigger for the quarterly calculation of CCTR depends on whether, in the particular week of care for which CCTR should be calculated, the service providing care operated under the Child Care Management System (CCMS) or not.

If an approved child care service operates under the CCMS (that is, an 'application day' has been determined in respect of the service under item 91 of Schedule 1 to the CCMS Act), the service is required under section 219N of the Family Assistance Administration Act to provide fortnightly reports for each week of care specifying child care usage relevant to the calculation by the Secretary of fee reductions for those weeks. In this case, the trigger for the calculation of quarterly CCTR for an individual is the calculation of fee reductions by the Secretary under section 50Z of the Family Assistance Administration Act, for at least one week of care falling in the quarter.

If an approved child care service does not operate under the CCMS (that is, an 'application day' has not been determined in respect of the service under item 91 of Schedule 1 to the CCMS Act), the service is required to give the Secretary a report for a 'reporting period' (defined in section 3 of the Family Assistance Administration Act which by default is a calendar quarter) specifying among other things, the amount of fee reductions the service calculated and by which the individual's child care fees in the quarter were reduced. In this case, the trigger for the calculation by the Secretary of quarterly CCTR for an individual is the giving of the quarterly report by the service.

If a service does not provide a report for an individual and a child in respect of at least one week in a quarter, the quarterly CCTR for this quarter will not be calculated.

The timely provision of reports underpinning the calculation of quarterly CCTR payments is a condition for continued approval of an approved child care service. Legislative sanctions and criminal penalties may apply to an approved child care service for failure to comply with this condition.

These amendments commence on 1 July 2008.

Explanation of the changes

Item 6 inserts new section 57EA -Eligibility for child care tax rebate for a quarter.

New Subsection 57EA - Eligibility for child care tax rebate - for a quarter

New subsection 57EA sets out the eligibility criteria to be met for an individual for CCTR for a quarter in respect of a child. These criteria generally follow the current child care tax rebate criteria for the annual payment.

The criteria are as follows:

- (a) a determination of conditional eligibility for CCB by fee reduction must be in force in respect of the individual and the child under section 50F of the Family Assistance Administration Act; and
- (b) one or more sessions of care must be provided to the child by one or more approved child care services during at least one week that falls wholly or partly in a quarter; and
- (c) in respect of the week, the weekly limit of hours applicable under Subdivision G of Division 4 of the Family Assistance Act to the individual and the child is 50 hours (under section 54 of the Family Assistance Act) or more than 50 hours (under section 55) or a 24 hour care limit (under section 56), regardless of whether all of the hours within the limit are used or not; and
- (d) the Secretary has calculated the rate and amount of fee reductions under subsection 50Z(1) of the Family Assistance Administration Act for the individual and child for at least one of the sessions in the week and the amount calculated is either greater than nil or is nil because the CCB% applicable is zero %.

This criterion is modified by **subitems 35(1) and 39(2)** of ‘respectively’ Divisions 3 and 4 of this Schedule for application when care is provided by an approved child care service during a week before the service’s ‘application day’ has been determined in respect of the service under item 91 of Schedule 1 to the CCMS Act.

Note 1 specifies that if the individual satisfies the conditions for the relevant weekly limit of care, the number of hours of care actually used by the child in the week is not relevant.

Note 2 specifies that for the purposes of paragraph 57EA(1)(d), which refers to the calculation of the fee reduction amount by the Secretary under section 50Z of the Family Assistance Administration Act, it does not matter that the amount is later recalculated under section 50ZA of that Act.

New subsection 57EA(2) provides that if a weekly limit of hours mentioned in paragraph (1)(c) (i.e. 50 hours, more than 50 hours or 24 hour care) does not apply to the individual in the week but there are circumstances in which such a limit applies in the week, then that limit will be taken to be the weekly limit of hours applicable to the individual for that week. This is to overcome the situation where a determination of the limit of hours in force in respect of the individual and the child for the week specified 24 hours only but circumstances were such that the individual satisfied the conditions for the higher limit of hours in a particular week.

The note at the end of subsection 57EA(2) makes it clear that where a limit of only 24 hours is applicable to the individual in a week, the limit of hours condition for CCTR for that week is not satisfied. Generally, an individual is eligible for a default limit of 24 hours (subsection 53(3) refers).

New subsection 57EA(3) replicates current subsection 57F(3) relating to eligibility for CCTR for an income year, which results in a less stringent requirement being applied when considering whether the 50 hour limit applies to an individual. It ensures that the 50 hour limit is taken to have been met for a week if the individual would have met the conditions for the limit but for the fact that he/she failed to meet the more stringent requirements for 50 hours limit specified in paragraph 17A(1)(b). This arrangement is consistent with the work/training/study test requirements prior to the changes to the test introduced from 1 July 2005 as part of the Welfare to Work amendments by the *Family and Community Services legislation Amendment (Welfare to Work) Act 2005*.

The note at the end of subsection 57EA(3) specifies a new heading for section 57F.

Item 7 inserts new Subdivision A in Division 4A of Part 4 which deals with the calculation of child care tax rebate.

New Subdivision A – Child care tax rebate for a quarter

New section 84AA - Amount of the child care tax rebate – for a quarter

New section 84AA provides for the calculation of the amount of CCTR for which an individual is eligible in respect of care provided to a child in a quarter. It provides that if the Secretary must calculate the amount of CCTR for a quarter under new subsection 65EAA(1) of the Family Assistance Administration Act in respect of an individual and a child for a quarter in the income year, the amount of rebate is worked out as provided by the method statement contained in this new section.

The method statement sets out the steps to be followed to calculate the rebate amount.

Under step 1, the total amount of ‘approved child care fees’ (defined in section 84AB) that the service charges the individual for the child in each ‘base week’ in the quarter (defined in new subsection 84AC(1)) are to be worked out.

Under step 2, the total CCB fee reduction amount (if any) calculated by the Secretary under subsection 50Z(1) of the Family Assistance Administration Act or recalculated under subsection 50ZA(1) is worked out for the individual and the child for each base week in the quarter.

If the individual is eligible to receive the 'Jobs Education and Training (JET) Child Care fee assistance' (defined in section 84E) for care provided to the child in any base week, step 3 is used to work out the total amount of JET Child Care fee assistance for the child for those base weeks in the quarter.

Under step 4, a formula is provided for the calculation of the amount of the quarterly rebate, which, once followed, will result in the total amount of the rebate (step 5). Under the formula, the amount of CCB fee reductions worked out in step 2 (and the JET Child Care fee assistance amount worked out in step 3, (if applicable) is deducted from the amount of full fees worked out in step 1. This produces an amount representing the individual's total out-of-pocket child care expenses in all the base weeks in the quarter. This amount is multiplied by 50 per cent. If any previous quarterly amounts of CCTR were paid to the individual in the income year, these are subtracted from the CCTR limit for the income year (\$7,500). The individual's rebate for the child for the quarter is the lesser of the amount resulting from the application of the formula and the annual CCTR limit less any quarterly payments made in previous quarters (step 5).

New section 84AB - Component of formula – approved child care fees

New section 84AB defines 'approved child care fees' required to be worked out in step 1 of the method statement in new section 84AA.

New subsection 84AB(1) provides that the amount of approved child care fees for the base week are those fees that the individual or the individual's partner is liable to pay for care provided to the child by an approved child care service during the base week. These are all the fees for all the hours used regardless of whether the number of those hours was below or exceeded the weekly limit of hours applicable in this week.

New subsection 84AB(2) provides a special rule where the base week for the individual and the child is the same base week as for the individual's partner and the child. This may occur in cases where each member of a couple is entitled to CCB in respect of care provided to the same child in a week, but for different sessions of care. The special rule is that the individual's fees for the week do not include any fees that the individual's partner is liable to pay for care provided to the child.

New subsection 84AB(3) specifies that relevant for the calculation of amount of 'approved child care fees' in a week is the amount of fees that the service would charge the individual if there were no fee reductions (i.e. the full child care fees that the individual is liable to pay and would have to pay if not for CCB fee reductions) - any fee reductions passed on by the service are to be disregarded for this calculation.

New section 84AC – Component of formula – base week

New section 84AC provides the definition of the formula component ‘base week’, relevant to the method statement in new section 84AA. A base week is the week which falls partly or fully within a quarter and in respect of which an individual satisfies the eligibility criteria in paragraphs 57EA(1)(b) to (e) (sessions of care occurred while a determination of conditional eligibility was in force and the relevant limit of hours applies to the week).

Subdivision B – Child care tax rebate for an income year

New heading - Subdivision B – Child care tax rebate for an income year - is inserted after new section 84AC and a note is included to amend the heading to section 84A to specify that the Subdivision deals with child care tax rebate for an income year.

Section 84B and 84C relate to the calculation of ‘approved child care fees’ for an income year and define the meaning ‘base week’ in the context of calculation of CCTR for an income year. **Items 8 and 9** are minor technical amendments clarifying that these sections operate for the purposes of section 84A which provides a method statement for the calculation of CCTR for an income year (as distinct from calculation for a quarter).

Subdivision C – Common components of each formula

Item 10 inserts new heading: Subdivision C – Common components of each formula - after section 84D to ensure clarity that section 84E dealing with JET payment and section 84F providing for CCTR annual limit per child are relevant to the calculation of both CCTR for a quarter and CCTR for an income year.

Item 11 amends section 84E to insert references to the method statements for calculation of quarterly CCTR (section 84AA) and CCTR for an income year (section 84A) to clarify that section 84E is relevant to both CCTR for an income year and CCTR for a quarter

Item 12 amends subsection 84F(1) in a similar way.

A note at the end of section 84F alerts the reader to the alteration to the heading to section 84F.

Amendments to the Family Assistance Administration Act

Item 13 inserts a new Subdivision AA in Division 4AA of Part 3, providing for the making of determinations of entitlement for quarterly payments of CCTR; notices of these determinations; and the manner of payment of CCTR in a quarter.

New Subdivision AA – Quarterly payments of child care tax rebate

New section 65EAA – Quarterly payments of child care tax rebate

Section 65EAA deals with the calculation and payment of quarterly amounts of CCTR.

New subsection 65EAA(1) imposes an obligation on the Secretary to calculate the amount of CCTR applicable for a session of care in a quarter provided to the child by one or more approved child care services if the individual is eligible for quarterly payments of CCTR under section 57EA(1) of the Family Assistance Act and the quarter has passed.

The eligibility for quarterly CCTR under section 57EA depends on the calculation of fee reductions by the Secretary for at least one week in the quarter. The requirement for the Secretary to calculate fee reductions for sessions of care provided to a child in a particular week under subsection 50Z(1) is contingent upon the service providing the Secretary with a weekly report under section 219N. The requirement for the Secretary to calculate a quarterly CCTR amount will not arise if a service has not provided a report for at least one week in the quarter.

The note at the end of this subsection specifies that the calculation of the quarterly payment is made in accordance with new section 84AA of the Family Assistance Act.

New subsection 65EAA(2) relates to the payment of CCTR and requires the Secretary to pay the amount of CCTR that has been calculated for the quarter to the credit of a bank account nominated and maintained by the individual at such time as the Secretary considers appropriate.

New subsection 65EAA(3) provides that the Secretary may direct that the payment be made in a different way than that provided for in subsection (2).

New subsection 65EAA(4) provides that the section is subject to the provisions in Part 4, which deals with overpayments and debt recovery, and Division 3 of Part 8B, which deals with payments to payment nominees.

New section 65EAB – Revising a calculation of quarterly child care tax rebate

New subsection 65EAB(1) provides the Secretary with a discretion to recalculate the provisional amount of CCTR for a quarter falling within an income year if the Secretary considers it appropriate, as long as a determination of entitlement to CCTR for the income year has not been made under Subdivision A.

For example, the Secretary may want to recalculate the quarterly payment of CCTR in order to rectify an administrative error that has occurred in the calculation or in circumstances where the service has corrected its reports on which the Secretary based the initial calculation.

New subsection 65EAB(2) provides for the situation where there has been a recalculation of the quarterly payment of CCTR amount under subsection 65EAA(1), which results in an increase in the amount of quarterly CCTR applicable. If this occurs, subsections 65EAA(2) to (4) apply to the increase as if the increase had been the amount applicable under subsection 65EAA(1).

New subsection 65EAB(3) provides for the situation where there has been a recalculation of the quarterly payment of CCTR amount under subsection 65EAA(1), which results in a decrease in the amount of quarterly CCTR applicable. If this occurs the Secretary may offset the amount of the decrease against an amount of CCTR that applies for a later quarter in the same income year.

New section 65EAC – Notices relating to quarterly payments of child care tax rebate

New subsection 65EAC(1) imposes an obligation on the Secretary, if the Secretary calculates a quarterly CCTR amount, to provide a notice to the individual stating: the name of the child and the quarter; the rebate amount; the total of the individual's child care fees for the child worked out under step 1 of the method statement in section 84AA of the Family Assistance Act when calculating the rebate amount; the total amount of fee reductions (if any) worked out under step 2 of the method statement in section 84AA of the Family Assistance Act when calculating the rebate amount; and if the rebate amount is the result of a calculation covered by subsections 65EAB(2) – the amount of the increase; and if the rebate amount is the result of a calculation covered by subsections 65EAB(3) – the amount of the decrease and whether the amount will be set off.

New subsection 65EAC(2) provides that the calculation and payment of an amount of CCTR under this section will still be effective even if any or all of the requirements of subsection (1) are not complied with.

Section 65EF deals with the payment of CCTR entitlement amounts determined under sections 65EA or 65EB or 65EC, as appropriate.

Item 14 amends subsection 65EF(1) to include a reference to section 65EC (this corrects an existing omission).

Item 15 repeals subsection 65EF(2) by substituting new subsections 65EF(2), 65EF(2A), 65EF(2B) and 65EF(2C), which specify the reductions that must be made to the entitlement amounts determined under various CCTR entitlement determinations. New subsection 65EF(2) specifies that this subsection has effect subject to the provisions in subsections (2A), (2B), and (2C).

New subsection 65EF(2A) provides that if a determination of entitlement for CCTR for an income year is made under subsection 65EA(2) (resulting from a determination relating to CCB by fee reduction), the amount to be paid must be reduced by the total amount of quarterly CCTR payments made in the same income year.

New subsection 65EF(2B) provides that if a determination of entitlement for CCTR for an income year is made under subsection 65EC and the entitlement amount includes entitlement for base weeks falling within the period of an individual's conditional eligibility, the amount to be paid must be reduced by the total amount of quarterly CCTR payments made in the same income year and by any previously paid CCTR entitlement amounts for the same income year under an earlier determination of CCTR entitlement.

New subsection 65EF(2C) operates to the effect that if a determination of entitlement for CCTR for an income year is made under subsection 65EC (resulting from a determination relating to CCB for a past period), the amount to be paid must be reduced by any previously paid entitlement amount for the year (unless subsection 65EF(2B) applies).

Item 16 amends subsection 65EF(3) dealing with the manner in which the payment of CCTR may be made by omitting reference to repealed subsection 65EF(2).

Section 66 provides for certain payments to be absolutely inalienable subject to subsection 66(2), which ensures that the specified actions under the family assistance law do not contravene inalienability provisions. **Item 17** amends subsection 66(2) by inserting two new paragraphs 66(2)(aa) and 66(2)(ab). New paragraph 66(2)(aa) makes the protection of CCTR subject to subsections 65EAA(3) and 65EF(3), which provide a discretion for the Secretary to pay the amount of CCTR in a different way than to the credit of a bank account nominated and maintained by the individual. New paragraph 66(2)(ab) makes the protection of CCTR subject to subsection 65EAB(3), which provides for the setting off of a decrease in the quarterly amount of CCTR against a rebate amount for a later quarter in the same income year.

Item 18 amends the definition of family assistance payment in subsection 93A(6) by inserting new paragraph (bb) to include quarterly payments of CCTR. Section 93A sets out the rules relevant to recovery of debts from financial institutions.

Section 104 provides for the decisions that may not be reviewed by the Secretary on own initiative. **Item 19** amends subsection 104(1) by inserting new paragraph 104(1)(da), which includes in the list of non-reviewable decisions a calculation of an amount of CCTR paid in a quarter under section 65EAA or a recalculation of this quarterly amount under section 65EAB. Therefore, any decision relating to the quarterly CCTR (for example, a decision whether or not to calculate the quarterly CCTR amount for a calendar quarter or a decision as to the amount calculated or revised or a decision relating to the manner of payment of quarterly CCTR including the payment of increases in the CCTR amount for a calendar quarter) will not be subject to the merit review provisions of the Family Assistance Administration Act. This is consistent with the treatment of the calculation by the Secretary of fee reductions under sections 50Z or 50ZB of the Family Assistance Administration Act or a recalculation under sections 50ZA or 50ZC (calculation of fee reduction is not reviewable).

Determinations of entitlement for CCTR for an income year are reviewable under Part 5 of the Family Assistance Administration Act.

Section 108 provides for the decisions that may not be reviewed by the Secretary on application. **Item 20** amends section 108 by inserting a new paragraph 108(2)(db), which includes a calculation of an amount of CCTR paid in a quarter (under section 65EAA) or a recalculation of this amount (under section 65EAB) as non reviewable decisions.

Paragraph 154(4A)(c) provides the Secretary with a general power to obtain information or produce a document relating to the eligibility of a person for CCTR for an income year from any person. **Item 21** amends paragraph 154(4A)(c) with the effect that the power extends to information regarding the eligibility for quarterly payments of CCTR.

Paragraph 154(4A)(d) provides the Secretary with a general power requiring a person to give information or produce a document relating to the amount of CCTR to which the person is entitled for an income year. **Item 22** amends subsection 154(4A)(d) to extend the Secretary's information gathering power to quarterly payments of CCTR applicable to the individual under Subdivision AA of Division 4AA of Part.

Section 173 is an offence provision in Subdivision B of Division 3 of Part 6 and deals with a false statement to deceive and sets out the elements of the offence. **Item 23** amends section 173(1)(d) by inserting new subparagraph (vi) which extends the offence to statements that affect the eligibility of the person for a quarterly payment of CCTR or the amount of quarterly payment of CCTR applicable under Subdivision AA of Division 4A of Part 3. A person who contravenes a provision of Subdivision B is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

Section 175 is an offence provision in Subdivision B of Division 3 of Part 6 dealing with obtaining a payment of family assistance where there is no entitlement to that payment whether whole or part. **Item 24** amends this section to qualify that quarterly payments of CCTR are not included. This is because new section 175AA deals with this situation separately.

Item 25 inserts new section 175AA which provides that a person contravenes this section if the person obtains CCTR for a quarter knowing that he or she is ineligible for the whole or part of that payment. A person who contravenes a provision of Subdivision B is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

Section 224 is a provision deeming notices described in this section to have been given when they were given in the way described in this section. **Items 26, 27, 28, 29, 30 and 31** amend section 224 to ensure that section 224 applies to a notice about the CCTR quarterly amounts under Subdivision AA of Division 4AA of Part 3.

Division 2 - Application

Item 32 provides that the amendments made by this Part apply in relation to care provided by an approved child care service to a child on or after 1 July 2008.

Division 3 – Transitional: Service’s application day happens after the quarter for which child care tax rebate is applicable

Division 3 modifies various provisions in the Family Assistance Act and the Family Assistance Administration Act relevant to the calculation of quarterly CCTR payments relevant to child care provided by an approved child care service if a quarter falls wholly before the service’s ‘application day’ determined under item 91 of Schedule 1 of the CCMS Act.

Item 33 provides definitions for the purposes of this Division. ‘Administration Act’ means the *A New Tax System (Family Assistance)(Administration) Act 1999* and ‘Family Assistance’ means the *A New Tax System (Family Assistance) Act 1999*.

Item 34 specifies that this Division applies if one or more sessions of care provided to a child by an approved child care service falls wholly or partly in the quarter and the service’s application day has not happened before the last week that falls wholly or partly in the quarter.

Item 35 modifies the following provisions of the Family Assistance Act: section 57EA, 84AA and 84AB.

Section 57EA deals with the eligibility conditions for quarterly CCTR payments. One of the conditions of eligibility is that the Secretary has calculated fee reduction for at least one week in the quarter (paragraph 57(1)(d)). **Subitem 35(1)** modifies this paragraph to refer to the service’s calculation of fee reductions under section 219A (as it is applicable to the service before the service’s ‘application day’). **Subitem 35(2)** modifies subsection 57EA(1) to exclude note 3 from this subsection.

Section 84AA provides for the method of calculation of CCTR quarterly amount. It requires working out the amount of fee reduction calculated by the Secretary and applicable to each base week in the quarter. **Subitem 35(3)** modifies this requirement so it includes the amounts of fee reductions reported by the service under subsection 219N(1) or 219P(1) (as it is applicable to the service before the service’s ‘application day’).

A note at the end of this subitem informs the reader that those fee reductions may be nil (as provided for in section 4A of the Administration Act) as modified by **subitem 36(1)**.

Section 84AB provides rules relevant to working out the amount of fees for the purposes of the method statement for calculation of quarterly CCTR amounts. Subsection 84AB(3) requires to count the child care fees amount, for which an individual is liable, before any fee reductions calculated by the Secretary have been passed on by the service. **Subitem 35(4)** modifies subsection 84AB(3) to refer to child care fees amounts before any reduction by the service under Division 1 of Part 8A of the Family Assistance Administration Act applies (as this Division applies to the service before the service’s ‘application day’).

Section 4A inserted by **item 16 of Schedule 1** provides that the rate of fee reductions calculated by the Secretary under section 50Z or 50ZA may be zero and the amount may be nil. **Item 36** modifies section 65EAA of the Family Assistance Act. **Subitem 36(1)** modifies section 4A to refer to zero rate and nil amount calculated by a service under section 219A (as it is applicable to the service before the service's 'application day').

Section 65EAA requires the Secretary to calculate a quarterly CCTR amount if the Secretary is satisfied that the individual is eligible for CCTR for a quarter and the quarter has passed. **Subitem 36(2)** adds an additional requirement with the effect that the calculation for a quarter may only occur if the service has given the Secretary a report under subsection 219N(1) or 219P(1) for at least one session of care provided in a week in the quarter, for which the individual is eligible for quarterly CCTR.

Division 4 – Transitional: Service's application day happens during the quarter for which child care tax rebate is applicable

Subitem 37(1) provides definitions for the purposes of this Division. 'Administration Act' means the *A New Tax System (Family Assistance)(Administration) Act 1999* and 'Family Assistance' means the *A New Tax System (Family Assistance) Act 1999*.

Subitem 37(2) specifies that section 219N applies for the purpose of this Division with the effect it has under item 96 of Schedule 1 to the CCMS Act (item 96 requires a service to provide the reports the service was required to provide under section 219N).

Item 38 provides for the application of this Division where one or more sessions of care are provided by an approved child care service to a child during a week that falls wholly or partly in a quarter and the service's application day (which is determined under item 91 of Schedule 1 to the CCMS Act) happens during the quarter.

Subitem 39(1) inserts in subsection 3(1) of the Family Assistance Administration Act, for transitional purposes, a definition of 'application day' as the day given meaning by item 91 of Schedule 1 to the CCMS Act.

Subitem 39(2) modifies section 57EA for the purpose of the quarter to which this Division applies so that

- in respect of the weeks before the service's application day, it refers to the calculation of fee reductions by the Secretary under sections 50Z and 50ZA of the Administration Act, and
- in respect of the weeks after the service's application day, it refers to the calculation of fee reductions under section 219A of the Administration Act.

Subitem 39(3) modifies further subsection 57EA(1) by addition of note 3 which says that for the purposes of paragraph (d)(i) as modified it does not matter if the amount is later recalculated by the Secretary under subsection 50ZA(1).

Subitem 39(4) modifies step 2 of the method statement in section 84AA so that, in respect of base weeks before the application day, the amount of fee reductions to be worked out under this section also included the amount of fee reductions reported by the service under subsection 219N(1) or 219P(1).

Note 1 in **item 39(4)** notes that the fee reduction amount may be nil (it refers in this respect to new section 4A replaced by **subitem 40(1)**).

Note 2 notes further that in the case of the quarter dealt with under this Division there will be also weeks falling after the services application date – the amounts of fee reductions for these weeks may also be nil.

Subitem 39(5) modifies subsection 84AB(3) so that in respect of the weeks before the service's application day, if the service reduced fees under Division 1 of Part 8A of the Family Assistance Administration Act, the child care fees to be counted as 'approved child care fees' amount for a quarter are the unreduced fees.

Item 40 modifies the provisions of the Administration Act.

Section 4A as inserted by **item 16 of Schedule 1** provides that the rate of fee reduction calculated by the Secretary under section 50Z or 50ZA may be zero and the amount may be nil. **Subitem 40(1)** modifies section 4A to refer to zero rate and nil amount calculated by a service under section 219A (as it is applicable to the service before the service's 'application day' is determined).

Section 65EAA inserted by **item 13** requires the Secretary to calculate a quarterly CCTR amount if the Secretary is satisfied that the individual is eligible for CCTR for a quarter and the quarter has passed. **Subitem 40(2)** adds an additional requirement with the effect that calculation for a quarterly payment of CCTR may only occur if the individual is eligible for at least a session of care provided by an approved child care service in a week that falls before or includes the service's application day and the Secretary is given a report under subsection 219N(1) or 219P(1) (as it is applicable to the service before the service's 'application day' is determined).

Schedule 3 – Recovery of debts

This Schedule contains amendments relevant to recovery of debts under the Family Assistance Administration Act.

Part 1 makes amendments to clarify which family assistance amounts can be set off against debts.

Amendments in Part 2 clarify the operation of section 71G of the Family Assistance Administration Act to ensure a debt is created under this section out of specified payments made to an approved child care service (amounts of fee reductions, enrolment advances and advances) in all instances of cancellation and suspension of a services approval under the Family Assistance Administration Act (**items 18 to 27** refer).

Part 3 amends Division 1 of Part 4 of the Family Assistance Administration Act dealing with overpayments and debt recovery. The amendment clarifies that references to a debt due to the Commonwealth by a service mean the debt is due by the operator on whose application the service was approved.

Part 1 – Setting off of entitlements

Background

Part 4 of the Family Assistance Administration Act deals with overpayments and debt recovery. Section 82 sets out the methods of recovery of debts. One way in which a debt may be recovered is through setting off ‘arrears’ of family assistance against the debt. Debts recoverable under the Family Assistance Administration Act are being recovered under these provisions from any amount of family assistance, to which the person who owes a debt, or another consenting person, is entitled.

Amendments are made for two purposes.

The amendments clarify debt recovery provisions to alleviate concerns that the current provisions authorising recovery of debts from ‘arrears’ of family assistance may not be robust enough to support recovery from any ‘family assistance entitlement’ amounts. The amendments made in this Part ensure that an amount of family assistance to which a person is entitled under the family assistance law may be set off against the person’s debt due to the Commonwealth or against another person’s debt if the entitled person consents to the set off. These amendments do not alter the range of family assistance payments from which debts may be recovered.

Amendments are also made to make CCB amounts also available for recovery of CCTR debts. Currently, CCB amounts are only available to for recovery of CCB debts.

These amendments commence on Royal Assent.

Explanation of the changes

Amendments to the Family Assistance Administration Act.

Generally, the amendments replace the reference to arrears of family assistance, with the reference to family assistance to which the person is entitled.

Section 82 of the Family Assistance Administration Act sets out the methods of recovery of debts, which are recoverable under this Act. One way in which a debt may be recovered is through setting off 'arrears' of family assistance to which the person is entitled against a debt of the person (subsection 82(1)(b)). **Item 3** removes the reference to arrears from paragraph 82(1)(b), with the effect that any amount of a person's entitlement to family assistance payment can be used to offset the person's debt. **Item 3** also makes it clear that recovery of a debt by deduction from instalments of family tax benefit under paragraph 82(1)(a) is a distinct method of recovery which does not fall in the ambit of the recovery method, to which paragraph 82(1)(b) applies.

Item 4 makes a similar amendment to paragraph 82(1)(e) which provides for setting off arrears of a consenting person's family assistance to which the person is entitled against another person's debt. **Item 4** also makes it clear that recovery of a person's debt by deduction from a consenting person's instalments of family tax benefit under paragraph 82(1)(d) is a distinct method of recovery which does not fall in the ambit of the recovery method to which paragraph 82(1)(e) applies.

Section 84A sets out the rules that apply to setting off a person's entitlement to arrears of family assistance against the person's debt. Amendments made by **items 5 to 9** remove the reference to 'arrears' from section 84A with the effect that the same rules apply to setting off a person's family assistance entitlement against the person's debt.

Following the amendments made to section 84A, **item 1** removes the reference to 'arrears' from paragraph 66(2)(ba) which refers to a set off from arrears of family assistance under section 84A and **items 15, 16 and 17** make similar consequential amendments to subparagraphs 95(3)(ia) and paragraphs 95(4)(b) and 99(2)(b) respectively.

Subsection 84A(3) limits availability of a person's CCB entitlement for recovery of the person's CCB debts only. **Item 8** amends subsection 84A(3) further so that CCTR debts of the person may also be recovered from the person's CCB entitlement.

Section 92A sets out the rules that apply to setting off a consenting person's entitlement to arrears of family assistance against another person's debt. Amendments made by **items 10 to 14** remove the reference to 'arrears' from section 92A with the effect that the same rules apply to setting off a consenting person's family assistance entitlement against another person's debt.

Following the amendments made to section 92A, **item 2** removes the reference to 'arrears' from paragraph 66(2)(ca) which refers to a set off from arrears of family assistance under section 92A.

Part 2 – debts of approved child care service where fee reduction or enrolment advance paid

Background

Section 71G (as it applies prior to an approved child care service's application day under item 91 of the CCMS Act), creates a debt owed by the service to the Commonwealth, out of amounts of advances paid to the service under section 219R (as it applies prior to a service's application day) if the service's approval under section 195 for family assistance purposes is suspended under the Family Assistance Administration Act or cancelled under section 200 or when the service ceased to operate.

Section 71G (as it applies after a service's application day under item 91 of the CCMS Act) creates a debt owed by the service to the Commonwealth, out of amounts of fee reductions and enrolment advances paid under sections 219Q and 219RA respectively, if the services approval under section 195 for family assistance purposes is suspended under the Family Assistance Administration Act or cancelled under section 200 or when the service ceased to operate.

A service's approval may also be cancelled under section 202 of the Family Assistance Administration Act on either: the request of the service; if the service should not have been approved; if the service fails to provide care for three continuous months or if the service ceases to be operated by the person on whose application the approval was granted. Section 71G (as it applies before and after a service's application day) does not expressly refer to a cancellation under section 202. In most circumstances, cancellation of a service's approval under section 202 also involves cessation of operations, resulting in a debt under section 71G. However, there may be situations when cancellation of approval may not result from cessation. In this situation section 71G would not create a debt out of the relevant amount paid to the service in excess of what it should have been paid.

These amendments commence on Royal Assent.

Explanation of the changes

Items 18 and 19 amend section 71G(1) to clarify that a debt is created out of the amount of fee reduction payments made to a service under section 219Q if the amounts related to sessions of care or periods occurring after suspension or cancellation of a service's approval under the Family Assistance Administration Act.

Items 20, 21 and 22 amend section 71G(2) to clarify that a debt is created out of the amount of fee reductions that should have been set off against another fee reduction amount or against an enrolment amount, under subsection 219QA(3), but was not set off before suspension or cancellation of the service's approval under the Family Assistance Administration Act.

Items 23, 24 and 25 amend section 71G(3) to clarify that a debt is created out of an amount of enrolment advance paid to a service under section 219RA if the amount has not already been set off under section 219RC before the service's approval has been suspended or cancelled under the Family Assistance Administration Act.

Transitional

Item 26 amends section 71G as in force immediately before the commencement of Schedule 1 of the CCMS Act, which continues to apply for an approved child care as it applied prior to the first Monday after the service's application day. **Subitem 26(1)** provides that 'application day' has the meaning given to it by item 91 of the CCMS Act. The amendment creates a debt, owed by the service to the Commonwealth, out of amounts of overpaid advances paid to the service under section 219R (as it applies prior to a service's application day), if the service's approval under section 195 for family assistance purposes is suspended or cancelled under the Family Assistance Administration Act. Overpaid advances are the amount of advance paid but not used by the service to reimburse itself for fee reduction provided in the period before suspension or cancellation.

Application of amendments in Part 2

Item 27 is an application provision. It provides that the amendments made by this part apply to suspension or cancellation decisions made after the commencement of these amendments. Amendments made by **items 18 to 25** only apply to an approved child care service on or after its application day.

Part 3 – responsibility for debts owed by an approved child care service

Background

Part 4 of the Family Assistance Administration Act deals with overpayments and debt recovery under the Act. In circumstances where the person who owes the debt is an approved child care service, Division 2 of Part 4 refers to a 'debt due to the Commonwealth by the service' (see, for example, section 71B(2)).

Beyond the technical definition of 'approved child care service' in section 3 of the Family Assistance Administration Act, 'service' is not defined in the Act.

Under sections 194 and 195 of the Family Assistance Administration Act, a person who is an operator of a child care service may apply for the service to be an approved child care service for the purposes of the family assistance law. If approved, that person is then an operator of an approved child care service.

Division 2 of Part 4 of the Family Assistance Administration Act includes debt creation provisions which specify amounts recoverable under the Act. In some circumstances, for example those specified in subsection 71B(2) the amount is a 'debt due to the Commonwealth by the service'. In this context, as the service itself is not a legal entity and can only be represented by its operator, the intent behind provisions creating a debt due by a 'service' is to make the operator on whose application the service was approved responsible for repayment of the service's debt.

To allay concerns that have been raised as to the intent of these provisions, amendments are made to clarify that the debt due by a service is a debt owed by the operator of the service.

The amendments commence on Royal Assent.

Explanation of the changes

Item 28 inserts new section 68A in Part 4, Division 1—Preliminary which deals with recovery from approved child care services. It provides that in circumstances where a debt is due to the Commonwealth by an approved child care service under Part 4 of the Family Assistance Administration Act, the debt is payable by the person who was the operator of the service. For this purpose, the operator of an approved child care service is defined as the person on whose application the service was approved.

For example, when an approved child care service does not remit to the Secretary fee reductions that are not reasonably practicable for the service to pass on, a debt is created under section 71CA of the Family Assistance Administration Act. In some circumstances, however the service may be sold prior to the deadline for the service to remit to the Secretary. As the service has been sold, the service's approval must be cancelled, and a new approval granted to the new operator. The debt under section 71CA, however, will attach to the previous operator to whom the fee reduction payments were provided.

Schedule 4 – Civil penalties and other compliance measures

Summary

New civil penalties scheme

Civil penalties for the child care compliance program were introduced on 1 July 2007 and currently only apply to the approved child care service providers' obligation to report information to the Child Care Access Hotline.

The Bill will amend the Family Assistance Administration Act to extend the civil penalties scheme which will regulate approved child care services and former approved child care services, to ensure that they comply with a range of obligations under the family assistance law (a summary of those obligations are set out below under the heading 'Proposed amendments').

Under the new scheme the Minister will be able to seek a civil penalty order from the Federal Court of Australia or the Federal Magistrates Court, where an approved child care service (or former approved child care service where required) contravenes a civil penalty provision. The civil penalty order will determine that a monetary amount to a specified maximum must be paid by either an individual or a body corporate where relevant.

The civil penalties scheme is intended to operate in conjunction with an improved infringement notice scheme, and the current criminal offence provisions. The extension of the civil penalties scheme is intended to provide the Government with a wider range of options to encourage compliance with obligations under the Family assistance law. Currently the scheme operates in relation to services that are not compliant with obligations to provide information. The wider range of options will apply to individuals and services.

Proposed amendments

The Bill will:

- extend from 1 July 2008 the civil penalty and infringement notice scheme to include a range of obligations where criminal penalties currently apply. The key obligations are to:
 - act on notices from the Secretary;
 - pass on fee reductions;
 - keep appropriate records;
 - provide receipts including required information;
 - notify the Secretary if the service intends to cease operating; and
 - provide reports on child care usage and CCB entitlements for individuals with children attending the service.

These will continue to be offences available for criminal prosecution. The appropriate response (civil penalty or criminal prosecution) will be selected on a case by case basis, as appropriate to the nature of the contravention. For example, where a service was also being prosecuted for fraud, the criminal offences under family assistance may also be pursued where applicable. For example, where a service provider does not keep records relating to provision of care, a civil penalty order can be sought against the provider and the provider can be prosecuted for this offence. Civil offences may be used where the issue is serious, but not considered to be of a criminal nature.

Expanded entry powers

The Bill will expand the purposes for which authorised officers may enter premises of approved child care services.

In undertaking on-site compliance reviews of approved child care services, officers authorised to do so under the family assistance law operate within the framework of monitoring powers in the Family Assistance Administration Act. Authorised officers may only enter with the consent of the service provider or occupier of the premises. A number of offences apply if records are not provided or the occupier fails to provide an authorised officer with all reasonable facilities and assistance.

However the current powers of entry for authorised officers under the Family Assistance Administration Act do not adequately support monitoring of approved child care services for compliance with the conditions for continued approval, as they are empowered to enter only 'for purposes of inspection of records' and nothing more. There are many obligations under the Family Assistance Administration Act that services must meet for continuing approval which cannot be monitored by only inspecting records. For example, it would be unlikely that services subject to rules for the allocation of places would, if in breach of the rules, keep records evidencing the breach.

The Bill will therefore broaden the entry powers to allow authorised officers to enter the premises of an approved child care service for the purposes of monitoring whether the service is operating in accordance with the conditions for continued approval. This includes the power to inspect documents that presently exist, as well as make observations and generally monitor the activities being undertaken in the service in order to determine if the service is complying with the requirements of the family assistance law. The provisions in relation to acquiring requisite consent from the occupier before entering the premises have not been altered.

Explanation of the changes

Part 1 – Amendments

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

Items 1 2, and 3 – Subsection 3(1)

Section 3 defines certain terms used in the Family Assistance Administration Act. **Item 1** inserts a definition of ‘civil penalty order’, which is already given meaning under subsection 219TSC, into the interpretation part of the Family Assistance Administration Act.

Item 2 repeals the previous definition, which related to only one identified civil penalty in the Family Assistance Administration Act, and inserts a new definition to encompass an expanded range of civil penalties which can be imposed on approved child care services, operators of approved child care services and former operators of approved child care services.

Item 3 inserts a definition of ‘penalty unit’ as having the same meaning given by section 4AA of the *Crimes Act 1914*.

Item 4 – Subsection 196(2)

Section 196 provides that for continued approval as an approved child care service a number of conditions must be met, such as eligibility rules, compliance with the family assistance law, cooperation with authorised officers, and compliance with other laws relating to child care which may be imposed by the Commonwealth, or a relevant State or Territory. **Item 4** inserts the words “or is of a civil penalty provision” to make clear that it is a condition of approval that a service must not contravene an obligation imposed by the family assistance law, whether or not that obligation is an offence or a civil penalty provision.

Item 5 – At the end of subsection 196(2)

Item 5 inserts a note to make clear that enforcement of these conditions may be undertaken by a range of compliance measures in the Family Assistance Administration Act such as infringement notices, proceedings for civil penalty orders and criminal prosecutions of offences or a combination of these. The application of one type of measure is not intended to limit the application of any other type. This is intended to give the Secretary maximum flexibility to take action against a service for contravention of their obligations under the Family Assistance Administration Act.

Items 6, 7 and 8 – Section 204

Section 204 concerns the requirement of approved child care services to notify the Secretary in writing of any matters which might affect the eligibility or continued eligibility for approval as an approved child care service. **Items 6, 7 and 8** amend section 204 to provide that contravention of this obligation constitutes a civil penalty (proposed subsection (1)) and an offence (proposed subsection (2)). The current criminal penalty under section 204 (and wherever else a criminal penalty is being supplemented by a civil penalty by these amendments) has been repealed and replaced in order to re-frame the provision in modern penalty terminology.

Section 219AC deals with the failure of approved child care services to notify the Secretary of enrolments in relation to:

- new enrolments; and
- enrolments where the child care service is eligible for child care benefit by fee reduction for care provided to a child at risk.

Item 9 – Before subsection 219AC(1)

Item 9 inserts civil penalty provisions at proposed subsections (1A) and (1B) to supplement the existing offences for failure to notify.

Item 10 - Before subsection 219AG(1)

Section 219AG deals with the failure of approved child care services to update enrolment information. **Item 10** inserts a civil penalty provision at proposed subsection (1A) to supplement the existing offence for failure to notify.

Items 11 to 14 – Section 219B

Section 219B deals with the obligation of approved child care services to pass on fee reductions where an individual is conditionally eligible. **Items 11, 12 and 13** amend section 219B to provide that contravention of this obligation may constitute a civil penalty [proposed subsection (2)] and an offence (proposed subsection (2A)). The repeal of subsection (6) by **Item 14** and the insertion of proposed subsection (2B) ensure that the offence at proposed subsection (2A) remains one of strict liability.

Items 15, 16 and 17 – Section 219BB

Section 219BB deals with the obligation of approved child care services to charge no more than the usual fee at the rate determined by the child care service or the Secretary. **Items 15, 16 and 17** amend section 219BB to provide that contravention of this obligation may constitute a civil penalty (proposed subsection (1)) and an offence [proposed subsection (2)]. Proposed subsection (3) ensures that the offence at proposed subsection (2) remains one of strict liability.

Items 18, 19 and 20 – Section 219BC

Section 219BC deals with the obligation of approved child care services to charge no more than the usual fee at the special grandparent rate. **Items 18, 19, and 20** amend section 219BB to provide that contravention of this obligation may constitute a civil penalty (proposed subsection (1)) and an offence (proposed subsection (2)). Proposed subsection (3) ensures that the offence at proposed subsection (2) remains one of strict liability.

Items 21 to 24 - Section 219BD

Subsection 219BD deals with the obligation of approved child care services to charge no more than the usual fee where an individual is eligible to receive Jobs Education and Training (JET) child Care fee assistance. **Items 21, 22 and 23** amend section 219BD to provide that contravention of this obligation may constitute a civil penalty (proposed subsection (1)) and an offence (proposed subsection (1A)). The repeal of subsection (3) by **Item 24** and the insertion of proposed subsection (1B) ensure that the offence at proposed subsection (1A) remains one of strict liability.

Items 25, 26 and 27 – Section 219E

Section 219E deals with the obligation of approved child care services to provide receipts. **Items 25, 26 and 27** amend section 219E to provide that contravention of this obligation may constitute a civil penalty [proposed new subsection (1)] and an offence (proposed new subsection (1A)). The repeal of old subsection (1A) by **Item 27** and the insertion of proposed subsection (1B) ensure that the offence at proposed new subsection (1A) remains one of strict liability.

Items 28 and 29 – Section 219EA

Section 219EA deals with the obligation of approved child care services to provide information relating to child care places. In the current legislation section 219EA (2), which requires a service to provide the information by a time, form, and manner to be determined by the Secretary, is the only civil penalty provision. **Items 28 and 29** amend the subsection and repeal current subsection (3) to re-frame the provision in modern penalty terminology. This civil penalty provision has no equivalent criminal penalty.

Items 30 to 34 – Section 219F

Section 219F deals with the obligation of approved child care services to keep records on certain specified matters (subsection (1)) and for a certain period [subsection (2)].

Items 30, 31 and 32 amend section 219F to provide that contravention of this obligation may constitute a civil penalty (proposed new subsection (1)) and an offence (proposed new subsection (1A)). Proposed subsection (1B) ensures that the offence at (1A) remains one of strict liability.

Item 33 inserts a civil penalty (proposed new subsection (2)) and an offence (proposed new subsection (2A)) to make clear that an approved child care service must keep these records for at least 36 months after the end of the year in which care was provided **or** until a time ordered by a court during civil or criminal proceedings. This amendment is proposed in order to preserve the records until any Court proceedings have finally been determined, which may be a time later than the time that the 36 month period has expired. Proposed subsection (2B) ensures that the offence at (2A) is one of strict liability.

Item 34 adds subsection (4) at the end of section 219F which provides that an offence against the Family Assistance Administration Act includes an offence against Chapter 7 of the *Criminal Code* that relates to the Family Assistance Administration Act.

Items 35 to 44 – Section 219G

Section 219G deals with the obligations of former approved child care services to:

- keep the records specified in section 219F for the same period as specified in section 219F as if they had not ceased to be approved child care services; and
- notify the Secretary within 14 days of ceasing to be an approved child care service of the premises at which the records are kept; and
- notify the Secretary if the premises at which the records are kept changes (within 14 days of the change in premises).

Items 35 to 44 amend section 219G to provide that contravention of these obligations may constitute a civil penalty and an offence and that the offences remain ones of strict liability.

Item 45 – Section 219J

Section 219J deals with the issuing of identity cards by the Secretary to authorised officers. **Item 45** amends the section to provide that:

- the card must be in certain form;
- a person commits an offence if they cease to be an authorised officer and do not return their identity card (except where the card was destroyed or lost); and
- authorised officers must carry their identity cards at all times when exercising their powers.

Item 46 and 47 – Section 219K

Section 219K deals with the power of authorised officers to enter premises of approved child care services for the purpose of inspecting records. **Item 46** amends the section to provide that an authorised officer may enter premises for the broader purpose of monitoring the approved child care service's compliance with a condition for the continued approval of the service. (These conditions are set out at section 196 of the act.) Monitoring allowable under proposed subsection (1A) could include making observations and generally monitoring the activities being undertaken by the approved child care service.

A note after subsection 219K(1A) advises the reader that the authorised officer could also inspect certain records while on the premises (see paragraph (1)(a)).

Item 47 clarifies that entry by authorised officers:

- must only be with the express voluntary consent of the occupier of the premises (or a person who represents that person), on presentation by the authorised officer of his or her identity card, after having been informed by the authorised officer of the right to refuse consent;
- may be limited to a particular time period with effect only during that period or until such time as consent is withdrawn;
- is subject to the consentor withdrawing consent at any time.

An authorised officer must leave the premises if the consent ceases to have effect.

The role of an authorised officer is to conduct reviews of approved services and educate operators on their obligations regarding the conditions of continued approval specified in the family assistance legislation.

Before undertaking compliance reviews as an authorised officer, all new staff must complete a 2-day training course run by the Department's national office. The course explains the roles and responsibilities of a compliance officer and the legislative framework within which he/she operates. It covers the end to end process of conducting reviews, from the planning of the visit through to follow-up action for any issues of non compliance identified during the review.

All child care compliance reviews must be conducted using the processes and procedures set down in the Child Care Compliance - Compliance Officer Manual Version 2.0. This manual is the primary resource tool for compliance officers - it contains extracts of the legislation applicable to child care compliance activity and documents the mandatory processes for conducting reviews. The manual also includes the review forms, review reports, consent letters and analysis worksheets which compliance officers must use to ensure their work is carried out in a systematic and consistent manner.

To manage the risk of services making particular claims/accusations about the activities of the authorised officers and to ensure the safety of staff while undertaking reviews all visits to services must be undertaken by at least two compliance officers.

While the role of authorised officer is not to investigate fraud, where fraudulent behaviour is suspected the matter is referred to the Department's Investigation Branch. The Investigations Branch is responsible for the investigation of all allegations of fraud, both internal and external, against the Department. All investigations are conducted in accordance with relevant standards and quality expectations as expressed within the DEEWR Investigations Standards and Commonwealth Fraud Control Guidelines 2002.

Items 48 to 58 – Section 219L

Section 219L deals with the obligation of occupiers of premises of approved child care services to provide authorised officers with access to records and assistance during monitoring visits described in section 219K. **Items 48 to 58** amend the section to provide that contraventions of these obligations may constitute civil penalties (subsections 1, 2 and 3) and offences (subsections 1A, 2A and 3A). The offences remain ones of strict liability.

Items 59, 60 and 61 – Section 219M

Section 219M deals with the obligation of operators of child care services to notify the Secretary if they intend to cease operating an approved child care services. **Items 59, 60 and 61** amend the section to provide that contravention of this obligation may constitute a civil penalty (subsection (1)) and an offence (subsection (3)).

Item 62 – Section 219N

Section 219N deals with the obligation of approved child care services to provide reports to the Secretary on specified matters in a specified manner and form. **Item 62** amends the section to insert a civil penalty provision at subsection (5A) for contravention of this obligation. An offence provision already exists at subsection (6).

Item 63 – Section 219NA

Section 219NA deals with the obligation of approved child care services to provide information to the Secretary about the number of child care places. **Item 63** amends subsection 219NA(4) to make it clear that contravention of the obligation to provide information as specified in a notice to do so from the Secretary is a civil penalty.

Items 64, 65 and 66 – Section 219NB

Section 219NB deals with the obligation of approved child care services to provide further information to the Secretary about enrolled children. **Items 64, 65 and 66** amend the section to provide that contravention of this obligation may constitute a civil penalty (subsection (1)) and an offence (subsection (2)).

Items 67, 68 and 69 – Section 219P

Section 219P deals with the obligation of operators of former approved child care services (where the approval was suspended or cancelled under the Family Assistance Administration Act) to fulfil a range of obligations under the Family Assistance Administration Act in respect of sessions of care provided before the approval was suspended or cancelled. **Items 67, 68 and 69** amend the section to provide that contravention of this obligation may constitute a civil penalty (subsection (1)) and an offence (subsection (2)).

Items 70, 71 and 72 – Section 219QB

Section 219QB deals with the obligation of approved child care services to remit to the Secretary amounts that cannot be passed on. **Items 70, 71 and 72** amend the section to provide that contravention of this obligation may constitute a civil penalty (subsection (1)) and an offence (subsection (1A)).

Item 73 – Section 219TSA

Section 219TSA deals with definitions of ‘civil penalty order’ and ‘penalty unit’. **Item 73** repeals the section because these definitions now appear in section 3 (see **items 1 and 3**)

Items 74, 75 and 76 – Section 219TSB

Section 219TSB provides that ancillary contravention of any civil penalty under the Family Assistance Administration Act is itself a civil penalty. **Items 74, 75 and 76** amend the section and repeal current subsection (2) to re-frame the provision in modern penalty terminology. This civil penalty provision has no equivalent criminal penalty.

Item 77 and 78 – Section 219TSC

Section 219TSC deals with the power of the Federal Court (or the Federal Magistrate’s Court) to make an order, on application by the Minister, for a person to pay a pecuniary penalty if it is satisfied that the person has contravened a civil penalty provision. **Item 77** adds a note for guidance that civil proceedings do not limit, or are affected by, the Secretary’s power to apply sanctions such as suspension or cancellation, or other compliance measures in the Family Assistance Administration Act.

The Court has discretion to determine the amount of pecuniary penalty it considers to be appropriate, but in making that determination it must have regard to all relevant matters including certain specified matters set out at paragraphs (3) (a) to (d). **Item 78** amends subsection (3) to add a proposed specified matter at (e), namely that in determining a pecuniary penalty the court must have regard to the likely impact of the penalty on the person and the continued operation of the approved child care service. This is to ensure that the Court takes into account matters which might include the relevant size and location of the service and whether the penalty is likely to cause a severe impact on the service’s continued operation.

Item 79 – Section 219TSD

Section 219TSD deals with the maximum penalties for contravention of the civil penalty provisions. **Item 79** amends the section to provide for a general rule that the maximum pecuniary penalty must not exceed 200 penalty units for an individual or 400 penalty units for a body corporate. **Item 79** provides an exception for this general rule for contraventions of the obligation to provide information relating to child care places (subsection 219EA (2)) or the obligation to provide authorised officers with access to records and assistance during monitoring visits (subsection 219L (3)) for which the maximum penalties are set at the previous rates of 30 penalty units for an individual and 60 penalty units for a body corporate.

The maximum penalties for the general rule have been set at the proposed levels in order to act as an effective deterrent to non-compliance across a wide range of approved child care services in the industry. Without an effective lever for service providers to comply with their obligations for continued approval, it would not be possible for the Government to adequately monitor the expenditure of Child Care Benefit payments made through service providers. The Court retains the discretion to impose a lesser penalty on a case by case basis having regard to the matters specified at subsection 219TSC (3) any other relevant matter.

Item 80 – After section 219TSG

Item 80 inserts a number of proposed provisions to deal with extra procedural issues which are raised by the expansion of the civil penalty scheme.

Proposed section 219TSGA deals with the situation where certain conduct contravenes two or more civil penalty provisions. Under the new provision, proceedings may be instituted against a person if they contravene one or more of those provisions. Although the double jeopardy rule applies so that a person cannot be liable for more than one pecuniary penalty for the same instance of contravening conduct, administrative sanctions for that conduct (such as suspension of approval) may still be imposed.

Proposed section 219TSGB provides that civil penalty proceedings must not follow successful criminal proceedings – in other words a court cannot make a civil penalty order against a person for conduct which is already the subject of an offence conviction.

Proposed section 219TSGC provides that where criminal proceedings are commenced after civil proceedings are commenced on the same conduct, the civil proceedings are to be stayed pending the outcome of the criminal proceedings. Where a conviction is recorded, the civil proceedings are to be dismissed and costs must not be awarded. (This is because the Minister should not be entitled to recover costs from the defendant if inappropriate proceedings have been instituted, and the defendant should not be entitled to recover costs as the defendant has clearly been in breach of an obligation under the family assistance law.) If the person is not convicted, the civil proceedings are to be resumed.

Proposed section 219TSGD provides that criminal proceedings may be commenced against a person after civil proceedings have commenced whether or not a pecuniary penalty has already been imposed for the same conduct.

Proposed section 219TSGE provides that evidence given by a person in a civil proceeding may not be used in a criminal proceeding. This does not apply where the person is accused of perjury in relation to evidence given in the civil proceeding.

Proposed section 219TSGF provides that the Minister may request a person to give all reasonable assistance in connection with an application for a civil penalty order and that, where this request has been made, failure to comply is an offence. Subsection (2) provides assistance to readers to clarify that the Ministerial request is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This subsection clarifies that the request is not an additional exemption under section 7 of the *Legislative Instruments Act 2003* which declares which instruments are not legislative instruments. The Minister would not be able to seek the assistance of:

- a person who is likely to be the subject of the civil penalty order;
- a person who has committed an offence constituted by the same conduct to which the application relates; or
- a person who is or was the legal practitioner representing the person against whom an order can be made.

The application for a civil penalty order in relation to which the Minister seeks a person's assistance need not have actually been made.

Item 81 – Section 219TSH

Section 219TSH deals with the definition of 'penalty unit' in relation to the infringement notice scheme. **Item 81** repeals the section because the definition now appears in section 3 (see **item 3**).

Items 82 and 83 – Section 219TSK

Section 219TSK deals with the infringement notices that can be given to bodies corporate (subsection (1)) and persons other than bodies corporate (subsection (2)).

Items 82 and 83 replace the current infringement notice scheme with new tables each for bodies corporate and persons other than bodies corporate. The tables set out the penalty units which can be imposed for single contraventions of a civil penalty provision for specified groups of civil penalty provisions, and for multiple contraventions, with maximum penalty amounts for each group. The penalty that can be imposed per infringement notice may not be multiplied by more than 8 times (even if there are more than 8 contraventions listed in the infringement notice).

Item 84 – Section 219TSN

Section 219TSN makes clear that the infringement notice scheme does not limit, nor is it affected by civil proceedings for contravention of a pecuniary penalty. **Item 84** adds a note to clarify further that the effect of the infringement notice scheme does not limit, nor is it affected by the Secretary's power to apply sanctions such as suspension or cancellation, or other compliance measures in the Family Assistance Administration Act.

Item 85 – After section 220

Item 85 inserts proposed section 220A to provide that the Minister may request a person to give all reasonable assistance in connection with criminal proceedings and that, where this request has been made, failure to comply is an offence. Subsection (2) provides assistance to readers that the request is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* – it is not an exemption to that Act. The Minister would not be able to seek the assistance of:

- a person who is likely to be a defendant in the proceedings;
- a person who has contravened a civil penalty provision constituted by the same conduct to which the proceedings relates; or
- a person who is or was the legal practitioner representing the defendant or a likely defendant in the proceedings.

The criminal proceedings in relation to which the Minister seeks a person's assistance need not have actually commenced.

Part 2 – Application*Items 86 and 87 – Application of amendments*

Item 86 provides that subject to the application provision about keeping records at **item 87**, the amendments made by Schedule 4 apply to conduct happening wholly after the commencement of the Schedule.

Item 87 provides that if, before the commencement of Schedule 4, an approved child care service was required to keep records under section 219F(2), and but for these amendments the record keeping period would have expired after commencement, the obligations under the amended section 219 (i.e. the civil penalty provision and the offence provision) both apply. The effect of this provision is that the approved child care service will only contravene the new civil penalty and offence provisions if the service fails to keep the records after commencement. Section 8 of the *Acts Interpretation Act 1901* applies to the application after commencement of the current offence in section 219F (2) is a service fails to keep records before commencement.

Schedule 5 - Other Measures

Summary

This Schedule contains a number of amendments to various provisions of the Family Assistance Act and Family Assistance Administration Act. These amendments relate to:

- Clarification of the provisions relating to the weekly limits of hours for the purposes of CCB. These amendments will ensure that there is alignment between CCTR provisions and CCB provisions. Also included in these measures is the ability to review child care tax rebate decisions automatically where there has been an application for review of a decision relating to CCB where the amount of CCB changes.
- Minor amendments of a technical character as a result of the CCMS Act.
- Publication of information relating to sanctions or suspensions of approved child care service's approval. These amendments give the Secretary a discretionary power to publicise information related to decisions to sanction or suspend a service for non-compliance with conditions for continued approval.
- Clarification of the allocation of places provisions so that these provisions only refer to the kind of approved child care service for which the Secretary allocates places.
- Replacing the obligation to provide receipts with an obligation for approved child care services to provide periodic statements to conditionally eligible individuals. The statement will contain information about the amount the service is required to pass on to the individual under section 219B, and any other information specified by the Secretary in a legislative instrument made for this purpose.
- Delegation of the Secretary's powers under Division 2 of Part 8C (infringement notices). This amendment ensures that the Secretary can delegate the powers under Division 2 of Part 8C to 'SES officers and acting SES officers.'
- Giving of notices under Part 8C (civil penalties) which will align notices given under Part 8C with the relevant deeming provisions in the Family Assistance Administration Act.

(a) CCTR eligibility**Background**

This amendment clarifies the CCTR eligibility provisions to ensure that eligibility of an individual for CCTR for a week arises when the circumstances specified in Subdivision G of Division 4 of the Family Assistance Administration Act, in which the weekly limits of 50 hours, more than 50 hours or 24 hour care apply, are met in that week by the individual. It does not matter whether there was a CCB determination relating to hours in force under section 50H of the Family Assistance Administration Act in respect of the individual and the week with the effect that the weekly limits of 50 hours, more than 50 hours or 24 hour care applied in that week for CCB purposes.

These amendments commence on Royal Assent.

Explanation of the changes

Section 57 specifies the conditions of eligibility for CCTR for an individual and the child for a week.

Paragraph 57F(1)(c) operates to the effect that an individual is eligible for CCTR for a week if the relevant weekly limit of hours of care applies to the individual under Subdivision G of Division 4 of the Family Assistance Administration Act (which deals with limitations on eligibility for CCB relating to hours). The relevant limit of hours applicable to the individual for a week is 50 hours, more than 50 hours or 24 hour care.

Subsection 57F(2) provides that if a 24 hours limit applies to the individual in a week the conditions for CCTR for the week are not met.

Item 1 repeals subsection 57(2) and substitutes new subsection (2) which clarifies paragraph 57F(1)(c) by providing that the conditions for CCTR for a week are met even though the required limit of hours specified in paragraph 57F(1)(c) does not apply under a determination on force under section 50H of the Family Assistance Administration Act, if circumstances in which a higher weekly limit of hours applies were applicable to the individual in the week. For example, if an individual's weekly limit of hours determination under section 50H specified only 24 hours limit in a particular week, but the individual was working full time and therefore the 50 hour limit would apply for the week, the applicable limit of hours for CCTR purposes will be taken to be 50 hours, which will make the individual eligible for CCTR for that week (subject to other conditions being met).

The note inserted at the end of new subsection 57F(2) replicates the current subsection 57F(2).

(b) CCTR indexation**Background**

Currently the CCB indexation is based on the December reference quarter whereas the CCTR indexation reference quarter is March. Given that the indexation dates of both payments are the same the indexation provisions for CCB and CCTR amounts need to be aligned.

These amendments align the indexation of the new CCTR limit, which is to occur on 1 July 2009, with indexation of the CCB amount by providing that the relevant reference quarter before indexation day is December and the relevant base quarter is the highest December quarter before the reference quarter but not earlier than December 2007.

These amendments commence on 1 July 2008.

Explanation of the changes

Item 5 amends table item 22 in subclause 3 of Schedule 4 (Indexation and adjustment amounts) relating to indexation of CCTR limit amount by substituting new item 22 specifying that the CCTR limit amount is indexed on 1 July each year, taking into account the December quarter before the indexation day as the reference quarter and making the base quarter the highest December quarter before the reference quarter but not earlier than December 2007 and applying the rounding base of \$1.00.

(c) Limit of hours – variation determination**Background**

Currently, the operation of the provisions relating to a variation of a determination of weekly limit of hours made under section 50H of the Family Assistance Administration Act for the purposes of CCB are not entirely clear. A change of the limit of hours occurs through variation of the determination made under Subdivisions U (sections 64A to 64D) or V (section 65D) of Division 4 of Part 3 of the Family Assistance Administration Act.

The two subdivisions apply to essentially the same situations; however, they produce different outcomes. A variation under Subdivision U to increase a limit of hours requires application from the individual and, in some cases, from the service providing care to the individual's child. There are no provisions in Subdivision U that would limit the time from which the variation may operate. Under a variation in Subdivision V (section 65D) if a claimant notifies of a change/event before the end of the following year or the Secretary did not become aware until after the end of the income year following the one in which the event occurred, the increase in the limit of hours is effected from the date of the occurrence of the event. If the event is notified later or not notified by the claimant the effect of the increase is limited to the beginning of the income year before the year in which the variation to increase the limit is made; the variation to decrease the limit is made with effect from the occurrence.

The amendments are made to ensure that a variation of determination of the weekly limit of hours made in particular circumstances has the same effect regardless of whether it is made under Subdivision U or V.

These amendments commence on Royal Assent.

Explanation of the changes

Item 7 inserts new section 64DA, which prevents the Secretary from varying a determination of weekly limit of hours under Subdivision U if the application for variation was made after the end of the income year following the one which provided the cause for the variation, the result of the variation would increase the individual's weekly limit of hours and the variation would apply to a period that ended before the start of the income year before the one in which the application was made.

This amendment ensures that the effect of the variation of the limit of hours relating to a retrospective period does not conflict with the effect of variation made in the same circumstances under section 65D.

Section 64E deals with the elements of notice of variation made under Subdivision U. Paragraph 64E(1)(c) requires that the notice states the effect of the variation. **Item 8** substitutes new subparagraphs 64E(1)(c)(i) and (ii). New subparagraphs 64E(1)(c)(i) provides that the notice must state the day from which the variation takes effect (dealt with in new section 64EA inserted by **item 10**). New subparagraph 64E(1)(c)(ii) provides that if the variation is to have effect for a period then the notice must state the period of one or more weeks that the variation is to have effect.

Item 9 makes a stylistic amendment to paragraphs 64E(1)(iii) and (iv) in keeping with the current drafting style.

Item 10 inserts new section 64EA, which specifies when a variation of weekly limit of hours takes effect. Generally, the date of effect of a variation of a weekly limit of hours is the start of the week in which circumstances exist that would make an individual eligible for a 50 hour weekly limit, more than 50 hour weekly limit, or a 24 hour care limit. The exception to this rule applies where the application to vary the weekly limit of hours is made after the end of the income year following the one in which such circumstance first applies and the variation would have the effect of increasing the weekly limit of hours. In these circumstances, the variation can only have effect from the start of the income year before the one in which the application was made. This is in line with the date of effect of beneficial variations applicable to variations made under section 65D.

(d) CCTR inalienability

Background

Currently, the payment of CCTR is the only family assistance payment that is not a protected payment.

These amendments align the treatment of CCTR with that of other family assistance payments making it absolutely inalienable, whether by way of or in consequence of sale, assignment, charge, execution, bankruptcy or otherwise.

These amendments commence on Royal Assent.

Explanation of the changes

Item 11 amends subsection 66(1), which deals with protection of payments, by inserting new paragraph 66(1)(ea) referring to CCTR.

(e) Publication of information relating to sanction or suspension of approved child care service's approval

Background

Section 196 of the Family Assistance Administration Act specifies conditions a child care service approved for the purposes of family assistance law must comply with to continue to be so approved. These conditions fall in 3 broad categories: compliance with the eligibility requirements (subsection 196(1)), compliance with family assistance law (subsection 196(2)), and compliance with child care laws of the Commonwealth or of the State or Territory (subsection 196(3)).

Failure to comply with the conditions for continued approval may result in a sanction being imposed on the service by the Secretary under section 200 of the Family Assistance Administration Act. The Secretary may:

- vary the conditions for the continued approval of the service imposed under subsection 199(2);
- impose additional conditions for the continued approval of the service under subsection 199(2);

- reduce the number of child care places allocated to the service under section 207;
- suspend the service's approval;
- cancel the service's approval
- withhold the payment of enrolment advances to the service under section 219RA;
- require the remittal to the Secretary of enrolment advances paid to the service under section 219RA;
- suspend, for a maximum of 3 weeks, payment under section 219Q or subsection 219QA(2) in respect of fee reduction.

The process of sanctioning requires that a notice of the intention to sanction and an opportunity to make a submission be given to the service.

Furthermore, subsection 201A(1) of the Family Assistance Administration Act provides that the Secretary may, by notice given to an approved child care service, immediately suspend the approval of the service if the Secretary reasonably believes that:

- the service is not complying with all applicable requirements imposed by a law of the Commonwealth, or of the State or Territory in which the service is situated, relating to child care; or
- there is an imminent threat to the health or safety of a child, or children, because of the care provided by the service to the child or children; or
- due to urgent circumstances, it is no longer appropriate for the service to provide child care.

Amendments will authorise the Secretary to publicise details about the decisions under section 200 to sanction an approved child care service for non-compliance with conditions for continued approval and about decisions to suspend a service's approval under subsection 201A(1) (e.g. by uploading the information on the website maintained by the Department). It is anticipated that the publication will act to improve the services' compliance with their obligations as approved child care services.

These amendments commence on Royal Assent

Explanation of the changes

Amendments to the Family Assistance Administration Act

Part 1 - Amendments

Item 20 inserts a new section 201B in Division 1 Part 8 dealing with the approval of child care services, which provides the Secretary with the discretionary power to publicise information about the Secretary's decision to sanction an approved child

care service under paragraphs 200(1)(a) to (h) or to suspend the approval of a service under subsection 201A(1).

New subsection 201B(2) provides examples of the information which the Secretary may publicise. The information may include the name and address of the service, the name of the operator of the service. In the context of a sanction the information may also include the day when the sanction starts to have effect, each condition for the continued approval of the service that the service has not complied, or is not complying, with, and the day (if any) when the sanction ceases to have effect. In the context of a immediate suspension the information may also include the day the suspension starts to have effect, the grounds for the suspension and the day (if any) when the suspension ceases to have effect.

It is intended that the Secretary will decide whether and what information about a service should be published on a case by case basis, with the level of detail to be determined by the Secretary, taking into account considerations such as seriousness of the breach, its persistence, the service's past record of compliance with its responsibilities and the consequences of the Secretary's decision for parties such as parents and children.

A decision to sanction made under section 200 or a decision to suspend a service's approval under subsection 201A(1) are reviewable by the Secretary on application made by the affected person (within 28 days of the notification of the sanction) or by the Administrative Appeals Tribunal (within 28 days of the notification of the review decision). As a matter of administration it is intended that the Secretary will not publish the information until after the appeal period for the sanction decision has lapsed. The Secretary's decision to publicise the information will not be reviewable on an application by the affected person. **Item 12** makes amendments to this effect. It inserts a new paragraph 108(2)(fa) which adds a decision under 201B to publicise sanction or suspension information to exceptions to the rule in subsection 108(1) that decisions made by an officer under family assistance law must be reviewed on application under section 109A. However the Secretary will be able to review the decision to publicise, on the Secretary's own initiative.

(f) CCTR review

Background

Part 5 of the Family Assistance Administration Act contains provisions relating to review of decisions under the family assistance law. The Secretary may review a decision on his or her own initiative (under section 105) at any time after a determination is made and no time limits apply. The Secretary may also review a decision where a person affected by a decision applies to the Secretary (under section 109A) no later than 52 weeks after the applicant was notified of the decision concerned. Where there has been a review by the Secretary and the person affected is not satisfied with that decision the person may apply to the Social Security Appeals

Tribunal (SSAT) (under section 111) no later than 13 weeks after the person is notified of that decision. A decision made by the SSAT may be reviewed by the Administrative Appeals Tribunal (AAT) (under section 142) on an application made no later than 60 days after the decision of the SSAT.

The decisions which can be reviewed include those relating to CCB determinations and CCTR determinations. The nature of the CCTR payment is such that the amount of CCTR entitlement for an income year depends on the amount of CCB entitlement for the year. Therefore, if a CCB entitlement determination needs to be reviewed to either increase or decrease the CCB entitlement, the CCTR entitlement determination also needs to be reviewed to either decrease or increase the CCTR entitlement. There is no flow-on effect to CCB from review of the CCTR entitlement.

Currently, both the CCB entitlement determination and the CCTR entitlement determination may be reviewed, but in separate review actions. Given that the legislation places restrictions on the beneficial effect of review decisions when the review occurs later than within the prescribed time limits, the current situation when review of the CCB and CCTR determinations may occur at a different time (e.g. CCB is reviewed at the end of the prescribed time limit and CCTR is then reviewed after the time limit), may, in some cases, lead to a detriment to the individual. An adverse decision in a separate CCTR review subsequent to the CCB review may create the recovery of a CCTR debt more difficult than it would have been if both reviews were undertaken at the same time.

These amendments ensure that when an application is made for a review of a CCB entitlement determination, which affects the person's CCTR entitlement, the CCTR entitlement determination for the same income year is also reviewed, at the same time.

These amendments commence on Royal Assent.

Explanation of the changes

Item 16 inserts a new Division 5 into Part 5 (review of decisions) providing for the automatic review of child care tax rebate decisions.

New Division 5 – Automatic review of child care tax rebate decisions

New section 152A – Automatic review of child care tax rebate decisions

New section 152A specifies when an automatic review of a CCTR decision is to occur.

New subsection 152A(1) provides that new section 152A applies when three conditions are met: an application for review of a CCB entitlement decision for one or more sessions of care provided by an approved child care service to a child during an income year has been made under the relevant provisions - sections 109A (internal review), 111 (SSAT review) and 142 (AAT review); an amount of CCTR is

applicable for the person and child for the income year; and the result of the review affects the amount of CCB payable in respect of a session or sessions of care.

New subsection 152A(2) provides that the Act has effect as if the application for the CCB review also included an application for review of any determination of entitlement for CCTR.

The amendment ensures that when an application is made for a review of a CCB entitlement determination, the CCTR entitlement determination for the same income year is also reviewed, but only if the CCB review results in an increase or decrease of the CCB amount. If the review of the CCB entitlement does not result in a change to the CCB amount, the automatic review of the CCTR entitlement is not required because the CCTR entitlement amount remains unaffected.

Section 109A provides that a person affected by a decision may apply to the Secretary for review of that decision. **Item 13** inserts a note at the end of subsection 109A(1) to inform the reader that there will be an automatic review of a person's CCTR entitlement for an income year whenever an application is made under this section to review a person's CCB entitlement for an income year and that review affects the person's CCTR entitlement for the income year. For further information the reader is directed to new Division 5.

Items 14 and 15 insert similar notes to that inserted by **item 13**, at the end of subsection 111(1) dealing with an application for review of a decision by the Social Security Appeals Tribunal and subsection 142(1) dealing with an application for review of a decision by the Administrative Appeals Tribunal.

(g) Clarification of the allocation of places provisions

Background

Certain kinds of approved child care services are restricted in the provision of child care to the number of places allocated to the service by the Secretary under section 207 of the Family Assistance Administration Act.

The allocation is made in accordance with a determination under section 206. The current determination *Child Care Benefit (Allocation of Child Care Places) Determination 2000* (the Allocation Determination), specifies only two kinds of services to which allocation is made: in-home care service and occasional care

service. The allocation of places to a service depends on the availability of places. The total number of places is limited.

Under paragraph 195(1)(d) of the Family Assistance Administration Act when an application for approval is made relating to a child care service of the kind to which allocation of places is made under the Allocation Determination, such a service cannot be approved unless there are places available for allocation to the service (allocation of places is a pre-requisite for the approval of such a service). Concerns have been raised that paragraph 195(1)(d) may operate to require allocation of places as a pre-requisite to approval of any kind of child care service.

Amendments are made to clarify the legislation to ensure that only if a service is of a kind to which the Allocation Determination applies, the condition for approval in paragraph 195(1)(d) applies.

These amendments commence on Royal Assent.

Explanation of the changes

Item 17 amends paragraph 195(1)(d) to clarify that the requirement that the places would be allocated to the service applies only to the service covered by a determination in force under section 206.

Item 18 amends section 197 which makes it a condition for continued approval of a service that the service does not exceed the number of allocated places. The amendment ensures that this condition applies only to the service covered by a determination in force under section 206.

Section 206 authorises the Minister to determine guidelines for allocation of child care places. **Item 19** makes a minor consequential amendment of stylistic nature to paragraph 200(1)(c) informing the reader that these guidelines do not apply to all kinds of approved child care services.

Item 21 adds a note at the end of section 206 informing the reader that these guidelines refer to one or more classes of approved child care services. The reader's attention is drawn to section 13(3) of the *Legislative Instruments Act 2003*, which provides that the rule-maker, when making a legislative instrument about a matter or thing, may refer to a class or classes of these matters or things.

Section 207 provides that the allocation of places must be made by the Secretary in accordance with the determination (if any) under section 206. **Item 22** amends subsection 207(1) to clarify that the allocation requirement applies only to child care services of the kind covered by a determination under section 206.

(h) Obligation to provide statements

Background

Section 219E was introduced by Schedule 1 of the CCMS Act and commenced on 1 July 2007, however it only applies to an approved child care service following its application day as determined under item 91 of the CCMS Act.

Subsection 219E(1) of the Family Assistance Administration Act, as it applies after a service's application day, provides that a service must issue a receipt for a fee charged by the service for an enrolment which has been confirmed under section 219AE. The receipt must be issued at the time the fee is paid and must state the amount paid, the amount of fee reductions that the service is required to pass on to the individual under sections 219B and 219BA and any other information the Secretary specifies in the rules made under subsection (2). A penalty of 60 penalty units applies for contravention of the requirement. It is an offence of strict liability.

In certain circumstances, however, subsection 219E(1) will not operate to the effect of showing the claimant the amount of fee reductions that the service is required to pass on to the individual under sections 219B. This is because a service can charge a conditionally eligible individual before the calculation by the Secretary of their fee reductions under subsection 50Z(1) occurs, and the issuing of a receipt is triggered by the payment of fees when there may not be any fee reductions at the time of the payment. When a service is notified by the Secretary of the fee reduction calculation and 'passes on' the fee reductions under subsection 219B(1), this may not result in an additional payment to trigger the obligation to provide a receipt. In this situation, the service would not give a receipt and the individual would not know how much fee reductions the Secretary calculated.

This result does not accord with the policy intention that a conditionally eligible individual is made aware of the amount of fee reductions the service is required to pass on to him or her under section 219B.

These amendments commence on 1 January 2009.

Explanation of the changes

Section 219E(1) provides that a service must issue a receipt for a fee charged by the service for an enrolment which has been confirmed under section 219AE. **Item 23** repeals section 219E and substitutes a new section 219E. New subsection 219E(1), creates an obligation for approved child care services to provide an individual in respect of whom a determination of conditionally eligibility is in force under section 50F of the Family Assistance Administration Act with a statement specifying the information in new subsection 219E(5) when sessions of care are provided to the child and the service is required to pass on an amount under section 219B. New subsection 219E(1) is a civil penalty provision.

New subsection 219E(2) makes it an offence for approved child care services not to provide to an individual in respect of whom a determination of conditionally eligibility is in force under section 50F of the Family Assistance Administration Act with a statement specifying the information in new subsection 219E(5) when sessions of care are provided to the child and the service is required to pass on an amount under section 219B carries a penalty of 60 penalty units.

The current subsection 219E makes it an offence for a service not to issue a receipt. The offence is of strict liability and carries a penalty of 60 penalty units. New subsection 219E(3) makes the offence in new subsection 219E(2) an offence of strict liability. The rationale for strict liability is the same as for the current offence relating to receipts.

New subsection 219E(4) defines the statement period as being a four week period starting on the latest Monday of the service's application day, 1 January 2009, or when a determination under section 50F comes into force in relation to an individual.

New subsection 219E(5) provides matters that are required to be set out in the statement, including the statement period to which the statement applies, the full fees that would have been payable by the individual but for fee reductions, the amount the service is required to pass on to the individual under section 219B as fee reductions, and any other information specified by the Secretary in a legislative instrument made for under new subsection 219E(6).

New subsection 219E(6) authorises the Secretary to make rules dealing with such matters as how and to whom the statement must be given, providing different statement periods for particular services or classed of services, and any other information that must be given in the statement in addition to the information in new subsection 219E(5).

(i) Delegation of the Secretary's powers under Division 2 of Part 8C (infringement notices)

Background

Division 2 of Part 8C of the Family Assistance Administration Act concerns matters relevant to the Secretary giving infringement notices to persons who have contravened a civil penalty provision. A 'civil penalty provision' is defined in subsection 3(1) of the Family Assistance Administration Act by reference to specific provisions in the Family Assistance Administration Act. Infringement notices may be given by the Secretary or an authorised person appointed by the Secretary under section 219TSO, for the purposes of Division 2 of Part 8C.

Currently, subsection 221(4) prevents the Secretary from delegating any of the Secretary's powers under Division 2 of Part 8C, including the power to give the notice or appoint an authorised person.

The prohibition imposed on the Secretary by the operation of subsection 221(4) has been found to be administratively impractical.

This amendment commences on Royal Assent.

Explanation of the changes

Item 24 amends subsection 221(4) to allow the Secretary to delegate the Secretary's powers under Division 2 of Part 8C to an "SES employee or acting SES employee." 'SES employee' and 'acting SES employee' are defined in section 17AA of the *Acts Interpretation Act 1901* as having the same meaning as defined in the *Public Service Act 1999*, unless a contrary intention appears.

(j) Giving of notices under Part 8C (civil penalties)

Background

Part 8C of the Family Assistance Administration Act, dealing with civil penalties authorises the giving of two types of notices relevant to infringement notices (under section 219TSI) and suspensions of approved child care service's approval (under section 219TSQ).

Section 224A of the Family Assistance Administration Act is a deeming provision relevant to the giving of notices under Part 8 (Approval of child care services and registered carers). It makes a notice of a decision under Part 8 left at the address of the place of business of a child care service last known to the Secretary, or sent by prepaid post to the address of a child care service last known to the Secretary, or sent

by email to the last known email address of a child care service, to be taken as given for the purposes of the family assistance law to the service.

Section 224A also provides that if a notice of a decision of an officer under Part 8 is given to a service by properly addressing, prepaying and posting the document as a letter, the notice is taken to have been given to the service at the time at which the notice would be delivered in the ordinary course of the post, unless contrary is proved.

Amendments are made to ensure that section 224A also applies to notices given under Part 8C.

These amendments commence on Royal Assent.

Explanation of the changes

Item 25 inserts into section 224A a reference to Part 8C with the result that section 224A will apply to Part 8C notices.

Item 26 adds a new subsection 224A(4) which specifies that, a notice of an officer under Part 8C to which section 224A applies, is an infringement notice under section 219TSI or a notice of suspension under section 219TSQ.

(k) Other amendments

Background

Items 2, 3, 4 and 6 make minor amendments to the Family Assistance Act and the Family Assistance Administration Act to correct various expressions and omissions.

These amendments commence on Royal Assent.

Explanation of the changes

Section 73 of the Family Assistance Act deals with the rate of fee reductions or the rate of CCB by fee reduction. Subsection 73(1) refers to an approved child care service calculating the rate of fee reduction as required under section 219A of the Family Assistance Administration Act. However, as a result of the amendments made by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*, it is the Secretary who is required to calculate this rate under section 50ZA of the Family Assistance Administration Act. **Item 2** amends paragraph 73(1)(a) to remove the reference to the service from this paragraph.

Section 84A of the Family Assistance Act provides for the method of calculation of the amount of CCTR for an income year where there is a determination of entitlement

for CCTR. Section 84A currently refers to a determination of entitlement for CCTR made under section 64EA (where the individual is eligible for CCB by fee reduction) or 64EB (where the individual is eligible for CCB for a past period). However, section 84A does not contain a reference to section 65EC of the Family Assistance Administration Act under which a replacement determination of entitlement to CCTR is made where the original determination did not include all periods of CCTR entitlement in the same income year. **Item 3** corrects this omission and inserts the reference to section 65EC in section 84A.

Section 84B of the Family Assistance Act sets out the rules relating to working out the amount of 'approved child care fees' for which an individual is liable relevant to the calculation of the individual's CCTR for that week. Subsection 84B(3) specifies in this regard that in the situation where the child care fees in the week were reduced under Division 1 of Part 8A of the Family Assistance Administration Act (that is by CCB fee reduction amount), it is the unreduced amount that counts. The reference in this subsection to reduction of fees under the specified Division is incorrect due to the amendments made by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*, as under this Division the service has the obligation to 'pass on' the amount of fee reductions which are calculated by the Secretary, rather than to reduce fees the service charges.. **Item 4** amends subsection 83B(3) to take this change into account.

Section 50 of the Family Assistance Administration Act deals with the requirement of the Secretary to make determinations when an individual claims CCB by fee reduction. Subsection 50(4) provides that the service uses these determinations as a basis for reducing a claimant's fees for sessions of care provided in an income year in respect of which a determination of conditional eligibility is in force. However, as a result of the amendments made by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*, it is the Secretary who is required to calculate this rate under section 50ZA of the Family Assistance Administration Act. **Item 6** make amendment to correct the explanation in subsection 50(4).

Part 2 – Application

Item 27 provides for the application of the amendments made by **items 2, 4 and 6** that correct various expressions to align the language of these provisions with the amendments made by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007* (CCMS Act). These amendments apply to sessions of care provided by an approved child care to a child during a week falling wholly after the service's application day determined in item 91 of the CCMS Act. These amendments commence on Royal Assent.

Item 28 provides for application of the amendment made by **item 3**, which amends the rate calculator for CCTR to ensure it applies to replacement decisions. The amendment applies to care provided on or after 1 July 2006.

Item 29 provides for the application of amendments made by **items 7 to 10**, which deals with the variation to the limit of hours. These amendments apply to the application for variations made after the commencement of this item. This amendment commences on Royal Assent.

Item 30 provides for the application of amendments made by **items 12 and 20** dealing with decisions to publicise sanctions and immediate suspension of a service's approval. These amendments apply to decisions made after the commencement of these amendments, irrespective of whether the non-compliance with the conditions of continued approval or grounds for the suspension occurred before or after the commencement of these amendments. These amendments commence on Royal Assent.

Item 31 provides for the application of the amendments made by **items 13, 14, 15 and 16** dealing with automatic review of CCTR determination of entitlement. These amendments apply to the decisions made after the commencement of these items. These amendments commence on Royal Assent.