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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FAMILY ASSISTANCE AND OTHER LEGISLATION
AMENDMENT (CHILD CARE AND OTHER
MEASURES) BILL 2011**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment Participation and Childcare,
the Honourable Kate Ellis MP)

FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT (CHILD CARE AND OTHER MEASURES) BILL 2011

OUTLINE

Offsetting and debt recovery

The Bill amends the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act) and the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007* (CCMS Act) to improve the effectiveness of the recovery of fee reductions, enrolment advances and business continuity payments paid to approved child care services.

Currently, the recoverable amounts are set off against subsequent payments of fee reductions, enrolment advances or business continuity payments made to the service. Amendments made by the Bill enable recovery of these amounts also by way of set off from any payments made to services through the Child Care Management System, that is, from acquittal payments made to services under the CCMS Act and from payments made to services under administrative (non-legislative) schemes.

Amendments are also made to enable the recovery of those amounts from the same range of payments to be made to another approved child care service operated by the same operator.

Enrolment advance payments are currently required to be made to an approved child care service for any enrolment of a child up to the last day the service is approved to continue operating. Once a service's approval for the purposes of the family assistance law is suspended or cancelled, all advance amounts that have not been offset by that time become a debt due by the service to the Commonwealth. The amendments made by this Bill authorise the Secretary to stop making enrolment advance payments from the date a service notifies its intention to cease operations and to commence recovery of the enrolment advance payments from that date.

Child care absences

Amendments to the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) clarify the provisions concerning the effect of a child's absence from the care of an approved child care service (other than an occasional care service) on the eligibility of an individual for child care benefit for that child. The amendments authorise the Minister to specify, by a legislative instrument, the circumstances relating to the absence of a child, in which the service will be taken to have permanently ceased providing care. The amendments also clarify that, where an approved child care service has permanently ceased providing care to a child, it will be deemed to have done so on the day the child last physically attended care.

Scope of family assistance law

The Bill makes amendments to clarify the definition of the 'family assistance law' in the Family Assistance Administration Act to include instruments made under the Family Assistance Administration Act and the Family Assistance Act. Similar

consequential amendments are made to the family assistance law definitions in the *Child Care Act 1972* and the *Social Security Act 1991*. The amendments provide that an instrument that is taken to be part of the family assistance law can provide that any decision under it is subject to the internal and external review mechanisms provided for in the Family Assistance Administration Act.

Protected information

Amendments are made by the Bill to confidentiality provisions in the Family Assistance Administration Act to enable disclosure of information about education and care services for the purposes of the new Education and Care Services National Law. This will support the establishment of the national education and care services quality framework for the delivery of education and care services to children. These services include centre-based long day care services, family day care services and outside school hours care services approved for the purposes of the family assistance law.

Existing provisions in the Family Assistance Administration Act, the *Social Security Administration Act 1999* and the *Student Assistance Act 1973* do not allow the Secretary or anyone else to use information about a person obtained for the purposes of the family assistance, social security or student assistance law for purposes other than those specifically prescribed in the family assistance, social security or student assistance law, even with the consent of the person concerned. This Bill amends the confidentiality provisions to enable a person to record, disclose and otherwise use protected information with the express or implied authorisation of the person to whom the information relates.

The Family Assistance Administration Act, *Social Security (Administration) Act 1999* and the *Student Assistance Act 1973* require the Minister to make guidelines to guide the exercise of the Secretary's discretion to provide protected information in the public interest and to the head of another agency for that agency's purposes. Under the Family Assistance Administration Act, these guidelines are also for the purposes of providing information to a person who is authorised by the person to whom the information relates. Except for disclosure in the public interest, no such guidelines have ever been made. Amendments are made to those Acts to provide the Minister with the discretion to make such guidelines.

Other amendments

The current provisions of the Family Assistance Administration Act relating to refusal of approval of a service for the purposes of the family assistance law have been a source of interpretational difficulties. While the current provisions clearly specify that the Secretary must approve the service if the specified conditions are met, there is no clarity whether the Secretary may or must refuse approval if any of these conditions are not met. Amendments are made to replace the existing provisions relating to refusal with the requirement to refuse approval where the conditions for approval are not met and to ensure that the applicants are notified of the refusal decision.

Amendments are made to broaden the scope of the condition for continued approval of child care services relating to the requirement to comply with child care laws. This ensures alignment with the similar requirement the services need to comply with as a condition of approval.

Amendments are made to ensure that the same process applies in relation to the reduction of the amount of CCB fee reduction for a reported period, irrespective of

whether the reduction results from a recalculation triggered by a service substituting or withdrawing a report for a period, or the Secretary recalculating the amount for the period.

The Bill makes a minor technical amendment to the *Family Assistance Legislation Amendment (Child Care) Act 2010* to correct a misdescribed provision.

FINANCIAL IMPACT

Nil.

FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT (CHILD CARE AND OTHER MEASURES) BILL 2011

NOTES ON CLAUSES

Clause 1 - Short title

Provides for the Act to be cited as the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011*.

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 to commence on the day of Royal Assent; Part 1 of Schedule 1 and Schedules 4 and 5 to commence on the day after Royal Assent; Part 2 of Schedule 1 to commence immediately after the time specified in the *Family Assistance Legislation Amendment (Child Care) Act 2010* for the commencement of item 5 of Schedule 5 to that Act; and for Schedules 2 and 3 to commence on the 28th day after the day on which this Act receives Royal Assent.

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;

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

‘Department’ means the Department of Education, Employment and Workplace Relations;

‘Family Assistance Act’ means the *A New Tax System (Family Assistance) Act 1999*;
and

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

Schedule 1 — Set off and recovery of amounts

Summary

Set off and recovery of amounts

This Schedule makes amendments to the Family Assistance Administration Act to enable:

- the setting off of amounts paid to an approved child care service under the family assistance law against amounts paid to the service under the CCMS Act, a payment to be made to the service under the Jobs Education and Training (JET) Child Care fee assistance and against other payments made to the service under a scheme or program administered by the Department; and
- recovery of a debt due by an approved child care service to the Commonwealth under the family assistance law by setting off the amount of the debt against amounts paid to the service under the CCMS Act, a payment to be made to the service under the Jobs Education and Training (JET) Child Care fee assistance and against other payments made to the service under a scheme or program administered by the Department; and
- the setting off of amounts paid to an approved child care service and a debt of an approved child care service against fee reduction payments, enrolment advances, payments made under the CCMS Act, payments under the Jobs Education and Training (JET) Child Care fee assistance and payments under a scheme or program administered by the Department to be made to another approved child care service operated by the same operator.

Enrolment advances

Amendments are also made by this Schedule to the Family Assistance Administration Act to:

- ensure that enrolment advance payments are not required to be made to an approved child care service after the operator of an approved child care service has notified the operator's decision to cease operating the service; and
- enable the set off, following the notification, of enrolment advance payments already made to the service but not yet recovered.

The Schedule also makes a technical amendment to correct a misdescribed amendment in the *Family Assistance Legislation Amendment (Child Care) Act 2010*.

Background

Amendments relating to set off and recovery of amounts

Payments to approved child care services

An approved child care service is, or may be, paid various amounts under the Family Assistance Administration Act, the CCMS Act and under non-legislative schemes or programs administered by the Department.

The Family Assistance Administration Act provides for payment of the following to an approved child care service:

- under sections 219Q and 219QA: weekly payments of fee reduction amounts that the service is required to pass onto the individuals using the service who are conditionally eligible for CCB by fee reduction (or to itself if the service is so eligible); and
- under section 219RA: enrolment advance amounts, paid for the benefit of the service, in relation to an enrolment of a child notified by the service and confirmed by the Secretary;
- under section 219RD: business continuity payments, paid in certain circumstances for the benefit of the service.

Subitems 97(5) and 97A(5) of the CCMS Act provide for payment to an approved child care service of an amount resulting from an acquittal under the CCMS Act of quarterly advance amounts paid to the service under the Family Assistance Administration Act as in force before 29 June 2007.

Further, an approved child care service is, or may be paid, amounts under non-legislative schemes or programs administered by the Department. Some of these payments are paid for the benefit of individuals using the care of the service and some are paid for the benefit of the service. For example:

- under the Jobs Education and Training (JET) Child Care Fee Assistance Program, a payment for an individual undergoing training is made directly to the service providing care to the individual's child. This is to cover the difference between the individual's CCB fee reductions and the total amount of child care fees charged by the service for that care; and
- under the Child Care Services Support Program, payments are made to services via funding agreements to assist the services with the provision of care in accordance with the outcomes specified in the agreements.

Set off

The Family Assistance Administration Act requires the Secretary to set off, in specified circumstances, the amounts of fee reductions, enrolment advances and

business continuity payments paid to a service against any amount of fee reduction or enrolment advances that are to be paid to the service.

A business continuity payment paid to a service can be also set off against an acquittal payment made to the service under subitems 97(5) or 97A(5) of the CCMS Act.

As a result of the amendments made by this Schedule, all amounts that the Family Assistance Administration Act required to be set off in respect of a service (the first service) will also be able to be set off against:

- an acquittal payment to be made to the service under subitems 97(5) or 97A(5) of the CCMS Act; and
- a payment to be made to the service under the Jobs Education and Training (JET) Child Care fee assistance; and
- any other payment made to the service under a scheme or program administered by the Department specified for this purpose by the Minister in a legislative instrument; and
- payments of fee reduction amounts, enrolment advances, payments made under the CCMS Act, payments under the Jobs Education and Training (JET) Child Care fee assistance and payments under a scheme or program administered by the Department to be made to another approved child care service operated by the same operator that operates the first service.

Debt recovery

Part 4 of the Family Assistance Administration Act contains provisions specifying the circumstances in which amounts of fee reductions, enrolment advances or business continuity payments become a debt due to the Commonwealth by an approved child care service. It includes section 71G, which creates a debt relevant to those payments when a service's approval for the purposes of the family assistance law is suspended or cancelled.

A debt due by a service to the Commonwealth can be recovered by one or more of the means specified in subsection 82(2). This includes setting off the debt against payments to the service of fee reduction amounts or enrolment amounts. As a result of the amendments made by this Schedule, a debt of a service (the first service) will be also recoverable by setting off the amount of the debt against:

- an acquittal payment to be made to the service under subitem 97(5) or 97A(5) of the CCMS Act; and
- a payment to be made to the service under the Jobs Education and Training (JET) Child Care fee assistance; and
- any other payment made to the service under a scheme or program administered by the Department, that the Minister specifies for this purpose in a legislative instrument; and

- payments of fee reduction amounts and enrolment advances, payments made under the CCMS Act, payments under the Jobs Education and Training (JET) Child Care fee assistance, and payments made under a scheme or program administered by the Department to be made to another approved child care service operated by the same operator that operates the first service.

Amendments relating to enrolment advances

An enrolment advance is an amount paid to an approved child care service to support the service's cash flow before the payment of fee reductions commence for a child whose enrolment the service has notified. It is required to be paid to the service once the service has elected to receive the advance and the Secretary confirms the enrolment (section 219RA). The requirement to pay the advance operates even if the enrolment notification is received immediately before the cancellation of the service's approval for the purposes of the family assistance law (for example, when the operator of the service ceases the operation).

Once the enrolment for which an advance was paid ceases (the care has stopped), the amount of the advance paid for the child is required to be set off against any subsequent payment of enrolment advance or fee reduction that is to be paid to the service (section 219RC).

Once a service's approval for the purposes of the family assistance law is suspended or cancelled, all advance amounts that have not been offset by that time (including advances for children whose enrolments have not ceased before the service's suspension or cancellation of approval) become a debt due by the service to the Commonwealth (subsection 71G(2)). That debt is recoverable from any enrolment advance and fee reduction amounts that may yet be paid to the service in connection with the care that occurred before the suspension/cancellation (subsection 82(2)).

One of the reasons for cancellation of a service's approval is where the person who operates the service (the person on whose application the service was approved) ceases to operate the service (eg closes the service or transfers the operation to another operator). The operator of the service in this situation is required to notify the decision to cease the operation of the service at least 42 days before the cessation (section 219M).

At the time a service ceases to operate there may be a greater amount of enrolment advance to be recovered than the amount of fee reduction payments due to the service, from which the enrolment advance debt may be recovered. If a service closes due to financial difficulties, for example, when insolvent, the Commonwealth may not be able to recover the debt.

Under the current legislation, a service is obliged to notify the Secretary of all new enrolments occurring before the service's cancellation of approval. Therefore, the service is paid enrolment advances for those enrolments even in the days leading up to the service's cessation of operation, adding to the amount of the service's debt arising on cancellation of approval.

This adds to the amount of a service's debt arising on cancellation of the service's approval and undermines the effectiveness of the recovery of the debt.

Amendments made by this Schedule ensure that enrolment advances are not required to be paid to the service after the operator has notified the decision to cease operating the service. The amendments also ensure that the enrolment advances that have been paid to a service (the first service), but have not been yet set off, will be able to be set off after the notification against the following payments:

- fee reductions, enrolment amounts, and an acquittal payment under subitem 97(5) or 97A(5) of the CCMS Act to be made to the service; and
- a payment to be made to the service under the Jobs Education and Training (JET) Child Care fee assistance; and
- any another payment made to the service under a scheme or program administered by the Department, specified for this purpose by the Minister in a legislative instrument; and
- payments of fee reduction amounts, enrolment advances, payments made under the CCMS Act and payments under a scheme or program administered by the Department to be made to another approved child care service operated by the same operator that operates the first service.

Explanation of the changes

Part 1 – Main amendments

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

Items 1 and 2 - Subsection 3(1) and After subsection 3(4)

Subsection 3(1) defines certain terms used in the Family Assistance Administration Act. **Item 1** inserts a new definition, of *child care service payment*, into subsection 3(1). The child care service payment means:

- a payment under section 219Q or subsection 219QA(2) in respect of fee reduction; or
- an enrolment advance under section 219RA; or
- a payment under subitem 97(5) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007* or subitem 97A(5) of that Schedule (as modified by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009*); or
- the payment known as Jobs Education and Training (JET) Child Care fee assistance that is paid by the Commonwealth; or
- a payment specified in an instrument under subsection 3(4A).

Item 2 inserts new subsection 3(4A). New subsection 3(4A) permits the Minister to specify, by legislative instrument, a payment for the purposes of paragraph 3(1)(e) of the definition of *child care service payment* in subsection 3(1). New subsection 3(4A)

provides that the payment that the Minister may specify must be one made to child care services under a scheme or program (however described) administered by the Department.

The new definition of *child care service payment* is relevant to the amendments made by **Items 8, 23, 29, 30 and 32**.

Items 3, 4, 5 and 6 – Paragraphs 66(2)(bb), 66(2)(bc), 66(2)(cb) and 66(2)(cc)

Subsection 66(1) provides for the inalienability of certain payments, including fee reductions and enrolment advance amounts paid to an approved child care service, from any sale, assignment, charge, execution, bankruptcy or otherwise. Subsection 66(2) sets out a number of provisions of the Family Assistance Administration Act that affect the amounts of those payments.

Items 3 and 4 make amendments to paragraphs 66(2)(bb) and (bc) consequential to the amendment made by **Item 10**, which substitutes new section 87A for sections 87A and 87B. **Item 3** makes a consequential amendment to the description of new section 87A in paragraph (bb) and **Item 4** repeals the redundant paragraph (bc) referring to section 87B.

Item 5 amends paragraph 66(2)(cb) to correct the description of section 219QA, as a consequence of the amendment made to section 219QA by **Item 23**.

Item 6 amends paragraph 66(2)(cc) to correct the description of section 219RC, as a consequence of the amendment made to section 219RC by **Item 27**.

Items 7 and 8 – Subsection 82(2) and Paragraphs 82(2)(a) and (b)

Subsection 82(2) sets out the methods by which a debt owed by an approved child care service is recoverable by the Commonwealth (setting off against fee reductions and enrolment advances paid to the service, by instalments through arrangements under section 91, through legal proceedings or through garnishee notices).

Items 7 and 8 amend subsection 82(2) to broaden the range of payments against which a debt of a service, referred to as ‘the first service’ (as a result of an amendment made by **Item 7**), may be set off.

Item 8 repeals paragraphs 82(2)(a) and (b) referring to fee reductions and enrolment advance payments, and substitutes a new paragraph 82(a) which provides for setting off the amount of the debt against one or more child care service payments that are to be made to the first service or to another approved child care service operated by the person who operates the first service.

A note is inserted at the end of subsection 82(2) which refers the reader to subsection 3(1) for a definition of *child care service payment* (inserted by **Item 1**).

Item 9 – Section 86

Item 9 amends section 86 to remove any reference to section 87B repealed by the amendment made by **Item 10**.

A note in this item informs the reader that the heading to section 86 is altered by omitting ‘87A and 87B’ and substituting ‘and 87A’.

Item 10 – Sections 87A and 87B

Sections 87A and 87B, respectively, provide for the setting off of an approved child care service’s debt against an amount of enrolment advances or fee reductions.

Item 10 repeals sections 87A and 87B and substitutes a new section 87A. New section 87A takes into account the fact that, as a result of the amendment made by **Item 7** to subsection 82(2), a debt of a service may be set off against not only fee reductions and enrolment advances, but also against advance acquittal payments made under subitems 97(5) and 97A(5) of Schedule 1 to the CCMS Act and against a *child care service payment* as defined in subsection 3(1) inserted by **Item 1**.

New subsection 87A(2) requires the Secretary to determine the amount by which a payment is to be reduced. New subsection 87A(3) provides that a determination under new subsection 87A(2) may cover one or more payments and make different provision for different payments. New subsection 87A(4) permits the Secretary to vary the determination made under new subsection 87A(2). New subsection 87A(5) provides that, if a payment is reduced by way of a set off in accordance with new section 87A, the amount of the debt is reduced by an amount equal to the set off amount.

New subsection 87A(6) states that a determination of an amount under new subsection 87A(2) is not a legislative instrument. New subsection 87A(6) is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Items 11, 12, 14, 16 and 18 - Subparagraphs 88(6)(b)(i), 90(5)(b)(i) and 95(3)(a)(iib) and paragraphs 95(4)(e) and 99(2)(d), respectively

Items 11, 12, 14, 16 and 18 amend subparagraphs 88(6)(b)(i), 90(5)(b)(i) and 95(3)(a)(iib) and paragraphs 95(4)(e) and 99(2)(d), respectively, to remove redundant references to section 87B repealed by **Item 10**.

Items 13 and 15 - Subparagraph 95(3)(a)(iia) and paragraph 95(4)(d)

These amendments are consequential to the amendment made to section 87A by **Item 10**.

Section 95 deals with the circumstances in which the Secretary may write off a debt which is recoverable by the Commonwealth under Division 2. Paragraphs 95(2)(a) and (b) respectively provide that the Secretary may decide to write off a debt under subsection 95(1) if the debt is irrecoverable at law, or the debtor has no capacity to repay the debt.

Subsection 95(3) sets out when a debt is taken to be irrecoverable at law. This includes the situation specified in subparagraph 95(3)(a)(ia) where a debt cannot be recovered by setting off under section 87A against enrolment advances. As a consequence of the amendment made by **Item 10**, which substitutes a new section 87A dealing with setting off debts against the payments referred to in paragraph 82(2)(a) (as amended by **Item 8**) (which include but are not limited to enrolment advances), **Item 13** amends subparagraph 95(3)(a)(ia) to omit the reference to enrolment advances and substitutes a reference to the payments referred to in paragraph 82(2)(a). As a result of the amendment made by **Item 13**, a debt will be irrecoverable at law if the debt cannot be recovered by setting off under section 87A against the payments referred to in that section.

Subsection 95(4) qualifies the application of paragraph 95(2)(b). Subsection 95(4) provides that a person is taken to have capacity to repay a debt unless recovery by the means set out in subsection 95(4), including setting off under section 87A against enrolment advances, would cause the person severe financial hardship. As a consequence of the amendment made by **Item 10**, which substitutes a new section 87A dealing with setting off debts against the payments referred to in paragraph 82(2)(a) (as amended by **Item 8**) (which include but are not limited to enrolment advances), **Item 15** amends paragraph 95(4)(d) to omit the reference to enrolment advances and substitutes a reference to the payments referred to in paragraph 82(2)(a). As a result of the amendment made by **Item 15**, a person is taken to have capacity to repay a debt if recovery of the debt by means of setting off under section 87A against a payment referred to in paragraph 82(2)(a) would not cause the person severe financial hardship.

Item 17 - Paragraph 99(2)(c)

This amendment is consequential to the amendment made to section 87A by **Item 10**.

Subsection 99(1) requires the Secretary to waive the right to recover a debt if the debt is or is likely to be less than \$200 and it is not cost effective for the Commonwealth to take action to recover the debt. Paragraph 99(2)(c) provides that subsection 99(1) will not apply if the debt is at least \$50 and could be recovered by setting off under section 87A against enrolment advances. As a consequence of the amendment made by **Item 10**, which substitutes a new section 87A dealing with setting off debts against the payments referred to in paragraphs 82(2)(a) (as amended by **Item 8**) (which include but are not limited to enrolment advances), **Item 17** amends paragraph 99(2)(c) to omit the reference to enrolment advances and substitutes a reference to the payments referred to in paragraph 82(2)(a). As a result of the amendment made by **Item 17**, subsection 99(1) will not apply if the debt is at least \$50 and could be recovered by setting off under section 87A against a payment referred to in paragraph 82(2)(a).

Item 19 – After paragraph 108(2)(da)

Subsection 108(2) sets out the exceptions to the rule provided in subsection 108(1) that a decision of an officer under the family assistance law must be reviewed on application under section 109A (internal review). Subsection 108(2) lists the decisions which are not reviewable on application under section 109A.

Item 19 amends subsection 108(2) to include in the list of the decisions that may not be reviewed a decision made under new subsection 219RA(1A) not to pay an enrolment advance to an approved child care service in the period after the operator has notified the Secretary that the operator will cease operating the service (new subparagraph 108(2)(daaa) refers) and before the cancellation of the service's approval for the purposes of the family assistance law. As at the time of the cancellation of approval, all amounts of enrolment advances paid to the service become a debt due by the service/operator to the Commonwealth (section 71G refers). A decision not to pay an enrolment advance before the cancellation of approval reduces the total amount of a debt that would otherwise arise. It is not necessary for such decisions to be reviewable given that, even if the review resulted in the decision to pay the advance, the amount paid would immediately become recoverable as a debt.

Items 20 and 21 – After subparagraph 111(2)(a)(xv) and After subparagraph 111(2)(a)(xvi)

Subsection 111(2) provides that a person cannot apply to the Social Security Appeals Tribunal under subsections 111(1) or 111(1A) for review of a decision made under any of the provisions set out in paragraph 111(2)(a) relating to the form and manner of claims and notices etc. **Items 20 and 21** insert two new subparagraphs into paragraph 111(2)(a). New subparagraph 111(2)(a)(xva) operates to the effect that a person cannot apply for review under subsections 111(1) or 111(1A) of a decision made under subparagraphs 219RA(1A)(b), (1B)(b) or (1C)(b). New subparagraph 111(2)(a)(xvia) provides that a person cannot apply for review of a decision made under paragraph 219RC(3)(d). The decisions in question are the Secretary's decisions approving the form, manner or way of notification of the operator's decision to continue operating the service.

Item 22 – Paragraph 219Q(3)(c)

Item 22 is a technical amendment consequential to the amendment made to section 219RC by **Item 27**. **Item 22** amends paragraph 219Q(3)(c) referring to section 219RC to reflect the change of the heading to section 219RC effected by **Item 27**.

Item 23 – At the end of subsection 219QA(3)

Subsection 219QA(3) requires the Secretary to set off a higher fee reduction amount paid to an approved child care service in respect of a week and a child if the amount of fee reduction for that week was reduced as a result of recalculation of the amount under sections 50ZA or 50ZC. The higher amount paid is required to be set off against any fee reduction or enrolment advance amounts to be paid to the service.

Item 23 amends subsection 219QA(3) to require a higher fee reduction amount paid to a service to be set off against one or more child care service payments that are to be made to the first service or to another approved child care service operated by the person who operates the first service.

A note at the end of subsection 219QA(3) refers the reader to subsection 3(1) for a definition of *child care service payment* inserted by **Item 1**.

Item 24 – After subsection 219RA(1)

Subsection 219RA(1) provides that the Secretary must pay the amount of an enrolment advance if an approved child care service (other than an approved occasional care service) makes an election to receive the enrolment advance in relation to a particular enrolment (in accordance with section 219R) and the Secretary confirms the enrolment (under section 219AE).

Item 24 inserts new subsections (1A), (1B) and (1C) into section 219RA. These new subsections serve to qualify the requirement of subsection 219RA (1) to pay an enrolment advance.

New subsection 219RA(1A) provides that the Secretary may decide not to pay an enrolment advance to an approved child care service under subsection 219RA(1) if, before the day the Secretary proposes to pay the advance, the operator of the service notifies the Secretary under subsection 219M(1) of the operator's decision to cease operating the service and, before that day, the operator has not notified the Secretary (in the form, and in the manner or way, approved by the Secretary) of the operator's decision to continue operating the service.

New subsection 219RA(1B) provides that, if the Secretary does not pay an enrolment advance to the service as a result of the notification of the operator's decision to cease operating the service, and the operator of the service notifies the Secretary (in the form, and in the manner or way, approved by the Secretary) of the operator's decision to continue operating the service and the enrolment concerned has not ceased before that notification of continuation, the Secretary must pay the amount of the advance to the credit of a bank account nominated and maintained by the service.

New subsection 219RA(1C) is relevant to a set off of an enrolment advance amount under new subsection 219RC(3) inserted by **Item 30** that requires the Secretary to set off a service's enrolment advance amounts once the operator of the service has notified the Secretary of the operator's decision to cease operating the service.

New subsection 219RA(1C) provides that, if, in respect of an enrolment paid to a service, the Secretary sets off an amount under subsection 219RC(3) against a payment to this service or another service operated by the same operator (because the operator of the service notified the decision to cease operating the service) and, after the set off, the operator notifies the Secretary (in the form, and in the manner or way, approved by the Secretary) of the operator's decision to continue operating the service and the enrolment has not ceased before that notification, then the Secretary may pay an enrolment advance in respect of that enrolment to the credit of a bank account nominated and maintained by the service. The amount to be paid equals the amount that was set off.

A note at the end of **Item 24** informs the reader that the heading to section 219RA is replaced by the heading 'Payment of enrolment advance'.

Item 25 – Paragraph 219RA(2)(c)

Item 25 is a technical amendment consequential to the amendment made by **Item 27** that changes the heading of section 219RC. **Item 25** amends paragraph 219RA(2)(c) that refers to section 219RC, to reflect the change to the heading of section 219RC.

A note at the end of **Item 25** inserts a heading to subsection 219RA(2), 'Interpretation'.

Item 26 – Subsection 219RA(3)

Item 26 is an amendment consequential to the amendments to section 219RA made by **Item 24**. **Item 24** provides the Secretary with a discretion to repay, in certain circumstances, a previously set off enrolment advance. **Item 26** amends subsection 219RA(3) to make it clear that the Secretary must give the service notice of any payment made under this section.

A note at the end of this item informs the reader that a heading 'Notice of Payment' is inserted in subsection 219RA(3).

Items 27, 28, 29 and 30 – Section 219RC, Paragraph 219RC(a), Section 219RC and At the end of section 219RC

An enrolment advance amount paid to an approved child care service 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 the fee reductions relate to a particular enrolment or not. **Items 27, 28, 29 and 30** amend section 219RC.

Item 27 makes technical amendments consequential to the amendments made by **Item 30**. **Item 27** inserts a reference to '(1)' in front of the current text of section 219RC, turning it into subsection 219RC(1).

Note 1 in **Item 27** informs the reader that the heading to section 219RC is altered by adding at the end 'or decision to cease operating service is notified'. The altered heading will read: '*Setting off enrolment advance when enrolment ceases or decision to cease operating service is notified.*'

Note 2 in **Item 27** inserts a heading to the new subsection 219RC(1), '*Enrolment ceases.*'

Items 28 and 29 amend section 219RC (which became subsection 219RC(1) as a result of **Item 27**) with the effect that, if an enrolment of a child for care by a service (the first service) ceases, the Secretary must set off the amount of an enrolment advance paid to the service for the enrolment against one or more child care services' payments that are to be made to the first service or to another approved child care service operated by the person who operates the first service.

A note at the end of paragraph 219RC(a) refers the reader to subsection 3(1) for a definition of *child care service payment as* inserted by **Item 1**.

Item 30 inserts new subsections 219RC(2) and (3).

New subsection 219RC(2) provides that subsection 219RC(1) does not apply in relation to an enrolment advance if subsection 219RC(3) has applied in relation to the advance. This new subsection ensures that an enrolment advance that has been set off under new subsection 219RC(3), because the operator of the service notified the Secretary of the operator's decision to cease operating the service, is not set off again under subsection 219RC(1) when the enrolment relevant to the advance ceases after the set off.

New subsection 219RC(3) provides that if:

- an operator of an approved child care service (the *applicable service*) notifies the Secretary under subsection 219M(1) of the operator's decision to cease operating that service; and
- either an enrolment advance was paid to the applicable service in respect of an enrolment, or an enrolment advance would have been paid but for a set off under subsection 82(2), section 219QA, this section or section 219RE or for the imposition of a sanction under paragraph 200(1)(f); and
- the enrolment advance has not been set off under subsection 219RC(1); and
- the operator has not notified the Secretary (in the form, and in the manner or way, approved by the Secretary) of the operator's decision to continue operating the service

the Secretary must set off an amount equal to the amount of the advance against one or more child care service payments that are to be made to the applicable service or to another approved child care service operated by the person who operates the applicable service.

A note at the end of new subsection 219RC(3) refers the reader to subsection 3(1) for a definition of *child care service payment* inserted by **Item 1**.

As a result of this amendment, enrolment advances that would constitute a debt recoverable only after the applicable service's approval has been cancelled (following the notification of cessation of operation by the operator), will be able to be recovered via a set off under new subsection 219RC(3) against the specified payments yet to be made to the service, or against those payments to be made to another approved child care service operated by the person who operates the applicable service, immediately after the operator's notification of the decision to cease operating has been received by the Secretary.

Items 31 and 32 – Section 219RE

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

Items 31 and 32 amend section 219RE with the effect that, if a business continuity payment is made to an approved child care service (the first service) under section 219RD, the Secretary must set off an amount equal to that payment against one or more child care service payments that are to be made to the first service or to another service operated by the person who operates the first service.

A note at the end of subsection 219QA(3) refers the reader to subsection 3(1) for a definition of *child care service payment* inserted by **Item 1**.

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

Item 33 – Subitem 97C(1) of Schedule 1

This amendment is consequential to the amendments made to subsections 82(2), 219QA(3) and 219RC by **Items 8, 23 and 29**, respectively, which extend the range of payments against which a child care service's debt and amounts of fee reductions and enrolment advances are set off, to include transitional acquittal payments made to approved child care services under subitems 97(5) and 97A(5) of Schedule 1 to the CCMS Act.

Item 33 amends subitem 97C(1) of Schedule 1 to the CCMS Act, which provides that payments under subitems 97(5) and 97A(5) are subject to a set off under section 219RE of the Family Assistance Administration Act (set off of business continuity payment). **Item 33** repeals subitem 97C(1) and substitutes a new subitem 97C(1) to

reflect the extended range of payments that are to be set off against the payments under subitems 97(5) and 97A(5).

New subitem 97C(1) provides that subitem 97(5) and subitem 97A(5) of Schedule 1 to the CCMS Act are subject to the following provisions of the Family Assistance Administration Act:

- paragraph 82(2)(a) (about set off of debts);
- subsection 219QA(3) (about set off where the amount of applicable fee reduction is reduced on recalculation);
- section 219RC (about set off of enrolment advances); and
- section 219RE (about set off of business continuity payments).

Item 34 – Application and saving

Item 34 includes application and saving provisions.

Subitem 34(1) provides that the amendments made to paragraphs 82(2)(a) and (b), subsection 219QA(3) and sections 219RC and 219RE of the Family Assistance Administration Act by **Items 8, 23, 29 and 32** respectively, extending a range of payments against which a service's debt and fee reductions, enrolment advances and business continuity payments can be set off, apply in relation to payments that are to be made on or after the commencement of those items (the day after the Royal Assent).

Subitem 34(2) provides that new subsection 87A(1) of the Family Assistance Administration Act, substituted by **Item 10**, dealing with setting off of a service's debt against child care service payments, applies in relation to debts arising on or after the commencement of **Item 34** (the day after the Royal Assent) and to debts arising before that commencement, to the extent that the debts were outstanding immediately before that commencement.

Subitem 34(3) provides that the amendment made by **Item 10**, which repeals sections 87A and 87B of the Family Assistance Administration Act and substitutes new section 87A, does not affect the validity of any debt recovery action taken under section 87A or 87B before the commencement of **Item 10** (the day after the Royal Assent).

Subitem 34(4) provides that subparagraphs 88(6)(b)(i) and 90(5)(b)(i) of the Family Assistance Administration Act, as amended by **Items 11 and 12** to remove a redundant reference to section 87B repealed by **Item 10**, apply on and after the commencement of **Item 34** (the day after the Royal Assent) as if a reference in those subparagraphs to section 87A included a reference to sections 87A and 87B as in force at any time before that commencement. This ensures that any debt recovery action taken before the commencement of this item under section 87A or 87B as in force before that commencement has effect for the purposes of subparagraphs 88(6)(b)(i) and 90(5)(b)(i) (legal proceedings and time limits on recovery action by garnishee notice) as if it was an action under new section 87A.

Subitem 34(5) provides that subsections 219RA(1A) and 219RC(3) of the Family Assistance Administration Act as amended by **Items 24 and 30**, about not paying an enrolment advance after a notice of the decision to cease operating a service was given by the operator of the service, and about setting off the service's enrolment advances after the notice was given by the operator, apply in relation to notices of the decision to cease operating an approved child care service given by operators under subsection 219M(1) on or after the commencement of **Item 34** (the day after the Royal Assent).

Part 2 – Technical amendment

Family Assistance Legislation Amendment (Child Care) Act 2010

Item 35 – Item 5 of Schedule 5

Item 35 corrects a misdescribed amendment made by item 5 of Schedule 5 of the ***Family Assistance Legislation Amendment (Child Care) Bill 2010*** to subitem 97B(1) of Schedule 1 to the ***Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007***. The amendment omits the word 'item' from the reference to 'item 97'.

A note at the end of this item informs the reader that this item corrects a misdescribed amendment.

Schedule 2 — Child care absences

Summary

This Schedule makes amendments to the Family Assistance Act to clarify the provisions concerning the effect of a child's absence from the care of an approved child care service (other than an occasional care service) on the eligibility of an individual for CCB in respect of that child.

The amendments authorise the Minister to specify, by a legislative instrument, the circumstances relating to absences of a child from a session of care that would otherwise have been provided, in which the service will be taken to have permanently ceased providing care.

The amendments also clarify that, where an approved child care service has permanently ceased providing care to a child, it means that the service has done so on the day the child last physically attended a session of care provided by the service. This ensures that, where the care has permanently ceased or has been taken to have permanently ceased, CCB eligibility does not arise in respect of any day after the child last physically attended the care.

A minor amendment is also made to a provision of the Family Assistance Administration Act dealing with child care services' reporting requirements.

Background

CCB eligibility arises in respect of a session of care provided to a child by a child care service approved for the purposes of the family assistance law (under section 195 of the Family Assistance Administration Act). In certain circumstances, CCB eligibility also arises when a child is absent from a session or sessions of care that would otherwise have been provided to the child.

Subsection 10(2) of the Family Assistance Act provides for up to 42 days of a child's absence from care in a financial year ('initial absence') for which CCB eligibility arises. This subsection specifies the conditions that need to be met for a day of absence from care to be an 'initial absence', including that the absence does not fall on a day that is 'after the day the service has stopped providing care for the child (otherwise than temporarily)' (subparagraph 10(2)(b)(ii) refers).

Ordinarily, whether a service has stopped providing care to a child or not, is a matter of fact. For example, if an individual who made an arrangement for the provision of care to a child by the service has terminated the arrangement as of a particular day, and the child attended care up to that day, it is clear that any next day on which the child is absent is not an 'initial' absence as it is after the day on which the service has stopped providing care to the child.

However, there are many situations where a child is absent from care (that would otherwise have been provided, for example, under an arrangement for care that did not specify the end date of the arrangement) for long periods and it is not clear, at the time the absence occurs, whether it is permanent or temporary (because it is not clear, or it is not known, whether the child will, or will not, return to the care). As an approved child care service is required (under section 219N of the Family Assistance Administration Act) to provide a report for each week in which the service provided care to a child or have been taken (under section 10 of the Family Assistance Act) to have provided care, a service in such situations frequently reports an extended period of absences as ‘initial absences’, sometimes until the 42 day allowance of initial absences for a child is exhausted. The report triggers calculation of CCB fee reductions and payment of the calculated amounts to the service, which is then required to pass the amount onto the individual who arranged the care by the service. Once it becomes clear that the absence is permanent, the fee reduction amounts paid for the period of the absence becomes a debt due to the Commonwealth by the individual.

To clarify the operation of the existing provisions relating to ‘initial’ absences, the amendments made by this Schedule provide the power for the Minister to specify in a legislative instrument circumstances in which a service will be taken to have permanently ceased providing care to a child (**Item 2**, new subsections (2A) and (2B)). An amendment is also made to make it clear that if the service has permanently ceased providing care to the child, in the ordinary course of events, as arranged for, or in the circumstances specified in the instrument, it means that it has done so on the last day on which the child was physically provided with care by the service (**Item 2**, new subsection (2C)). Any subsequent day of absence is not an ‘initial absence day’ and CCB eligibility does not arise for that absence.

Explanation of the changes

A New Tax System (Family Assistance) Act 1999

Item 1 – Subparagraph 10(2)(b)(ii)

Subsection 10(2) operates to the effect that an individual may be eligible for CCB for up to 42 days in a financial year of a child’s ‘initial’ absence from sessions of care provided by an approved child care service.

Subsection 10(2) specifies the conditions that need to be met for a day of absence from care to be an initial absence, including that the absence does not fall on a day that is ‘after the day the service has stopped providing care for the child (otherwise than temporarily)’ (subparagraph 10(2)(b)(ii) refers). In other words, the day in question cannot be a day after the service has permanently stopped providing care to the child. To better express the meaning of this condition, **Item 1** makes a stylistic change to the wording of subparagraph 10(2)(b)(ii) so that it refers to an absence which does not fall on a day: ‘after the day the service has permanently ceased providing care for the child’. This amendment does not change the operation of subparagraph 10(2)(b)(ii).

Item 2 – After subsection 10(2)

Item 2 inserts new subsections (2A), (2B) and (2C) into section 10.

New subsection (2A) provides that an approved child care service is taken to have permanently ceased providing care for a child in the circumstances specified by the Minister in a legislative instrument.

New subsection (2B) provides the Minister with the power to make such an instrument. It is intended that a continuous period of absence of, for example, 6 weeks will be specified in the instrument as the circumstance in which a service will be taken to have permanently ceased providing care to the child, irrespective of whether there might have been an intention for the child to return to care at a later date. Different periods may be specified to cater for different circumstances. It is intended that the commencement of the instrument will coincide with the commencement of this Schedule.

New subsection (2C) provides that, if an approved child care service has permanently ceased providing care to a child, including in the circumstances specified in a legislative instrument, then, for the purposes of subparagraph 10(2)(b)(ii), the service is taken to have done so on the day the child last physically attended a session of care by the service. New subsection (2C) operates in relation to the cessations that occur as a matter of fact (that is, where it is sufficiently clear that the arrangement relating to the care for a child has ended) and to the cessations in the circumstances specified in the instrument. This clarifies that a day of absence after that day cannot be an ‘initial’ absence day for which CCB eligibility arises. For example, if, as it is intended, the Minister specifies in a legislative instrument a period of continuous absence of, for example, 6 weeks, as a circumstance in which the service is taken to have permanently ceased care for a child, then after that period of absence has elapsed, the service will be taken to have permanently ceased care to the child on the last day before the period of absence started.

Items 3 - Application

Item 3 is an application provision. It provides that the amendments made by **Items 1 and 2** apply in relation to working out whether an approved child care service has permanently ceased providing care for a child on or after commencement of those items (regardless of whether the absences from sessions of care occurred before, on or after that commencement).

If, as it is intended, the Minister specifies in a legislative instrument, a particular period of continuous absence as a circumstance in which the service is taken to have permanently ceased care for a child, the amendments will apply to the making of a decision about the permanent cessation of care for a child if the child has been absent from care for the period specified in the instrument and the last day of that period occurs after the commencement of **Items 1 and 2** (and after the commencement of the instrument, which is intended to occur at the commencement of the Schedule), regardless of whether that period started before or after the commencement.

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

Item 4 – At the end of section 219N

Item 4 amends section 219N. Section 219N imposes an obligation on an approved child care service to give the Secretary a report about matters relevant to the CCB eligibility and entitlement for each week of care provided to a child enrolled by the service. The report must be provided in accordance with the requirements set out in this section. Once a report relating to a week of care for a child is given, the Secretary calculates the amount of fee reduction for the week for the child (based on the information provided in that report) and pays the amount to the service to pass on to the individual who is conditionally eligible for CCB by fee reduction for the child (sections 50Z and 219Q refer).

Subsection 219N(7) provides that an approved child care service may substitute a report it has given with an updated report at any time (for example, when the service made a mistake in the report already given) or withdraw the report that was given where it was not required to be given (for example, where a report was given in respect of a child for a week in which the service did not provide any sessions of care to the child and was not taken to have provided such sessions). If a service substitutes or withdraws a report for a week for a child, the Secretary may recalculate the amount of fee reduction for the child for that week and adjust the amount previously paid to the service (section 50ZA and 219Q and 219QA refer).

An approved child care service is required, as a condition of its continued approval for the purposes of the family assistance law, to comply with the rules specified in a legislative instrument made under paragraph 205(1)(b). The rules may impose requirements relating to substitution and withdrawal of a report given under section 219N in the circumstances specified in the rules.

Item 4 inserts new section 219N(8) to provide that subsection 219N(7) (about the discretionary substitution or withdrawal of reports) does not prevent rules under paragraph 205(1)(b) making provision for, and in relation to, child care services substituting and/or withdrawing a report given under section 219N. This amendment does not affect the operation of subsection 219N(7).

Schedule 3 — Scope of family assistance law

Summary

This Schedule makes clarifying amendments to the definition of the *family assistance law* in the Family Assistance Administration Act to include instruments made under the Family Assistance Administration Act and the Family Assistance Act. Similar consequential amendments are also made to the family assistance law definitions in the *Child Care Act 1972* and the *Social Security Act 1991*.

The amendments also provide that an instrument that is taken to be part of the family assistance law can provide that any decisions under it are subject to the internal and external review mechanisms provided for in the Family Assistance Administration Act.

Background

The definition of the *family assistance law* in subsection 3(1) of the Family Assistance Administration Act provides that this term means any of the following:

- the Family Assistance Administration Act;
- the Family Assistance Act;
- regulations under the Family Assistance Administration Act; and
- Schedules 5 and 6 to the *A New Tax System (Family Assistance and Related Measures) Act 2000* (the Act providing for the transitional arrangements relevant to the introduction of the Family Assistance Act and the Family Assistance Administration Act).

Currently, there are no regulations made under the Family Assistance Administration Act, although there are numerous legislative instruments made under that Act and the Family Assistance Act.

The definition of *family assistance law* does not expressly include other instruments (legislative or non-legislative) made under the instrument-making powers in the Family Assistance Administration Act or the Family Assistance Act.

The Family Assistance Administration Act, the Family Assistance Act and the instruments include frequent references to the *family assistance law* in a variety of contexts, including review of decisions, delegation of powers, obligations, offences, confidentiality provisions etc. While it may be that an instrument made under the power in any of these Acts is, in effect, part of the *family assistance law*, there is some doubt that it may not be, or it may not be so in some legislative contexts.

Clarifying amendments are therefore made in this Schedule (by **Item 1**) to achieve certainty that the references to the family assistance law include instruments made under the authority of the Family Assistance Administration Act and the Family Assistance Act.

Explanation of the changes

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

Item 1 – Subsection 3(1) (paragraph (c) of the definition of *family assistance*)

Paragraph 3(1)(c) of the definition of *family assistance law* includes within the scope of this term regulations made under the Family Assistance Administration Act. **Item 1** substitutes this paragraph with new paragraph (c) which extends the scope of this term to include any instrument, including regulations, made under this Act or the Family Assistance Act.

Items 2 and 3 – At the end of subsection 108(2) and After subsection 108(2)

Subsection 108(1) of the Family Assistance Administration Act provides that a decision of an officer under the family assistance law is subject to internal review, unless it is a decision of a kind set out in subsection (2). Most decisions that are subject to internal review can then be appealed to external merits review bodies (the Social Security Appeals Tribunal, then the Administrative Appeals Tribunal). Unless a decision under the family assistance can be subject to internal review, it cannot be appealed to external review bodies.

Item 2 amends subsection 108(2) to include in the list of the decisions that cannot be reviewed a decision under an instrument, including regulations, made under the Family Assistance Administration Act or the Family Assistance Act. **Item 3** inserts new subsection 108(2A), which provides that new paragraph 108(2)(h) does not apply in relation to a decision under an instrument if the instrument provides that the decision is reviewable for the purposes of this section.

In most cases, instruments made under the Acts do not and will not contain decision-making powers, either because individually they are the embodiment of an administrative decision under the Act, or because they simply amplify existing provisions in the Act for which review is already available. In some cases, instruments may contain provisions that involve decisions, but these decisions are not amenable to merits review, for example, they are:

- ‘process’ decisions (i.e. they are not final and operative), such as the approval of a form or the manner of giving notice of something to the Department, or
- decisions that do not affect substantive rights, such as a decision to allocate child care places to areas of Australia, or
- decisions for which review would be futile.

However, where it is appropriate to do so, the maker of an instrument can and will provide that a decision or decisions under the instrument are reviewable (**Item 3**).

These amendments do not affect current reviews of decisions under instruments (if any) (see **Item 6**).

Items 4 and 5 – Section 195A and Paragraphs 195A(a) and (b)

Section 195A provides that, for the purposes of the family assistance law and an instrument under that law, obligations imposed, and permissions conferred, on an approved child care service by the family assistance law or an instrument are imposed or conferred on the operator of the service. As the amendment made by **Item 1** includes instruments made under the Family Assistance Administration Act and the Family Assistance Act in the scope of the *family assistance law*, the references in section 195A to ‘an instrument’ are redundant and are removed by the amendments made by **Items 4 and 5**.

Item 6 – Application

Item 6 is an application provision. It provides that the amendments made by **Items 2 and 3** apply in relation to decisions made on or after the commencement of those items.

Child Care Act 1972

Item 7 – Subsection 4(1) (paragraph (c) of the definition of *family assistance law*)

Item 7 amends the definition of the *family assistance law* in subsection 4(1) of the *Child Care Act 1972* as a consequence of the amendment made by **Item 1** to the definition of the *family assistance law* in the Family Assistance Administration Act.

Family assistance law is defined in subsection 4(1) of the *Child Care Act 1972* to mean the Family Assistance Administration Act, the Family Assistance Act and regulations under the Family Assistance Administration Act.

Item 7 substitutes paragraph (c) of this definition (referring to regulations) with a new paragraph (c) referring to any instrument, including regulations, made under the Family Assistance Administration Act and the Family Assistance Act.

Social Security Act 1991

Item 8 – Subsection 23(1) (definition of *family assistance law*)

Item 8 amends the definition of the *family assistance law* in subsection 23(1) of the *Social Security Act 1991* as a consequence of the amendment made by **Item 1** to the definition of the *family assistance law* in the Family Assistance Administration Act.

The definition in subsection 23(1) of the *Social Security Act 1991* replicates the definition in subsection 3(1) of the Family Assistance Administration Act. **Item 8** repeals the definition in subsection 23(1) of the *Social Security Act 1991* and replaces it with the definition of the *family assistance law* that cross-refers to the meaning given by subsection 3(1) of the Family Assistance Administration Act.

Schedule 4 — Protected information

Summary

This Schedule amends the information protection provisions of the Family Assistance Administration Act to enable disclosure of information for the purposes of the new Education and Care Services National Law (National Law), so far enacted in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria (Victorian Act), that is to start operating from 1 January 2012.

Further, amendments are made to the Family Assistance Administration Act, the *Social Security Administration Act 1999* (Social Security Administration Act) and the *Student Assistance Act 1973* (Student Assistance Act) to enable a person to use information with the express or implied consent of the person to whom that information relates. The amendments also give the Minister a discretion to make guidelines for the exercise of the Secretary's power to give information to agency heads, and, in the case of the amendments to the Family Assistance Administration Act, also to a person who is authorised by the person to whom the information relates.

Minor consequential amendments are made to the *Age Discrimination Act 2004*.

Background

Amendments are made to the Family Assistance Administration Act to enable disclosure of information relating to education and care services for the purposes of the new Education and Care Services National Law (National Law). So far, the National Law has been enacted in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria (Victorian Act), that is to start operating from 1 January 2012.

The objective of the National Law is to establish a national education and care services quality framework (National Quality Framework) for the delivery of education and care services to children which, among other things, ensures the safety, health and wellbeing of children attending education and care services, establishes a nationally integrated system based on shared responsibility between participating jurisdictions and the Commonwealth, improves public knowledge, and access to information, about the quality of education and care services and reduces the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

All other jurisdictions are working towards passage of legislation referring to the Victorian Act to give effect to the National Quality Framework. The exception will be Western Australia which will pass corresponding legislation, also constituting the National Law, through its Parliament.

The sharing of information about education and care services between the Commonwealth and the State and Territory regulatory authorities administering the National Law is underpinned by the COAG National Partnership Agreement on National Quality Agenda on Early Childhood Education and Care (December 2009), under which the parties agreed to take necessary legislative steps to enable free and open exchange of data and information relating to education and care services, for the purposes of the National Quality Framework.

The kind of information that is intended to be disclosed for the purposes of the National Law (that is, for the purposes of regulating a new framework for education and care services) includes compliance activities undertaken in relation to education and care services, financial information about education and care services or information about a person with management control of an education or care service.

The information that may be disclosed is the information that relates to education and care services, which includes information relating to centre-based long day care services, family day care services and outside school hours care services approved for the purposes of the family assistance law. Such information obtained for the purposes of the family assistance law may be ‘protected information’ under the provisions of the Family Assistance Administration Act, and therefore prohibited from disclosure. The amendments made in this Schedule will enable disclosure of such information if the disclosure is made for the purposes of the National Law.

The Family Assistance Administration Act, the Social Security Administration Act and the Student Assistance Act provide protection for information held by the Department administering those laws (including Centrelink) for the purposes of those laws. The information protection provisions in the three bodies of legislation are modelled on each other and are intended to operate in a consistent fashion.

Minor amendments are made to the information protection provisions in those Acts to:

- simplify the language; and
- give the Minister a discretion to make guidelines for the exercise of the Secretary’s power to give information to agency heads or to an authorised person, where appropriate (rather than making it mandatory to make guidelines); and
- enable a person to use information with the express or implied consent of the person to whom that information relates.

Explanation of the changes

Disclosure of information for the purposes of the National Law

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

Item 3 – After subsection 161(1)

Section 161 is a general provision relating to operation of Division 2—
Confidentiality.

Subsection 161(1) makes lawful disclosure of information if the information is disclosed for the purposes of the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988*.

Item 3 inserts new subsections 161(1A) and 161(1B) that relates to disclosure of information for the purposes of the Education and Care Services National Law.

New subsection 161(1B) defines ‘Education and Care Services National Law’ as Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria (Victorian law).

New subsection 161(1A) makes lawful disclosure of information if the information is disclosed for the purposes of any of the following:

- (a) the Education and Care Services National Law applying as a law of a State or Territory (currently, this is the Victorian law);
- (b) a law of a State or Territory that applies the Education and Care Services National Law as a law of that State or Territory, whether or not that law has commenced (this refers to the relevant laws of all other States and Territories, except Western Australia, that are yet to commence);
- (c) regulations made under the Education and Care Services National Law;
- (d) a law of a State or Territory that substantially corresponds to the provision of the Education and Care Services National Law, whether or not that law has commenced (this refers to such law yet to be enacted by Western Australian Parliament);
- (e) regulations made under the Western Australian law referred to in paragraph (d).

Notes 1 and 2 at the end of new subsection 161(1A) inform the reader that the heading ‘Commonwealth laws’ is inserted to the existing subsection 161(1), and the heading ‘No effect on operation of *Freedom of Information Act 1982*’ is inserted to the existing subsection 161(2).

Minister's power to make guidelines

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

Items 5, 6 and 7 – Subsections 168(2) and (3), Section 169 and Transitional – guidelines for exercise of Secretary's disclosure powers

Social Security Administration Act 1999

Items 8, 9, and 10 – Subsections 208(2) and (3), Section 209 and Transitional – guidelines for exercise of Secretary's disclosure powers

Student Assistance Act 1973

Items 12, 13 and 14– Subsections 355(2) and (3), Section 356 and Transitional – guidelines for exercise of Secretary's disclosure powers

Age Discrimination Act 2004

Items 1 and 2 – Subsection 41(2A) and Subsection 41(3A)

Under section 169 of the Family Assistance Administration Act, section 209 of the Social Security Administration Act and section 356 of the Student Assistance Act, the Minister is required to make guidelines to guide the exercise of the Secretary's discretion to provide information protected under those Acts:

- in the public interest;
- to the head of another agency for that agency's purposes; and
- in the case of the amendments to the Family Assistance Administration Act, also to a person who is authorised by the person to whom the information relates.

There has never been perceived to be a need for the Minister to make guidelines to guide the discretion to give information to agency heads or to an authorised person, and no such guidelines have ever been made. Consequently, section 169 of the Family Assistance Administration Act, section 209 of the Social Security Administration Act and section 356 of the Student Assistance Act are repealed and new provisions substituted that give the Minister a discretion to make such guidelines, that is, the Minister 'may' make guidelines (see **Items 6, 10 and 14**). The substituted sections do not include the current redundant provisions which state the Minister may revoke or vary the guidelines (this is already covered by subsection 33(3) of the *Acts Interpretation Act 1901*). Apart from giving the Minister a discretion to make the guidelines, there is no substantive change to these provisions.

There are existing guidelines made by the Minister to guide the exercise of the Secretary's discretion to disclose information in the public interest. See, for example,

the *A New Tax System (Family Assistance) (Administration) (Public Interest Certificate Guidelines) (DEEWR) Determination 2009 (No.1)*, the *Social Security (Public Interest Certificate Guidelines) (DEEWR) Determination 2008*, and the *Student Assistance (Public Interest Certificate Guidelines) Determination 2008*. To avoid these existing guidelines being impliedly repealed by the repeal and substitution of the sections under which they are made, they are saved by the savings provisions in **Items 7, 11 and 15**.

Items 1 and 2 amend subsections 41(2A) and (3A) of the *Age Discrimination Act 2004* to correct references to the provisions of the Family Assistance Administration Act and the Student Assistance Act amended by **Items 6 and 10**.

The amendments made to subsections 168(2) and (3) of the Family Assistance Administration Act, subsections 208(2) and (3) of the Social Security Administration Act and to subsections 355(2) and (3) of the Student Assistance Act by **Items 5, 9 and 13**, respectively, recognise the fact that there may be no guidelines to guide the exercise of the Secretary's discretion to disclose information where the disclosure is in the public interest or to agency heads, or to a person who is authorised by the person to whom the information relates to obtain it.

Use of protected information with the express or implied consent of person to whom information relates

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

Item 4 – At the end of subsection 162(2)

Social Security Administration Act 1999

Item 8 – At the end of subsection 202(2)

Student Assistance Act 1973

Item 12 – At the end of subsection 351(2) (before the note)

Currently, the Secretary is able to disclose information about a person obtained for the purposes of the family assistance law, social security law, or Student Assistance Act with the consent of that person: see subparagraph 168(1)(b)(ii) of the Family Assistance Administration Act, subparagraph 208(1)(b)(iii) of the Social Security Administration Act and paragraph 355(1)(d) of the Student Assistance Act.

However, the Secretary or anyone else is not able to use that information for purposes other than those specifically prescribed in the family assistance law, social security law, and Student Assistance Act, even with the consent of the person concerned. It is not clear that information Centrelink holds for family assistance, social security, or student assistance purposes can be used by Centrelink to facilitate provision of

payments and services by Centrelink that stand outside those laws (for example, the provision of *ex gratia* payments or payments under administrative schemes for economic stimulus or household stimulus payments) even with the consent of the individuals concerned.

The amendments made by **Items 4, 8, and 12** add a new paragraph (f) to subsection 162(2) of the Family Assistance Administration Act, subsection 202(2) of the Social Security Administration Act and subsection 351(2) of the Student Assistance Act to make it clear that a person can record, disclose or otherwise use protected information with the express or implied authorisation of the person to whom the information relates.

Subparagraph 168(1)(b)(ii) of the Family Assistance Administration Act currently authorises the Secretary to disclose information ‘acquired by an officer in the exercise of the officer’s powers, or the performance of the officer’s duties or functions, under the family assistance law’ to a person who is expressly or impliedly authorised by the person to whom the information relates. In contrast, new paragraph 162(2)(f) of the Family Assistance Administration Act authorises the disclosure of ‘protected information’, as defined in that Act, with the express or implied authorisation of the person to whom the information relates. This distinction between the nature of the information contemplated in each of the provisions means that new paragraph 162(2)(f) would not replace subparagraph 168(1)(b)(ii) of the Family Assistance Administration Act. Therefore, subparagraph 168(1)(b)(ii) of the Family Assistance Administration Act has been retained.

For the same reason, subparagraph 208(1)(b)(ii) of the Social Security Administration Act and subparagraph 355(1)(d) of the Student Assistance Act are also retained.

Schedule 5 — Other amendments

Summary

This Schedule amends the Family Assistance Administration Act to:

- clarify and broaden the powers of the Secretary to refuse a service's approval for the purposes of the family assistance law; and
- broaden the scope of the condition for continued approval of child care services relating to the requirement to comply with child care laws to align with the scope of the similar requirement the services need to comply with as a condition of approval; and
- ensure that the same process applies in relation to the reduction of the amount of fee reduction for a reported period irrespective of whether the reduction results from recalculation triggered by a service substituting or withdrawing a previously given report for the period, or the Secretary recalculates the amount on her own initiative; and
- align the treatment of any reduced fee reduction amount payable to the service as a result of recalculation with the current treatment of a fee reduction amount payable in other situations (upon calculation or as an increase resulting from recalculation) and, by doing that, address the current omissions in the legislation.

Background

Secretary's power to refuse a child care service's approval for the purposes of the family assistance law

Section 195 of the Family Assistance Administration Act empowers the Secretary to approve or refuse to approve a child care service for the purposes of the family assistance law. Approval of a service allows parents of children attending the service to be eligible for child care benefit (CCB).

The language and structure of the current provisions of the Family Assistance Administration Act relating to approval of a service for the purposes of the family assistance law and to refusal of approval has been a source of interpretational difficulties for the Department in approving or refusing to approve child care services for the purposes of the family assistance law. While the current provisions clearly specify that the Secretary must approve the service if the specified conditions are met, there is no clarity whether the Secretary may or must refuse approval if these conditions are not met. The difficulty is mainly due to the fact that subsection 195(2) appears to allow refusal only in some specified circumstances (when the service has been previously approved and has been sanctioned under the family assistance law); moreover, this provision is of limited practical application as the circumstances specified in it can seldom be met.

Amendments made by **Items 8, 9 and 10** clarify the requirements relating to refusal of approval for the purposes of the family assistance law.

Requirement to comply with child care laws

It is a condition of a child care service's approval for the purposes of the family assistance law, and its continued approval, that the service complies with 'child care laws'. This requirement, expressed as a condition of a service's approval, is specified in the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 (Eligibility Determination). A similar requirement, expressed as a condition of continued approval, is specified in the Family Assistance Administration Act but it is differently worded, resulting in the scope of the requirement for the purposes of a service's approval being, arguably, broader than the scope of the requirement for continued approval.

Item 11 amends the requirement for continued approval in the Family Assistance Administration Act to align its scope with the requirement for approval and ensure that the same conditions apply for both approval and continued approval of a child care service.

Recalculation of CCB fee reductions

CCB fee reductions for care provided by an approved child care service during an income year are calculated following the provision by the service of a periodic report relating to the usage of the care. The amount of fee reductions applicable for that period may be recalculated if the service subsequently withdrew the report or replaced the report, or if the Secretary decided that the previous calculation was incorrect. Calculations and recalculations of fee reductions are only made if a determination of CCB entitlement made for a particular income year after the income year has not yet been made.

Currently, if a service changed the report and the recalculation results in reduction of the fee reduction amount for the period, the higher amount previously paid to the service is recovered via a set off against any subsequent payments (from which a set off can occur) made to the service and the lower amount is paid to the service. The service has to pass that lower amount onto the individual for whose benefit fee reductions were calculated.

If the recalculation resulting in reduction of fee reduction amount occurs without the service changing the report, the higher amount previously paid to the service is not recovered from the service and the difference between the higher amount passed by the service on to the individual and the lower amount that applies to the period is recovered as a debt from the individual.

Amendments made by **Items 1 to 4, 6, 7 and 12 to 19** ensure that the same process applies in relation to the reduction of the amount of fee reduction for a reported period irrespective of whether the fee reductions were calculated for the benefit of an individual or a service itself and whether the reduction results from recalculation triggered by a service substituting or withdrawing a previously given report for the period, or the Secretary recalculates the amount on her own initiative.

Amendments made by **Items 20 and 5** further align the treatment of any reduced fee reduction amount payable to the service as a result of recalculation with the current

treatment of a fee reduction amount payable in other situations (upon calculation or as an increase resulting from recalculation) and, by doing that, address the current omissions in the legislation.

These amendments ensure that

- any lower amount paid to the service as a result of recalculation must be remitted if it is not passed by the service on to the eligible individual (or the service itself, if the service is eligible); if not remitted, the amount is a debt to be paid by the service;
- any lower amount paid to the service as a result of recalculation is the amount against which other amounts may be set off;
- the service is always notified of the recalculated amount of fee reductions, must pass the amount on to the eligible individual and the service is taken to have done so on the day on which it is notified of the amount.

Explanation of the changes

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

Secretary's power to refuse a child care service's approval for the purposes of the family assistance law

Items 8, 9 and 10 – Subsection 195(1) and Subsection 195(2) and At the end of section 195

Subsection 195(1) provides that the Secretary must approve a child care service for the purposes of the family assistance law if the Secretary is satisfied that the conditions specified in this subsection are met.

Subsection 195(2) gives the Secretary a discretion to refuse to approve a child care service in limited circumstances: if the service has been previously approved and was sanctioned under the family assistance law or convicted of an offence under the Family Assistance Administration Act.

Item 9 repeals subsection 195(2). **Item 8** makes a consequential amendment to subsection 195(1) to omit a redundant reference to subsection 195(2).

Item 10 inserts new subsections 195(5) and (6). The new subsection 195(5) requires the Secretary to refuse to approve a child care service for the purposes of the family assistance law, if the Secretary is not satisfied that the conditions for approval specified in subsection 195(1) are met. The new subsection 195(6) provides that if the Secretary refuses to approve a child care service for the purposes of the family assistance law, the Secretary must give the applicant written notice of the decision and the reasons for the decision and specify the applicant's review rights.

Requirement to comply with child care laws

Item 11 – Subsection 196(3)

Subsection 196(3) provides that it is a condition for the continued approval of an approved child care service that the *provision* of care by the service complies 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.

Item 11 amends subsection 196(3) so as to broaden the scope of this condition for continued approval by aligning this condition with the scope of the condition for approval in the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 to capture the requirements imposed by a law of the Commonwealth, State or Territory, relating to the *operation* of the service (including construction of premises and equipment, provision of care and licensing requirements).

Amendments relevant to recalculation of fee reductions

Amendments made by **Items 1 to 4, 6, 7 and 12 to 19** align the process relating to recalculation of fee reductions for a period by the Secretary on the Secretary's own initiative, and the treatment of the recalculated amount, with the process, and the treatment, that applies to the reduction of the fee reduction amount for a period resulting from recalculation triggered by a service substituting or withdrawing a previously given report for the period.

Items 18 and 19 – Subsection 219QA(1) and Subsection 219QA(2)

Section 219QA deals with set off of a previously calculated higher amount of fee reduction where the amount of applicable fee reduction is reduced on recalculation. Subsection 219QA(1) provides that section 219QA applies if the Secretary, on recalculating under section 50ZA or 50ZC the amount in which the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by a service to a child in a week, reduces the amount and the amount is reduced because of the substitution or withdrawal by the service of a report given under section 219N. Subsection 219QA(2) provides that the Secretary must pay the amount as last recalculated to the credit of a bank account nominated and maintained by the service.

Item 18 repeals subsection 219QA(1) and substitutes a new subsection 219QA(1) that makes section 219QA applicable to any situation in which the Secretary recalculates fee reductions and reduces the amount applicable.

Item 19 amends subsection 219QA(2) that requires the Secretary to pay to the service the recalculated amount of fee reductions. It inserts the words '(if any)' after the reference to 'amount' to acknowledge that the recalculation may result in a nil amount.

The amended section 219QA operates to the effect that if the Secretary reduces the amount of fee reduction on recalculation, the Secretary must pay the amount as last recalculated to the service (if any), irrespective of whether the reduction results from recalculation triggered by a service substituting or withdrawing a previously given report for the week, or the Secretary recalculates the amount for the week on the Secretary's own initiative.

Items 12 and 13 – Subsection 219B(2) and Subsection 219B(3)

Subsection 219B(2) provides that the service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to the claimant, except to the extent that the service is required to remit the amount to the Secretary under section 219QB of the Act.

Subsection 219B(3) provides that if the Secretary, on recalculating under section 50ZA the amount in which the Secretary considers fee reduction is applicable in respect of the session of care (the last recalculation), reduces the amount, and the amount is reduced for a reason other than the substitution or withdrawal by the service of a report given under section 219N, the service must pass on to the claimant the amount as calculated, or recalculated, immediately before the last recalculation, rather than the amount last recalculated.

Item 13 repeals subsection 219B(3). As a result of this amendment, a service will be required, under subsection 219B(2), to pass on to the claimant any amount calculated or recalculated of which the service has been notified, regardless of the reason for which the recalculation occurred. **Item 12** makes an amendment to subsection 219B(2) consequential to the amendment made by **Item 13**, to omit a redundant reference to subsection 219B(3).

Items 15 and 16 – Subsection 219BA(2) and Subsection 219BA(3)

Subsections 219BA(2) and 219BA(3) apply when an approved child care service is eligible for fee reductions (for a child at risk of serious abuse or neglect), not an individual. These subsections replicate the requirements of subsections 219B(2) and 219B(3) applicable when an individual is conditionally eligible for fee reductions (amended by **Items 12 and 13**).

Items 15 and 16 replicate the amendments to section 219B made by **Items 12 and 13**. **Item 16** repeals subsection 219BA(3). **Item 15** amends subsection 219BA(2) to remove a redundant reference to subsection 219B(3) repealed by the amendment made by **Item 16**.

Items 1 and 2 – Subsection 50ZA(2) and Subsection 50ZA(3)

Section 50ZA relates to recalculation of fee reductions for which an individual is conditionally eligible.

Subsection 50ZA(1) provides that the Secretary may recalculate the rate at which, and the amount in which, the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by the service to the child in the week, provided no determination has been made under section 51B (a determination of entitlement to CCB by fee reduction) of the rate at which and the amount in which the Secretary considers the claimant eligible for the income year in which the week falls.

Subsection 50ZA(2) provides that the Secretary must notify an approved child care service of the recalculated rate and amount. Subsection 50ZA(3) provides that the Secretary need not notify the approved child care service of the recalculated rate and amount if the rate or amount is reduced, and the recalculation is for a reason other than the substitution or withdrawal by the service of a report given under section 219N.

Item 2 repeals subsection 50ZA(3), with the effect that, if the Secretary recalculates fee reductions for any reason, the Secretary must notify the service of the recalculated amount. This ensures that the requirement in sections 219B and 219BA to pass on the recalculated amount will apply in respect of all the recalculated amounts including the reduced amounts.

Item 1 makes an amendment to subsection 50ZA(2), consequential on the amendment made by **Item 2**, to omit a redundant reference to subsection 50ZA(3).

Items 3 and 4 – Subsection 50ZC(2) and Subsection 50ZC(3)

Section 50ZC relates to recalculation of fee reductions for which an approved child care service is eligible; it replicates the requirements of section 50ZA relating to recalculation of fee reductions for which an individual is conditionally eligible.

Subsection 50ZC(1) provides that the Secretary may recalculate the amount in which the Secretary considers child care benefit by fee reduction is applicable in respect of a session or sessions of care provided to the child in the week, provided no determination has been made under section 54B (a determination of entitlement to CCB by fee reduction) of the amount in which the Secretary considers the service eligible in respect of the care provided to the child for the financial year in which the week falls.

Subsection 50ZC(2) provides that ‘subject to subsection (3)’, the Secretary must notify the approved child care service of the recalculated amount. Subsection 50ZC(3) provides that the Secretary need not notify the approved child care service of the recalculated amount if the amount is reduced, and the recalculation is for a reason other than the substitution or withdrawal by the service of a report given under section 219N.

Items 3 and 4 replicate the amendments to section 50ZA made by **Items 1 and 2**. **Item 4** repeals subsection 50ZC(3), with the effect that, if the Secretary recalculates fee reductions for any reason, the Secretary must notify the service of the recalculated amount. **Item 3** makes an amendment to subsection 50ZC(2), consequential on the amendment made by **Item 4**, to omit a redundant reference to subsection 50ZC(3).

Items 6 and 7 – Subparagraph 111(2)(a)(vii)

Subsections 50ZA(4) and 50ZC(4) specify that a notice of recalculated amount must be given to the service in the form, and in the manner or way, approved by the Secretary.

Subsection 111(2) provides that a person cannot apply to the Social Security Appeals Tribunal under subsection 111(1) or 111(1A) for a review of a decision made under any of the provisions set out in paragraph 111(2)(a) relating to the form and manner of claims and notices, etc.

Items 6 and 7 amend subparagraph 111(2)(a)(vii), to omit misdescribed and redundant references to subsections 50ZA(3) and 50ZC(3), respectively, (repealed by the amendments made by **Items 2 and 4**) and insert instead references to subsections 50ZA(4) and 50ZC(4) to ensure that the approval of a particular form, manner or way of a notice of a recalculated fee reduction amount is not reviewable by the Tribunal (this is consistent with the treatment of other ‘decisions’ relevant to approval of a form, manner or way of doing things).

Items 14 and 17 –At the end of subsection 219B(5) and At the end of subsection 219BA(5)

A service’s obligation to pass on to a claimant the amount of fee reduction for a period is triggered by the notification of the calculation of that amount. As a result of the amendments made by **Items 13 and 16** obligation to pass on will also apply to all recalculated amounts (regardless of the reason for recalculation). As a result of the amendments made by **Items 2 and 4** a service will have to be notified about all recalculated amounts (regardless of the reason for recalculation).

Subsection 219B(5), which applies to passing on calculated and recalculated amounts for which an individual is conditionally eligible, provides that the amount is taken to have been passed on to the claimant on the day on which the Secretary notified the service of the amount calculated in accordance with subsection 50Z(3). **Item 14** amends subsection 219B(5) to ensure that this provision applies equally to the notification of the amount recalculated in accordance with subsection 50ZA(2).

Section 219BA applies to impose the requirement to pass on calculated and recalculated amount on to the service itself. This section replicates the requirements of section 219B which applies to passing the amounts on to eligible individuals. Subsection 219BA(5) replicates subsection 219B(5). **Item 17** amends subsection 219BA(5) to replicate the amendment made by **Item 14** to subsection 219B(5).

Item 20 – Subparagraph 219QB(1)(a)(i)

Section 219QB requires a service to remit any fee reduction amount paid to the service under section 219Q (the calculated amounts or the increase resulting from recalculation) if it is not reasonably practicable for the service to pass on that amount

to the individual or the service itself (if the service is eligible for CCB by fee reduction) within the time required under subsections 219B(2) or 219BA(2) (that is, within 14 days after being notified of the amount calculated or recalculated). The amount 'paid' includes an amount 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). The current remittance requirement does not operate, by a legislative omission, in respect of the amounts paid under subsection 219QA(2) (reduced amounts paid as a result of recalculation).

Item 20 inserts in **subparagraph 219QB(1)(a)(i)** a reference to subsection 219QA(2) to ensure that a service is also required to remit any fee reduction amount paid to it under subsection 219QA(2) (the recalculated lower amount) and not passed on within 14 days, as required.

Item 5 – Subparagraph 71G(1)(a)(i)

Section 71G creates a debt due by an 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.

An approved child care service may also be paid fee reduction amounts under subsection 219QA(2), where recalculation of fee reductions for a period results in the lower amount of the applicable fee reduction amount. In such a case, the previously paid higher amount is set off against the subsequent payments to be made to the service and the lower recalculated amount is paid to the service.

Item 5 amends subparagraph 71G(1)(a)(i) to include a reference to an amount paid under subsection 219QA(2) to ensure that debt creation under section 71G applies also to the payment made under subsection 219QA(2).

Item 21 - Application

Item 21 is an application provision which provides the following.

The amendments made by **Items 1 to 4 and 12 to 19** apply in relation to recalculations done under section 50ZA or 50ZC of the Family Assistance Administration Act on or after the commencement of those items (the day after the Royal Assent) in respect of weeks beginning before, on or after that commencement.

The amendments made by **Items 5 and 20** apply in relation to amounts paid on or after the commencement of those items (the day after the Royal Assent).

The amendments made by **Items 8 to 10** apply in relation to applications made under section 194 of the Family Assistance Administration Act on or after the commencement of those items (the day after the Royal Assent).

The amendments made by **Item 11** apply, on and after the commencement of this item (the day after the Royal Assent) in relation to child care services approved before, on or after that commencement.