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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE)
BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Early Childhood Education, Childcare and Youth the Honourable Kate Ellis MP)

FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE) BILL 2010

OUTLINE

Business continuity payments

From the time of transition to the Child Care Management System, child care benefit (CCB) is paid to a service weekly or fortnightly in arrears, based on reports provided through the Child Care Management System. Payment of CCB in arrears does not provide a buffer for services whose ability to report has been disrupted due to circumstances beyond their control. Amendments are made to introduce business continuity payments to support a service's financial viability during a period of disruption. Once the payments to a service have ended, they are offset against any subsequent payment due to the service under the family assistance law or under the Child Care Management System Act.

Compliance with child care services' obligations

Statements to families

Approved child care services are currently required to provide statements to individuals receiving CCB fee reductions every four weeks, setting out, among other things, their fees and the amount of CCB fee reduction. The start date for the statement period can vary for children in the care of the service. The requirement to issue statements every four weeks and the varying start dates have caused unintended complexity for services. Amendments are being made to simplify these requirements so that services have flexibility about when they issue the statements, while still ensuring that the required information is provided to families for all periods of care.

Discretionary suspension for 10 infringement notices

Where a child care service is given 10 infringement notices within a 12 month period for contravening civil penalty provisions, current legislation requires the automatic suspension of CCB approval for the service. Other suspension and cancellation provisions applying to CCB approval are discretionary. This amendment will make the suspension discretionary, enabling the Secretary to take into consideration the impact of suspension or cancellation on the families using the service.

Notification when a service ceases operation

An operator of an approved child care service must, as a condition of the service's continued approval, notify the Secretary when it intends to cease operating the service at least 30 days before the operator ceases to operate the service. Amendments are made to require the operator to notify that they have decided to close the service or transfer ownership at least 42 days before they cease to operate the service. This will provide additional time to deal with any potential disruption to families. Operators that are unable to provide 42 days notice, because they have to cease the operation earlier, in order to comply with Commonwealth or State/Territory law, or due to other circumstances beyond their control, will be required to provide notice as soon as

possible after the decision to cease operating the service is made. The existing penalty regime will continue to apply in relation to failure to comply with these notification requirements.

Transition to the Child Care Management System

Under the pre-Child Care Management System services were paid quarterly CCB advances based on CCB fee reductions expended by the services in a penultimate quarter. This advance was acquitted once the service submitted usage information from that quarter and any over advance was adjusted from the subsequent quarterly advance. Services are now paid CCB fee reductions weekly or fortnightly in arrears based on actual usage, under the Child Care Management System.

The acquittal of quarterly advances occurred either prior to or post the service's transition to the new system.

This amendment will clarify that there is authority to recover over advanced amounts paid under the previous quarterly advance system where the acquittal occurred prior to a service transitioning to Child Care Management System and the over advance amounts were not recovered before the transition. These amendments are retrospective to 29 June 2007 (commencement of the amendments made for the purposes of the Child Care Management System).

The final acquittals on transition to the Child Care Management System may result in an amount to be paid to the approved child care service. Amendments are made to provide for a clear power to appropriate funds for the purposes of making payments to services resulting from the final acquittals.

FINANCIAL IMPACT

Nil.

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NOTES ON CLAUSES

Clause 1 - Short title

Provides for the Act to be cited as the *Family Assistance Legislation Amendment (Child Care) Act 2010*.

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for sections 1-3, Schedule 1 and Part 2 of Schedule 5 to commence on Royal Assent; Schedules 3 and 6 to commence on the day after Royal Assent; Schedules 2 and 4 to commence on the 28th day after the day on which this Act receives Royal Assent; Division 1 of Part 1 of Schedule 5 is taken to have commenced on 29 June 2007; and Division 2 of Part 1 of Schedule 5 is taken to have commenced on 16 May 2009.

Subclause 2(2) provides that column 3 of the table contains additional information which may be added to or edited in any published version of the Act, but that information in this column is not part of the Act.

Clause 3 - Schedule(s)

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

For ease of description, this explanatory memorandum uses the following abbreviations:

‘CCB’ means child care benefit.

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

‘CCR’ means child care rebate.

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

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

Schedule 1— Business continuity payments

Summary

A business continuity payment is a discretionary payment that may be made in certain circumstances to approved child care services when there are circumstances beyond their control that prevent them from providing the weekly or fortnightly report through the Child Care Management System that triggers the payment of CCB fee reduction to services. The purpose of the business continuity payments is to support the service's financial viability during the period of disruption. Business continuity payments are recoverable in full, predominantly from the next available amounts that are routinely due to the service by way of CCB fee reduction payments and enrolment advances.

Background

Approved child care services are required to provide weekly reports that trigger the payment of fee reduction amounts via the Child Care Management System, which relies on electronic means of communication. Occasionally, a service cannot provide the required reports within the prescribed legislative timeframe because there is a situation beyond the service's control that affects the service's ability to do so (eg malfunction of the internet connection or the software the service is required to use or there is a local emergency such as flood or bushfire). Where a service cannot provide the weekly report on time, the fee reductions that would otherwise have been paid to the service in connection with that report cannot be calculated and paid.

Explanation of the changes

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

Item 1 - After paragraph 66(1)(fa)

Item 1 is a technical amendment consequential to the amendment made by **Item 27** authorising payment to a service of a business continuity payment. **Item 1** inserts new paragraph (fb) into subsection 66(1) providing for inalienability of the payments specified in this subsection, to ensure that business continuity payments are inalienable and protected from any sale, assignment, charge, execution, bankruptcy or otherwise.

Item 2 - Section 70

Section 70 provides for a regime for the creation of a debt relating to payment of amounts by way of 'family assistance' (as defined in section 3 of the Family Assistance Act) and other specified payments made under the family assistance law. **Item 2** amends section 70 to ensure that an amount paid by way of business continuity payments is a debt due to the Commonwealth only if the Family Assistance Administration Act expressly provides that it is. **Item 2** makes a similar amendment

for the purposes of the payment made under section 219Q or 219QA(2) (fee reductions) and under section 219RA (enrolment advances).

Item 3 - Subparagraphs 71G(1)(a)(ii) and (3)(a)(ii)

Subsection 71G(1) creates a debt due by the approved child care service if an amount is paid to the service by way of weekly fee reduction payments (under section 219Q) for sessions of care provided by the service and where the service's approval was suspended or cancelled before the payment was made for the session of care. The amount paid for the sessions of care occurring after the suspension or cancellation is a debt due to the Commonwealth by the service.

Subsection 71G(1) provides that fee reduction amounts that would be paid to a service but for the fact that a debt was recovered from this amount under subsection 82(2), or a set off was made against these amounts under section 219QA (set off of fee reduction amounts) or under section 219RC (set off of enrolment amounts) are included in the amounts that are to be repaid as a debt (see subparagraph 71G(1)(a)(ii)).

Item 3 amends subparagraph 71G(1)(a)(ii) to include a reference to new section 219RE (inserted by **Item 27**), which mandates a set off of business continuity payments against fee reduction amounts. As a result, fee reductions which would have been paid for the sessions of care relevant to subsection 71G(1) will also constitute a debt.

Subsection 71G(3) creates a debt due by an approved child care service if an amount is paid to the service by way of enrolment advances (under subsection 219RA) and the service's approval was suspended or cancelled. The enrolment amount paid to the service is a debt due to the Commonwealth by the service.

Subsection 71G(3) provides that fee reduction amounts that would be paid to a service but for the fact that a debt was recovered from this amount under subsection 82(2), or a set off was made against these amounts under section 219QA (set off of fee reduction amounts) or under section 219RC (set off of enrolment amounts) are included in the amounts that are to be repaid as a debt (see subparagraph 71G(3)(a)(ii)).

Item 3 amends subparagraph 71G(1)(a)(ii) to include a reference to new section 219RE (inserted by **Item 27**), which mandates a set off of business continuity payments against enrolment advances. As a result, an enrolment advance amount which would have been paid but for that set off will also constitute a debt.

Item 4 - After section 71GA

Item 4 inserts new section 71GB. New subsection 71GB(1) creates a debt in respect of a business continuity payment paid to a service in circumstances where the service's approval is suspended or cancelled and the amount of a business continuity payment has not been set off in full under new section 219RE (inserted by **Item 27**) against an amount of fee reductions or enrolment advances or a payment under subitem 97(5) or 97A(5) of Part 2 of Schedule 1 of the Child Care Management

System Act that were to be made to the service. The amount of the business continuity payment that has not been set off before the day of suspension or cancellation is a debt due to the Commonwealth by the service.

New subsection 71GB(2) creates a debt in respect of a business continuity payment made to a financial institution for the credit of an account kept with that institution but the payment was not intended for the person or persons who kept that account. The whole amount paid is a debt due to the Commonwealth by that person or persons.

New subsection 71GB(2) ensures that only the amount of a debt that has not been recovered from the financial institution under the recovery mechanism in section 93A is the debt recoverable from the person or persons in whose name the account is kept. **Item 8** amends section 93A to ensure that it applies to enable the recovery of business continuity payments from the financial institution.

Item 5 - Subsection 82(3) (paragraph (a) of the definition of *debt*)

Item 5 is an amendment consequential to the amendment made by **Item 4** to include a reference to an amount of business continuity payment paid to a service in the definition of *debt* under subsection 82(3). This amendment ensures that a business continuity payment debt is recoverable by the same means as specified in subsection 82(2) relating to recovery of all other debts owed by approved child care services.

Items 6 and 7 - Paragraphs 87A(2)(b) and 87B(2)(b)

Items 6 and 7 make minor technical amendments to the wording of paragraphs 87A(2)(b) and 87B(2)(b) to reflect correctly the intended operation of the setting off mechanism when a debt owed by an approved child care service is being recovered from both fee reductions (under section 87B) and enrolment advances (under section 87A) that are to be paid to the service.

Item 8 - Subsection 93A(6) (after paragraph (ba) of the definition of *family assistance payment*)

Section 93A enables the recovery from financial institutions of the family assistance payment amounts paid to an incorrect account. This may be where it is intended to be paid to someone who was not the person in whose name the account was kept, or to an account in the name of the person who died before the amount was paid. **Item 8** amends the definition of ‘family assistance payment’ applicable in the context of this section to ensure that business continuity payments paid in these circumstances are recoverable from the financial institution.

Items 9 - After paragraph 104(d)

Item 9 amends section 104 so that a decision made by the Secretary relating to business continuity payments under new section 219RD (inserted by **Item 27**) is not reviewable by the Secretary on the initiative of the Secretary.

Item 10 - After paragraph 108(2)(da)

Item 10 amends subsection 108(2) so that where an applicant seeks a review of a decision made by the Secretary relating to business continuity payments under section 219RD (inserted by **Item 27**) the decision is not reviewable.

The effect of the amendments made by **Items 9 and 10** is that under the family assistance law these decisions are not able to be the subject of the merits review. Business continuity payments may be made if an approved child care service is unable, in accordance with the circumstances to be specified in a ministerial determination (a legislative instrument), to give the Secretary a weekly report, as required by section 219N, that triggers the payment of fee reduction amounts to the service. Business continuity payments are designed as discretionary and fully recoverable payments that provide short-term financial assistance to approved child care services. The payment is not an entitlement and there is no lasting benefit associated with the payment. It is therefore considered that, given the nature of the payments, it would be inappropriate to provide for the merits review of decisions relating to those payments.

Items 11, 12, 13, 14 and 15 – Subparagraph 176(1)(a)(iii), at the end of paragraph 176(1)(a), at the end of subsection 176(2), at the end of subsection 176(3), and at the end of subsection 176(4)

Items 11 to 15 amend section 176, which provides that a person contravenes this section if the person obtains the payments specified in subsection 176(1) by means of impersonation, or by fraudulent means, or if the person obtains the payment as a result of making a false or misleading statement and the person was reckless as to whether the statement is false or misleading. This includes fee reductions and enrolment advances paid to approved child care services. Section 177 creates an offence for these contraventions. The offence is a strict liability offence (subsections 176(2) and (4) refer).

Items 11 to 15 make amendments to section 176, to which an offence already applies, to insert references to business continuity payments (under new section 219RD inserted by **Item 27**) so that a section 177 offence also applies to contraventions specified in section 176 relating to obtaining business continuity payments. Consistent with the current operation of sections 176 and 177 as they apply to the existing payments made to child care services, strict liability applies to the element of the new offence that a payment is made to the service under new section 219RD. Strict liability is an appropriate basis for the offence because of the difficulty the prosecution would have in proving fault (especially knowledge or intention) in this case and the fact that the offence does not involve dishonesty or serious imputation affecting a person's reputation.

Item 16 makes an amendment to section 178, consequential on the amendments made to section 176 by **Items 11 to 15**. Section 178 provides for a court order that a person pays the Commonwealth an amount equal to any amount of the payment made as a result of the offence against section 177 if the person is convicted of that offence. The amendment made by **Item 16** ensures that a court order may be made in relation to the amounts of business continuity payments.

Items 17 and 18 - Subsection 219AB(2) and at the end of section 219AB

Section 219A deals with a service's obligation to notify the Secretary of the enrolment of a child by an individual, and section 219AA deals with a service's obligation to notify the Secretary of an enrolment where the service is eligible for CCB by fee reduction for a child at risk under section 47 of the Family Assistance Act and the service has given a certificate under section 76 of that Act.

Section 219AB sets out the time and manner in which a notice of an enrolment must be given under sections 219A and 219AA. **Item 18** inserts new subsection 219AB(4) which deals with the timeframe within which a notice (under sections 219A and 219AA) must be given in circumstances where a business continuity payment has been made to the service (**Item 27** inserted new section 219RD providing for business continuity payments). New subsection 219AB(4) provides that if a business continuity payment is made to a service for a specified period as notified to the service; and the payment is made because of the service's inability to give a report as required under section 219N for a particular week for enrolments that have been notified already; and the last day on which the service must notify new enrolments (as specified in section 219AB) is the same as the last day on which the report required to be given (as specified in subsection 219(5)) or occurs during the period specified in the business continuity payment notice (provided to the service under new subsection 219RD(4)); then the enrolment notice must be given no later than 7 days after the end of the specified period. In a situation where business continuity payments were made for more than one consecutive period (each separately notified), the enrolment notice must be given no later than 7 days after the end of the last of those periods.

This new deadline ensures that, where a business continuity payment is made in connection with a report required to be given by a particular day, sanctions, criminal and civil penalties do not apply for the service's failure to notify an enrolment which was due to be notified by that day or during the period for which a business continuity payment is paid.

An example is provided at the end of new subsection 219AB(4) to illustrate how this new provision will operate.

Item 17 makes a consequential amendment to subsection 219AB(2) to insert a reference to new subsection 219AB(4) inserted by **Item 18**.

Items 19 and 20 - Subsection 219AF(1) and after subsection 219AF(1)

Section 219AF deals with the obligation of a service to update enrolment information where that information becomes incorrect or new information subsequently becomes available. The updated information must be provided to the Secretary within 7 days after the information becomes incorrect or new information becomes available. **Item 20** inserts new subsections 219AF(1A) and (1B), which together with **Item 19** (which makes a consequential amendment to subsection 219AF(1)) provide that if a business continuity payment is made to a service in relation to a specified period notified to the service; and the payment is made because of the service's failure to give a report required to be given under section 219N for a particular week for enrolments that have been notified already; and the last day on which the service must notify new

enrolments (as specified in section 219AB) is the same as the last day on which the report is required to be given (as specified in subsection 219(5)) or occurs during the period specified in the business continuity payment notice (provided to the service under new subsection 219RD(4)); then the enrolment notice must be given no later than 7 days after the end of the specified period. In a situation where business continuity payments were made for more than one consecutive period (each separately notified), the enrolment notice must be given no later than 7 days after the end of the last of those periods.

This new deadline ensures that, where a business continuity payment is made in connection with a report required to be given by a particular day, sanctions, criminal and civil penalties do not apply for the service's failure to update an enrolment if the update was due by that day or during the period for which a business continuity payment is paid.

Items 21 and 22 - Subsection 219N(5) and after subsection 219N(5)

Section 219N imposes an obligation on an approved child care service to give reports to the Secretary for each week of care provided to the enrolled children whose enrolment was notified by the service and confirmed by the Secretary (subsections 219N(1) and (2) refer). A report for a week must be given by the end of the week following the week in which care was provided; the first report in respect of a new confirmed enrolment must be given within 7 days from the day of the confirmation (subsection 219N(5) refers). The report is required to be given in the form and manner or way approved by the Secretary (subsection 219N(3) refers); services must provide the report via the electronic interface maintained by the department using registered software, as approved.

The report triggers calculation of CCB fee reductions for the week reported. The fee reductions are paid to the service to be passed on to the individuals who are conditionally eligible for CCB by fee reduction under section 50F of the Family Assistance Act, or onto the service itself if the service is eligible for CCB by fee reduction under section 47 of that Act.

Sanctions (section 200 refers) and civil penalties (subsection 219N(5) refers) apply for failure to give the report in accordance with section 219N (including for failure to provide the report within the prescribed time or in the approved form, manner and way). Contravention of section 219N is an offence (subsection 219N(6) refers).

Item 22 inserts new subsection 219N(5AA), which together with **Item 21** (making a consequential amendment to subsection 219N(5)) provides that if a business continuity payment is made to a service in relation to a specified period notified to the service; and the payment is made because of the service's failure to give the report required under subsections 219N(1) or (2) (within the period applicable under subsection 219N(5)), the report must be given no later than 7 days after the end of the specified period. In a situation where the payments are made for more than one consecutive period, the notice must be given no later than 7 days after the end of the last of those periods.

This new deadline ensures that, where business continuity payments are made in connection with a report, sanctions, criminal and civil penalties do not apply for the service's failure to provide the report within the time specified in subsection 219N(5).

Item 23 - After paragraph 219Q(3)(c)

Section 219Q requires the Secretary to pay to an approved child care service the amounts of fee reductions calculated in respect of a week under section 50Z or 50ZB or recalculated under section 50ZA or 50ZC. Subsection 219Q(3) provides that the requirement in section 219Q is subject to: the provisions in Part 4, which deal with overpayments and debt recovery; section 219QA which deals with set off where the amount of applicable fee reduction is reduced on recalculation; section 219RC which deals with set off where enrolment ceases; and paragraph 200(1)(h) which deals with suspension of payment in respect of fee reduction. **Item 23** inserts a reference to new section 219RE providing for a set off from fee reduction amounts where a business continuity payment is made under new section 219RD (both new sections 219RE and 219RD are inserted by **Item 27**).

Item 24 - Subparagraph 219QB(1)(a)(ii)

Section 219QB requires the service to remit any fee reduction amount paid to the service under new section 219Q or that would be paid but for a set off under subsection 82(2) (debt recovery), section 219QA (set off of a previously calculated higher amount) or section 219RC (set off of an enrolment advance) if it is not reasonably practicable for the service to pass on that amount to the individual or the service itself within the time required under new subsections 219B(2) or 219BA(2) (within 14 days after being notified of the amount calculated or recalculated). **Item 24** inserts a reference to new section 219RE (set off of business continuity payments) in subparagraph 219Q(1)(a)(ii) that specifies the provisions authorising a set off against fee reductions, to include this new set off within the ambit of section 219QB (as it further affects the payment).

Item 25 - After paragraph 219RA(2)(c)

Section 219RA provides that the Secretary must pay the amount of the enrolment advance if an approved child care service makes an election to receive an enrolment advance in relation to a particular enrolment (in accordance with section 219R) and the Secretary confirms the enrolment (under section 219AE). Subsection 219RA(2) specifies the following provisions that may affect the payment: Part 4 (overpayments and debt recovery); section 219QA (set off where amount of applicable fee reduction reduced on recalculation); section 219RC (set off when enrolment ceases); and paragraph 200(1)(f) (withholding of enrolment advances). **Item 25** inserts a reference to new section 219RE (set off of business continuity payments) in paragraph 219RA(2)(c) that specifies the provisions authorising a set off against enrolment advances, to include this new set off within the ambit of section 219RA (as it further affects the payment).

Item 26 - Paragraph 219RC(b)

An enrolment advance amount paid is recoverable when the enrolment to which it relates ceases (in the circumstances specified in section 219AD). If the enrolment ceases, section 219RC requires the Secretary to set off the amount of the advance against any other enrolment amount to be paid to the service or any fee reduction amount to be paid to the service, whether fee reductions relate to this particular enrolment or not. Paragraph 219RC(b) provides that an enrolment advance amount that would have been paid but for the fact that a debt was recovered from this amount under subsection 82(2), or a set off under section 219QA or 219RC occurred against this amount, is also recoverable in full. A business continuity payment amount made to a service is to be set off against any enrolment advance that is to be paid to the service (under new section 219RE inserted by **Item 27**). **Item 26** amends paragraph 219RC(b) to insert a reference to that new set off affecting enrolment advance amounts. The effect of the amendment is that an enrolment advance amount that would have been paid but for a set off of a business continuity payment will still be recoverable under section 219RC.

Item 27 - At the end of Part 8A

Item 27 inserts a new Division 4, which deals with business continuity payments to approved child care services.

New subsection 219RD(1) provides the Secretary with a discretionary power to determine that a business continuity payment is to be made to an approved child care service in relation to a period if: the service is required to give to the Secretary a report under subsection 219N(1) or (2) for a week in respect of one or more enrolments (where one or more sessions of care have been provided to the child in the week); and, the service fails to give the report for the week within the period applicable to the report under subsection 219N(5); and, the Secretary is satisfied that the failure to give the report is due to circumstances specified in a determination under new subsection 219RD(2).

New subsection 219RD(2) provides that the Minister must, by legislative instrument, determine the following matters: the circumstances in which the Secretary may determine that business continuity payment may be paid; and the method of determining the amounts of business continuity payment. It is intended that the relevant circumstances will encompass situations beyond the service's control, such as, a malfunction of the internet connection or the software the service is required to use, or a local emergency (flood or bushfire). The intended method of calculating the amount of the payment is to set the payment at the amount of the fee reduction payment for the last week for which the service provided a report.

This subsection authorises the Minister to set out in the instrument any other matter relating to the payment that the Minister thinks appropriate. For example, the instrument may specify the time limit on the period for which business continuity payments may be paid or such matters as the application process (if any) for obtaining the payment.

New subsection 219RD(3) provides that the Secretary must pay into a nominated bank account maintained by the service any amount of business continuity payments determined by the Secretary under new section 219RD.

New subsections 219RD(4) and (5) require the Secretary to give a notice to the service, in the form, manner and way approved by the Secretary, of the business continuity payment and of the period to which the payment relates.

New section 219RE provides that if a business continuity payment is made to an approved child care service (under new section 219RD), the Secretary must set off an amount equal to the payment against any amount of fee reductions to be paid to the service; or any enrolment advance to be paid to the service; or any payment to be made to a service resulting from acquittals under subitem 97(5) of Schedule 1 to the Child Care Management System Act; or subitem 97A(5) of that Schedule (as modified by *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009*).

Item 28 – Application

Item 28 inserts an application provision which provides that paragraph 219RD(1)(a) (as inserted by **Item 21**), providing for the payment of business continuity payments, applies in relation to:

- a report required to be given under subsection 219N(1) or (2) on or after the commencement of this item (that is, where the week to be reported on falls after the commencement day); and
- a report required to be given under that subsection before that commencement, where the period under subsection 219N(5) of that Act relating to the report (that is, the period within which the report for a particular week has to be provided) ends on or after that commencement.

The application provision does not authorise the making of business continuity payments in respect of the reports under subsection 219N(1) and (2) if the last day of the period within which the service is required to provide the report (under subsection 219N(5)) ended before the commencement of the amendments made by this Schedule (the day of Royal Assent).

Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007

Item 29 - Before item 98 of Schedule 1

Item 29 inserts new section 97C. New subitem 97C(1) ensures that all payments that are to be made to services under subitem 97(5) and subitem 97A(5) are subject to set off for recovery of relevant amounts of business continuity payments (under section 219RE of the Family Assistance Administration Act). New subitem 97(2) defines the term *subitem 97A(5)* to mean subitem 97A(5) of this Schedule as modified by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009*.

Schedule 2— Obligation on approved child care services to provide statements

Summary

This Schedule amends the Family Assistance Administration Act to modify the current obligation of an approved child care service relating to the provision of 4-weekly statements to the individuals who are conditionally eligible for CCB by fee reduction for a child. The modifications are intended to provide services with greater flexibility in the manner in which they may provide statements. In particular, a service will be able to provide a statement for all the individuals at the same time, for any period chosen by the service not exceeding 3 months.

Background

Currently, section 219E of the Family Assistance Administration Act requires an approved child care service, as a condition of continued approval of the service, to give 4-weekly statements to individuals using the service, who are conditionally eligible for CCB by fee reduction. The 4-week statement period starts on a day specific to each child, or group of children, as the case may be (subsection 219E(4) refers). The statement provides a vehicle by which the individuals in question are informed about, among other things, the amount of fee reductions calculated for them by the Secretary, in respect of the statement period.

The obligation to provide statements on a child-specific, 4-weekly cycle is of considerable concern to child care services as this obligation may not align with the service's usual accounting or business practices. This affects services' compliance with the current statement requirements.

The amendments made by this Schedule provide greater flexibility for approved child care services in the way they provide the statements, and parents or families continue to receive the information for the whole period that they are using care.

Explanation of the changes

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

Item 1 - Subsection 3(1) (at the end of paragraph (h) of the definition of *civil penalty provision*)

Item 1 amends the definition of *civil penalty provision* in subsection 3(1) by including a reference to new subsection 219E(7) (inserted by item 5 of this Schedule). Further explanation is provided in the context of the amendment made by **Item 5**.

Item 2 - Subsection 219E(1)

Section 219E deals with the obligation of approved child care services to provide a statement for a statement period to an individual who is conditionally eligible for CCB by fee reduction for a child or to some other person specified under rules made under subsection 219E(6).

Currently, if a service is required under section 219B to pass on to the individual an amount of fee reduction in respect of a session or sessions of care occurring during a statement period, subsection 219E(1) requires the service to give the individual (or the other person), a statement for the statement period within four weeks of the end of the statement period. **Item 2** amends subsection 219E(1) to allow a service to give the statement before the end of one month starting on the day after the end of the statement period. This amendment, in the context of section 219E as amended, operates to the effect that, if sessions of care are provided to a child during the entire statement period, the service will be required to provide the statement for that period after the end of the period, within one month from the end of the period. If a child leaves the service before the end of the statement period and the service is certain that it will not provide any more sessions of care for a child in that period, the service will be able to provide the statement relating to that child at any time after the cessation of care and before the end of one month after the end of the statement period (for example, immediately after the cessation of care irrespective of when during the statement period the care has ceased).

Item 3 - Paragraph 219E(2)(d)

Subsection 219E(2) is an offence provision for a service's failure to comply with the obligation to provide a statement for a statement period at the time specified in subsection 219E(1). It is an offence of strict liability (subsection 219E(3) refers).

Item 3 makes a consequential amendment to paragraph 219E(2)(d) referring to the time-frame for the provision of a statement specified in subsection 219E(1), so that it refers to the time-frame as amended by **Item 2**.

Item 4 - Subsection 219E(4)

Subsection 219E(4) determines the frequency with which a service must give a statement to an individual. It also specifies a start date of any statement period. Currently subsection 219E(4) requires a service to provide a statement on a 4- weekly cycle, potentially different for each child in care of the service.

Item 4 amends subsection 219E(4) to change the duration of the period for which a statement must be given from the 4 week period to a 3 month period or any period shorter than 3 months. It also provides that the start of the statement period is specific to the service, so that the statements for all the relevant children in care of the service are provided at the same time.

New paragraph 219E(4)(a) provides that the first statement period for the service is the 3-month period that commences on the day (further referred to as the *initial day*) that is:

- (i) the day on which Schedule 2 to the *Family Assistance Legislation Amendment (Child Care) Act 2010* commences; or
- (ii) if the Secretary approves the service (under section 195) on a day later than that commencement day, that later day.

That is, if, on the day of the commencement of these amendments, a child care service is approved under section 195 for the purposes of the family assistance law, the service's first statement period starts on the commencement day. If a service is approved after the commencement day, the service's statement period starts on the day on which the approval is given. This day may not necessarily be the same day from which a service's approval is expressed to operate. If, for example, a service's approval is expressed to operate retrospectively, the service is not required to provide a statement for the periods of care occurring before the day on which the approval was given.

Alternatively, paragraph 219E(4)(a) also provides that if (before or during the 3-month period) the service chooses a period shorter than the 3-month period starting on the initial day, then the shorter period is the first statement period.

New paragraph 219E(4)(b) provides that each of the subsequent statements periods is either:

- (i) the 3-month period commencing on the day after the end of the immediately preceding statement period; or
- (ii) if the service has chosen a shorter period, the shorter period.

Item 5 - At the end of section 219E

Item 5 inserts new subsections 219E(7) and (8).

Section 50ZA of the Family Assistance Administration Act allows the Secretary to recalculate the rate and amount of fee reductions which the Secretary considers is applicable in respect of any sessions of care provided to a service for a child in a week.

New subsection 219E(7) provides that, if a service has already given an individual or some other person a statement under subsection 219E(1) relating to any sessions of care provided by a service to a child in the statement period, the service is required to give an individual/person a revised statement if the service has been notified on a day (the ***notification day***) of a recalculated rate or amount (under section 50ZA) in respect of any of those sessions of care. The service must, before the end of the first statement period starting after the notification day, give the individual/person either a statement taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

A note at the end of new subsection 219E(7) informs the reader that subsection 219E(7) is a civil penalty provision and that Part 8C provides for pecuniary penalties for breaches of civil penalty provisions. **Item 1** amends the *civil penalty provision* definition in section 3 to include new subsection 219E(7). This means that the consequences for failure to comply with the obligation under subsection 219E(1) to give a statement for a statement period, which is currently subject to civil penalties,

and the consequences for failure to correct or reissue the statement previously given, are the same.

New subsection 219E(8) provides that a service commits an offence if the service has given a statement under subsection 219E(1) relating to sessions of care provided during a statement period, is notified of recalculation of fee reductions under section 50Z in respect of any of the sessions falling within the statement period and the service fails to give a corrected statement or fails to reissue the statement as required by new subsection 219E(7). The penalty is 60 penalty units; the same penalty currently applies in relation to an offence for failure to give the statement required under subsection 219E(1) (subsection 219E(2) refers). This offence is a strict liability offence, as is the offence for the failure to give the statement required under subsection 219E(1) (subsection 219E(2) refers). Strict liability is an appropriate basis for the offence because of the difficulty the prosecution would have in proving fault (especially knowledge or intention) in this case and the fact that the offence does not involve dishonesty or serious imputation affecting a person's reputation.

Item 6 - Saving provision

Item 6 is a saving provision. It operates to the effect that the current requirements of section 219E relating to the provision of a statement continue to apply in relation to any statement period which started before commencement of this Schedule.

Schedule 3— Suspension of approved child care services’ approvals

Summary

This Schedule amends the Family Assistance Administration Act to change section 219TSQ requiring automatic suspension of a child care service’s approval for the purposes of the family assistance law where the service is given 10 infringement notices within a period of 12 months for contraventions of civil penalty provisions. The amendment results in the suspension being changed from a mandatory suspension to a discretionary suspension.

Background

Currently, section 219TSQ requires the Secretary to suspend a child care service’s approval for the purposes of the family assistance law if 10 infringement notices are issued to the operator in relation to the service’s contraventions of a *civil penalty provision* (as defined in section 3 of the Family Assistance Administration Act) within a period of 12-months. Section 219TSQ has not yet had any application.

Explanation of the changes

Suspension of a service’s approval affects the individuals using the service (neither CCB fee reductions nor CCR can be paid in respect of child care provided by the service during the period of suspension). It is therefore considered more appropriate for the suspension to be applied flexibly, at the Secretary’s discretion, rather than to be mandatory.

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

Item 1 – Subsection 219TSQ(1)

Item 1 amends subsection 219TSQ(1) by replacing the word “must” with the word “may”. The amendment results in the Secretary being provided with a discretion to suspend a child care service’s approval where the service is given 10 infringement notices under section 219TSI within a period of 12 months and, in relation to each notice, the time for paying the penalty imposed has ended before the end of the 12-month period.

Item 2 – Application

Item 2 is an application provision. It provides that the amendment made by **Item 1** applies in relation to:

- infringement notices given on or after the commencement of **Item 1**; and
- infringement notices given before the commencement of **Item 1**, other than where the conditions for the requirement to suspend a service’s approval in relation to such notices were satisfied prior to that commencement.

That is, if 10 infringement notices were given before the commencement and, for each of those notices, the time given to pay the penalty specified in the notice has passed before the commencement, section 219TSQ providing for a mandatory suspension applies. In any other situation, section 219TSQ as amended, providing for a discretionary suspension, applies.

Schedule 4— Notification of cessation of operation of approved child care services

Summary

This Schedule amends the Family Assistance Administration Act to require the operator of an approved child care service to provide to the Secretary at least 42 days notice of the operator's decision to cease operating the service. Where an operator decides to cease operating the service to avoid being in breach of a law of the Commonwealth, a State or a Territory, or due to circumstances beyond the operator's control, the operator must notify the Secretary of that decision as soon as possible after that decision.

Background

Currently, where an operator intends to cease operating an approved child care service, the operator must give at least 30 days notice of intention to cease the operation (whether due to closure of the service or transfer of the operation to another operator) (subsection 219M(1) refers). This requirement is intended to provide the department with the time to take steps, if necessary, to ensure that the children from an affected service are not left without the availability of care and that continued care can be provided for the children by another service. Early notification of the intended cessation is also required to ensure that in circumstances where, for example, a service has been purchased by a new operator, the process that the legislation requires to be followed in relation to the new operator seeking approval of the service for the purposes of the family assistance law does not result in the gaps in the entitlement to child care benefit or child care rebate of the individuals using the service.

The current 30 days notice requirement provides insufficient time for the department to assess the child care situation and/or take any necessary steps to alleviate the impact of the closure or transfer of the operation on the children and parents affected. Therefore, the amendments made by this Schedule require that, as a rule, the provision of a notice relating to the cessation must be made at least 42 days before the cessation.

Explanation of the changes

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

Item 1 – Subsection 219M(1)

Item 1 repeals and substitutes subsection 219M(1). New subsection 219M(1) requires a person who operates an approved child care service to notify the Secretary if the person decides to cease operating the service. The cessation of operation includes, for example, a closure of the service or a transfer of the operation to a new operator resulting from sale of the child care service.

New paragraph 219M(1)(a) requires the operator, as a rule, to notify the Secretary of that decision at least 42 days before the cessation. This rule applies to most of the cessations; in particular to the cessations occurring as a result of the transfer of the operation to a new operator (new legal entity) as a result of sale or otherwise.

New paragraph 219M(1)(b) provides exceptions from the 42-day notice rule. In cases where the operator decides to cease the operation of a service to either avoid being in breach of a law of the Commonwealth, a State or a Territory or due to circumstances beyond the operator's control, the operator must notify the Secretary as soon as possible after that decision. If the cessation occurs in the circumstances to which this paragraph applies, this paragraph will enable the operator to notify the decision to cease operation later than 42 days before the cessation, that is, closer to the cessation day (but as soon as possible after that decision is made). An example of the operation of this shorter notification time-frame could be where a company operating a service becomes aware that it is insolvent and decides to immediately cease the operation to avoid penalties for insolvent trading under the *Corporations Act 2001*.

Item 1 also inserts two notes at the end of new subsection 219M(1).

The first note alerts the reader that new subsection 219M(1) is a civil penalty provision, for the breach of which Part 8C provides pecuniary penalties. The *civil penalty provision* is defined in section 3; it includes the current section 219M(1). The amended notification requirement provision continues to be a civil penalty provision.

The second note alerts the reader that the heading to section 219M is changed by omitting the word "intends" and substituting the word "decides". This reflects the fact that subsection 219M(1) as amended refers to the operator's 'decision' to cease the operation rather than to the operator's 'intention', as is currently the case. It is considered that the reference to the operator's 'decision' provides a clearer legal test and, therefore, will assist in the administration of the notification obligation.

Items 2 and 3 - Paragraphs 219M(4)(a) and 219M(4)(b)

Items 2 and 3 are technical amendments consequential to the amendments made by **Item 1**.

Item 4 - Paragraph 219M(6)(b)

If an operator notifies the Secretary of the cessation, as required by amended subsection 219M(1), the Secretary may request the operator, under subsection 219M(4), to provide the information specified in the request concerning the cessation, or the cessation decision, as the case may be.

Currently, paragraph 219M(6)(b) requires that the information requested be given to the Secretary within 7 days after the day on which the request was given to the operator. **Item 4** amends paragraph 219M(6)(b). It preserves the 7-day time-frame for the provision of the specified information relating to the cessations to which the 42-day notification requirement in paragraph 219M(1)(a) applies (new subparagraph 210M(6)(b)(i) refers). If the notification requirement in paragraph 219M(1)(b) applies to a cessation decision (that is, 'as soon as possible' after the decision to cease to

operate the service), the specified additional information must be provided within the time specified by the Secretary in the request for that information (new subparagraph 219M(6)(b)(ii) refers).

Item 5 - Application

Item 5 provides that the amendments made by this Schedule apply in relation to decisions to cease operating an approved child care service made on or after the commencement of this Schedule.

Schedule 5— Recovery of old advances to approved child care services

Summary

Under the pre-Child Care Management System, services were paid quarterly CCB advances based on CCB fee reductions expended by the services in a penultimate quarter. Under the new Child Care Management System services are now paid weekly or fortnightly in arrears.

This Schedule amends the Child Care Management System Act to clarify that over advances resulting from acquittals made prior to services' transition to the Child Care Management System, and not recovered before the transition, are fully recoverable. These amendments operate retrospectively to 29 June 2007 (commencement of the amendments made for the purposes of the Child Care Management System).

This Schedule also makes amendments to ensure that the actions that were taken by the staff of Centrelink and the Department relating to acquittals under the Child Care Management System Act of the amounts previously advanced to services have the intended legal effect.

Background

The Family Assistance Administration Act as in force before 29 June 2007 (further referred to as 'previously in force') provided for the payment to approved child care services of advance amounts to reimburse the services for amounts of CCB fee reductions the services were required to make to individuals who were determined to be conditionally eligible for CCB by fee reduction for a child. These advance amounts were estimated for a calendar quarter and paid to services usually in quarterly instalments. By the end of the following quarter, each service was required to submit a report specifying, among other things, the actual child care usage and the amount of fee reductions which the service provided to the individuals during the quarter. After submission of the report, the advance amounts paid to the service were acquitted by comparing the amount of advance paid against the actual amount of fee reductions provided by the service. Where the comparison resulted in an excess of the advance, the excess amount was recovered by a set off against any subsequent advance amount to be paid to the service. As long as a service continued to be an approved child care service, any over-advanced amount was recoverable but not as a debt; it was merely carried over to be applied as a set off against future advances, as provided for in the Family Assistance Administration Act. It was only at the time when a service's approval was suspended or cancelled that an outstanding over-advanced amount became a debt under the Family Assistance Administration Act, due to the Commonwealth by the service.

The relevant provisions of the Family Assistance Act as previously in force, relating to payment and acquittal of advances, were included in Division 2 of Part 8A of that

Act. The legislation as previously in force unambiguously provided for recovery of any excess of the advance paid to services. The recovery of an excess advance amount has been an intrinsic element of the advance and acquittal system, well recognised by the services participating in that system as a result of their approval under the family assistance law.

The Child Care Management System Act repealed the provisions of the Family Assistance Administration Act dealing with advances, as part of the amendments introducing the Child Care Management System, which did not provide for the payment of advances.

The Child Care Management System Act contained transitional provisions authorising the conducting, after the services' transition to the new Child Care Management System, of acquittals of previously advanced amounts that were not yet acquitted before the transition (item 97 of the Child Care Management System Act refers). Any over-advanced amount resulting from that post-transition acquittal is a debt due to the Commonwealth by the service, recoverable by the means specified in subsection 82(2) of the Family Assistance Administration Act. This includes from any fee reduction payment and enrolment advance payments due to the service under that Act after the service's transition to the Child Care Management System (subitem 97(4) refers).

Similarly, any excess amount of the advance determined through re-acquittal or adjustment, authorised under the transitional provisions, of the advance amounts previously acquitted before the transition (under the repealed provisions of the Family Assistance Administration Act) or after (under the transitional provisions) constitute a debt due to the Commonwealth by the service, recoverable by the means specified in subsection 82(2) of the Family Assistance Administration Act (subitem 97A(4) of the Child Care Management System Act refers).

However, the transitional provisions omitted to provide a similar mechanism specifically to recover the over-advanced amounts. These were validly acquitted under the pre-transition legislative provisions but not fully recouped under the previous legislative offsetting mechanism, which stopped being available once a service transitioned to the Child Care Management System.

Explanation of the changes

Part 1—Amendments

Division 1—Amendments commencing on 29 June 2007

Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007

The absence in the legislation of a specific mechanism for recovery of the over-advanced amounts acquitted under the pre-transition legislative provisions, that is, under section 219S of the Family Assistance Administration Act as previously in

force, but not fully recouped before the transition of services to the Child Care Management System, has not been recognised until recently. The recoveries of those amounts were carried out after the transition, in the same way as if it was an over-advanced amount acquitted under the transitional provisions of the Child Care Management System Act. The recovery was done through setting off the unrecovered amounts against any fee reduction payment and enrolment advance payments due to the service under that Act after the service's transition to the Child Care Management System.

Items 1 to 3 make amendments to the Child Care Management System Act, with effect from 29 June 2007, to confirm the recovery of the excess of the advance amount acquitted under section 219S of the Family Assistance Administration Act as previously in force, and for related purposes.

Item 1 – At the end of item 93 of Schedule 1

Item 93 deals with application of amendments made to the Family Assistance Act and the Family Assistance Administration Act by Part 1 of Schedule 1 of the Child Care Management System Act. Generally, these amendments apply to sessions of care provided by an approved child care service after the day determined for this purpose by the Secretary under item 91 (the service's 'application day').

Item 1 inserts a note at the end of item 93 of Schedule 1 to inform the reader that the relevant provisions of the Family Assistance Act and the Family Assistance Administration Act as they were in force immediately before the commencement of Schedule 1 of the Child Care Management System Act continue to apply to earlier sessions of care that were provided by an approved child care service in a week starting before or on the service's application day.

Item 2 – After item 96 of Schedule 1

Item 2 inserts new item 96A into Schedule 1. New item 96A creates a debt out of an amount of the excess advance amount not offset as required by section 219S of the Family Assistance Administration Act as previously in force, before the service's 'application day'.

New subitem 96A(1) provides that new item 96A applies where:

- under section 219S of the Family Assistance Administration Act (as in force before the commencement of this Schedule), a comparison is or has been made between the amount of an advance determined by the Secretary under section 219Q of the Family Assistance Administration Act (as in force before the commencement of this Schedule) in respect of the service and the period; and
- and the amount of the advance exceeds the amount passed on.

New subitem 96A(2) provides that where such a comparison results in an excess amount that has not been offset (as required by section 219S of the Family Assistance Administration Act, as in force before the commencement of this Schedule), before the service's application day, that excess amount becomes a debt due to the Commonwealth by the service. The date on which the debt becomes due to the

Commonwealth is either the service's application day (if the comparison has already been made by that day) or, if the comparison was made after a service's application day, the day on which the comparison is actually made.

New subitem 96A(3) provides that any debt arising under new item 96A is recoverable by one or more of the means set out in subsection 82(2) of the Family Assistance Administration Act. This includes setting off the debt amount against any fee reduction payment due to the service under sections 219Q, 219QA or enrolment advance payment under 219RA of the Family Assistance Administration Act.

New subitem 96A(4) provides that in respect of any such debt, Division 4 (non-recovery of debts) of Part 4 of the Family Assistance Administration Act applies, allowing the Secretary, for example, to write off or waive a debt.

Item 3 - Before item 98 of Schedule 1

Item 3 inserts new item 97B. New subsection 97B(1) has the effect that if a payment or payments are required to be made to a service as a result of a comparison made under item 97 or section 219S of the Family Assistance Administration Act (as in force before the commencement of this Schedule) any debt arising under new item 96A or item 97 may be recovered by setting off the amount of the debt against any of these payments. New subsection 97B(2) provides that such recovery is not limited by any of the debt recovery methods set out in subsection 82(2) of the Family Assistance Administration Act (as permitted under new subitem 96A(3)).

Division 2—Amendments commencing on 16 May 2009

Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007

Item 4 - At the end of item 96A of Schedule 1

The *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009* modified Schedule 1 of the Child Care Management System Act by inserting item 97A under which adjustments of the acquittals of advance amounts are made on or after 16 May 2009.

Item 4 inserts new subitems (5) and (6) into new item 96A (inserted by **Item 2**).

New subitem 96A(5) deals with the situation where an adjustment debt under item 97A in respect of advances paid for a period before a service's application day has occurred (after 16 May 2009) before a debt for the same period is created as a result of new item 96A applying from 29 June 2007. New subitem 96A(5) has the effect of discharging a debt created (later) under item 96A in respect of a service and a particular period if a debt has already been created under item 97A in relation to the same service and the same period.

New subitem 96A(6) defines the term ‘ item 97A’, to mean item 97A of this Schedule as modified by *Family Assistance Legislation Amendment (Child Care Management System and Measures) Regulations 2009*.

Items 5, 6 and 7 - Subitem 97B(1), Paragraph 97B(1)(a) of Schedule 1 and At the end of item 97B of Schedule 1

Items 5, 6 and 7 are amendments consequential on the amendment made by **item 4** of Division 2 of Part 1 of this Schedule.

Items 5 and 6 ensure that the provisions of new item 97B apply also to a debt arising under item 97A (adjustment of acquittals). Item 97B (as inserted by **item 3** of Division 1 of Part 1 of this Schedule) provides that where a payment is required to be made to a service as a result of a comparison made under item 97 or under section 219S of the Family Assistance Administration Act (as in force before the commencement of this Schedule), any debt (arising from new item 96A or item 97) may be recovered by setting off the amount of the debt against that payment. As a result of the amendments made by **Items 5 and 6**, a debt arising under item 97A (after 16 May 2009) may be recovered by setting off that debt against the payment required under item 97 or item 97A.

Item 7 inserts new subitem 97B(3). New subitem 97B(3) defines the term *item 97A*, for the purposes of item 97B, to mean item 97A of this Schedule as modified by *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009*.

Part 2—Other provisions

Item 8 - Comparisons of amounts of advances and amounts passed on

These amendments relate to acquittals of advances made under subitem 97(2) or 97A(2) of the Child Care Management System Act after commencement of those items; that is, after 29 June 2007 and 16 May 2009, respectively.

Subitems 8(1) and 8(2) provide that any of the following things that an officer (within the meaning of the Family Assistance Administration Act) did before the commencement of **Item 8** (that is, before the day of Royal Assent), without authority from the Secretary, is taken always to have applied as if the thing had been done by the Secretary:

- comparison of amounts described in subitem 97(2), or subitem 97A(2), of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007* (that is, the acquittal or adjustment of the acquittal of advance amounts under those items); or
- giving of notice purporting to be a notice of either a debt arising under subitem 97(4), or subitem 97A(4), of that Schedule, or a payment under subitem 97(5), or of subitem 97A(5), of that Schedule.

Subitem 8(3) defines the term, *item 97A* of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007* (for the purposes of Item 8 of Part 2 of this amending Schedule) to mean item 97A of Schedule 1 as modified by *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009* as in force at the commencement of this definition.

Schedule 6 — Transitional payments relating to the Child Care Management System

Summary

Schedule 1 of the Child Care Management System Act provides for acquittals of advance amounts that were paid to an approved child care service before the service's transition to the Child Care Management System. The advance amounts were paid to reimburse the service for the amount of CCB fee reduction the service was required to make to the individuals eligible for CCB by fee reduction.

This Schedule amends Part 2 of Schedule 1 of the Child Care Management System Act to provide for an appropriation of funds for the purposes of a payment required to be made to an approved child care service as a result of an acquittal under Part 2 of Schedule 1 of that Act.

Background

Part 1 of Schedule 1 of the Child Care Management System Act amended the Family Assistance Administration Act, with effect from 29 June 2007, to provide for the introduction of the Child Care Management System.

The Family Assistance Administration Act, as in force before the amendments, provided for the payment to approved child care services of quarterly advance amounts to reimburse the services for the amount of CCB fee reduction the services were required to make to the individuals using the service who were eligible for CCB by fee reduction. The advance amounts paid for a quarter were acquitted after a service submitted a report relating to fee reductions made by the service in that quarter. The advance amounts were acquitted by determining the difference between the amount of advance paid to the service and the amount of fee reductions provided by the service for that quarter. If the amount of advance paid to the service was less than the total amount of fee reductions made by the service during the quarter, the amount of the difference was required to be paid to the service.

As the quarterly advances were not available under the Child Care Management System, the amendments made by Schedule 1 of the Child Care Management System Act repealed the provisions relating to payment of advances. However, Part 2 of that Schedule, dealing with transitional arrangements, provided for acquittal of advance amounts paid to an approved child care service for periods before its transition to the Child Care Management Systems to be carried out after the service's transition to the Child Care Management System (transitional acquittals). If, as a result of such an acquittal, it is determined that the advance amount paid for a quarter is less than the amount of fee reductions made by the service in that quarter, subitems 97(5) and 97A(5) of Part 2 of Schedule 1 of the Child Care Management System Act requires that the amount of the difference be paid to the service.

While the Child Care Management System Act clearly authorises the payment of the amounts resulting from the transitional acquittals, the Act itself does not contain any specific appropriation provision.

For avoidance of doubt, this Schedule makes an amendment to the Child Care Management System Act to insert an appropriation power relating to payments resulting from the transitional acquittals.

Explanation of the changes

Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007

Item 1 – At the end of Part 2 of Schedule 1

Item 1 inserts new item 102 into Part 2 of Schedule 1. New item 102 provides for the appropriation of funds from the Consolidated Revenue Fund for the purposes of making payments to services under this Part, that is, in respect of acquittals occurring under this Part.

Item 2 – Application

Item 2 is an application provision. It provides that the amendment made by **Item 1** applies in relation to payments made on or after the commencement of that item.