



# **Family Assistance Legislation Amendment (Child Care) Act 2010**

**No. 34, 2010**

**An Act to amend the law relating to family  
assistance, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**No. 34, 2010**

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## **An Act to amend the law relating to family assistance, and for related purposes**

*[Assented to 13 April 2010]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Family Assistance Legislation  
Amendment (Child Care) Act 2010*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 April 2010
2. Schedule 1	The day this Act receives the Royal Assent.	13 April 2010
3. Schedule 2	The 28th day after this Act receives the Royal Assent.	11 May 2010
4. Schedule 3	The day after this Act receives the Royal Assent.	14 April 2010
5. Schedule 4	The 28th day after this Act receives the Royal Assent.	11 May 2010
6. Schedule 5, Part 1, Division 1	29 June 2007.	29 June 2007
7. Schedule 5, Part 1, Division 2	16 May 2009.	16 May 2009
8. Schedule 5, Part 2	The day this Act receives the Royal Assent.	13 April 2010
9. Schedule 6	The day after this Act receives the Royal Assent.	14 April 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Business continuity payments**

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

#### **1 After paragraph 66(1)(fa)**

Insert:

- (fb) payments under section 219RD (business continuity payments);

#### **2 Section 70**

After “one-off payment to families,”, insert “a payment under section 219Q or subsection 219QA(2), a payment of an enrolment advance under section 219RA, a payment under section 219RD,”.

#### **3 Subparagraphs 71G(1)(a)(ii) and (3)(a)(ii)**

Omit “or 219RC”, substitute “, 219RC or 219RE”.

#### **4 After section 71GA**

Insert:

#### **71GB Debts arising in respect of business continuity payments paid to service—debt owed by service**

(1) If:

- (a) an amount is paid to an approved child care service under section 219RD (business continuity payments); and
- (b) the service’s approval is suspended or cancelled under this Act; and
- (c) the whole or a part of the amount has not already been set off against another amount under section 219RE by the day the service’s approval is suspended or cancelled;

then that whole or part is a debt due to the Commonwealth by the service immediately before its approval was suspended or cancelled.

(2) Subject to subsection 93A(5), if:



- 
- (a) a payment under section 219RD is made to a financial institution for the credit of an account kept with the institution (the *incorrect account*); and
  - (b) the Secretary is satisfied that the amount paid to the institution was intended to be paid for the credit of an account kept in the name of a person who was not the person or one of the persons in whose name or names the incorrect account was kept;

an amount equal to the amount of the payment made to the institution is a debt due to the Commonwealth by the person, or jointly and severally by the persons, in whose name or names the incorrect account was kept.

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

After “71GA,”, insert “71GB,”.

## **6 Paragraph 87A(2)(b)**

Omit “and any amounts by which the advance is reduced under section 87B”, substitute “, and of any amounts by which any amount in respect of fee reduction is reduced under section 87B in relation to the setting off of the debt,”.

## **7 Paragraph 87B(2)(b)**

Omit “and any amounts by which the advance is reduced under section 87A”, substitute “, and of any amounts by which any advance is reduced under section 87A in relation to the setting off of the debt,”.

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

Insert:

- (baa) a payment under section 219RD (business continuity payments); or

## **9 After paragraph 104(d)**

Insert:

- (daa) a decision under section 219RD (business continuity payments); or

## **10 After paragraph 108(2)(da)**

Insert:

(daa) a decision under section 219RD (business continuity payments); or

**11 Subparagraph 176(1)(a)(iii)**

Omit “and”, substitute “or”.

**12 At the end of paragraph 176(1)(a)**

Add:

(iv) in the case of an approved child care service—a payment under section 219RD (business continuity payments); and

**13 At the end of subsection 176(2)**

Add:

; and (c) the element of the offence that a payment is made under section 219RD.

**14 At the end of paragraph 176(3)(d)**

Add:

; or (iv) in the case of an approved child care service—a payment under section 219RD (business continuity payments).

**15 At the end of subsection 176(4)**

Add:

; and (c) the element of the offence that a payment is made under section 219RD.

**16 Paragraph 178(1)(b)**

Omit “or enrolment advances”, substitute “, enrolment advances or payments under section 219RD”.

**17 Subsection 219AB(2)**

Omit “subsection (3)”, substitute “subsections (3) and (4)”.

**18 At the end of section 219AB**

Add:

(4) If:

- (a) a payment is made to the service under section 219RD in relation to a period (the *initial period*) notified to the service under subsection 219RD(4); and
- (b) the payment is made because of the service's failure to give a report under subsection 219N(1) or (2) for a week (the *applicable week*) in respect of one or more enrolments; and
- (c) for another enrolment referred to in subsection 219A(1) or 219AA(1), the last day of the period referred to in subsection (2) of this section:
  - (i) is the last day of the period applicable under subsection 219N(5) in relation to the applicable week; or
  - (ii) occurs during the initial period;

the notice of the other enrolment must be given no later than:

- (d) 7 days after the end of the initial period; or
- (e) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—7 days after the end of the last of those periods.

**Example:** A payment is made under section 219RD to an approved child care service for a week starting on the 22nd day of a month. This week is the initial period. Assume no other payments under that section are made to the service.

The payment is made because of the service failing to give a report under subsection 219N(1) (in respect of one or more enrolments) for the week starting on the first day of the month. This is the applicable week. Assume the last day for giving the report is the 21st day of the month.

For another enrolment, assume the last day for giving notice of the enrolment under subsection (2) of this section is the 21st day of the month or a day occurring in the initial period.

The notice in relation to the other enrolment must be given by the end of the week commencing on the 29th day of that month.

## **19 Subsection 219AF(1)**

Omit “, within 7 days after the information becomes incorrect or becomes available,”.

## **20 After subsection 219AF(1)**

Insert:

(1A) Subject to subsection (1B), the notice must be given within 7 days after the information becomes incorrect or becomes available.

(1B) If:

- (a) a payment is made to the service under section 219RD in relation to a period (the *initial period*) notified to the service under subsection 219RD(4); and
- (b) the payment is made because of the service's failure to give a report under subsection 219N(1) or (2) for a week (the *applicable week*); and
- (c) for any enrolment, the last day of the period referred to in subsection (1A) of this section:
  - (i) is the last day of the period applicable under subsection 219N(5) in relation to the applicable week; or
  - (ii) occurs during the initial period;

the notice must be given no later than:

- (d) 7 days after the end of the initial period; or
- (e) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—7 days after the end of the last of those periods.

## 21 Subsection 219N(5)

Omit "The", substitute "Subject to subsection (5AA), the".

## 22 After subsection 219N(5)

Insert:

(5AA) If:

- (a) a payment is made to the service under section 219RD in relation to a period (the *initial period*) notified to the service under subsection 219RD(4); and
- (b) the payment is made because of the service's failure to give a report under subsection (1) or (2) of this section within the period applicable under subsection (5) of this section;

the report must be given no later than:

- (c) 7 days after the end of the initial period; or
- (d) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—7 days after the end of the last of those periods.

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**23 After paragraph 219Q(3)(c)**

Insert:

- (ca) section 219RE (set off where a payment under section 219RD is made); and

**24 Subparagraph 219QB(1)(a)(ii)**

Omit “or 219RC”, substitute “, 219RC or 219RE”.

**25 After paragraph 219RA(2)(c)**

Insert:

- (ca) section 219RE (set off where a payment under section 219RD is made); and

**26 Paragraph 219RC(b)**

Omit “or 219RC”, substitute “, this section or section 219RE”.

**27 At the end of Part 8A**

Add:

**Division 4—Business continuity payments****219RD Business continuity payments**

- (1) The Secretary may determine that a payment is to be made to an approved child care service in relation to a period if:
  - (a) the service is required to give a report under subsection 219N(1) or (2) for a week in respect of one or more enrolments; and
  - (b) the service does not give the report for the week within the period applicable under subsection 219N(5); and
  - (c) the Secretary is satisfied that the failure to give the report is due to circumstances specified in a determination under subsection (2).

Note: Section 219RE deals with the setting off of payments made under this section.

- (2) The Minister must, by legislative instrument, make a determination:
  - (a) specifying circumstances for the purposes of paragraph (1)(c); and

- (b) setting out the method of determining the amounts of payments under this section.

The determination may set out any other matters relating to the making of payments under this section that the Minister thinks appropriate.

- (3) The Secretary must pay the amount of any payment under this section to the credit of a bank account nominated and maintained by the approved child care service.
- (4) The Secretary must give the approved child care service notice of the payment and of the period to which the payment relates.
- (5) Notice of the payment must be given in the form, and in the manner or way, approved by the Secretary.

### **219RE Setting off business continuity payments**

If a payment is made to an approved child care service under section 219RD, the Secretary must set off an amount equal to the payment against:

- (a) any amount that is to be paid to the service in respect of fee reduction; or
- (b) any enrolment advance that is to be paid to the service; or
- (c) any payment that is to be made to the service under:
  - (i) subitem 97(5) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*; or
  - (ii) subitem 97A(5) of that Schedule (as modified by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009*).

### **28 Application**

Paragraph 219RD(1)(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as inserted by this Schedule, applies in relation to:

- (a) a report required to be given under subsection 219N(1) or (2) of that Act on or after the commencement of this item; and
- (b) a report required to be given under that subsection before that commencement, where the period under subsection 219N(5)

of that Act relating to the report ends on or after that commencement.

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

**29 Before item 98 of Schedule 1**

Insert:

**97C Payments under items 97 and 97A subject to set off**

- (1) Subitem 97(5) and subitem 97A(5) are subject to section 219RE of the Family Assistance Administration Act (about setting off business continuity payments).
- (2) In this item:  
***subitem 97A(5)*** means subitem 97A(5) of this Schedule as modified by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009*.

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

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

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

Add “or (7)”.

#### **2 Subsection 219E(1)**

Omit “within 4 weeks after the end of the statement period for the session or sessions”, substitute “before the end of one month starting on the day after the end of the statement period”.

#### **3 Paragraph 219E(2)(d)**

Omit “within 4 weeks after the end of the statement period for the session or sessions”, substitute “before the end of one month starting on the day after the end of the statement period”.

#### **4 Subsection 219E(4)**

Repeal the subsection, substitute:

(4) The statement periods for the service are as follows:

(a) the first statement period is the period of 3 months starting on the day (the *initial day*) that is:

(i) the day Schedule 2 to the *Family Assistance Legislation Amendment (Child Care) Act 2010* commences; or

(ii) if the Secretary approves the service under section 195 of this Act on a day later than the one described in subparagraph (i)—that later day;

or, if before or during that 3-month period the service chooses a shorter period starting on the initial day, the shorter period;

(b) each of the later statement periods is:

(i) the period of 3 months starting on the day after the end of the immediately preceding statement period; or



- (ii) if before or during that 3-month period the service chooses a shorter period starting on that day—the shorter period.

## **5 At the end of section 219E**

Add:

### *Correcting or reissuing statements*

(7) If:

- (a) an approved child care service has, under subsection (1), given an individual or other person a statement (the ***earlier statement***) relating to a session or sessions of care provided by the service to a child in the statement period; and
- (b) under section 50ZA, the service is notified on a day (the ***notification day***) of a recalculated rate or amount in respect of any of those sessions;

the service must, before the end of the first statement period starting after the notification day, give the individual or other person either a statement setting out the matters specified in subsection (5) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(8) An approved child care service commits an offence if:

- (a) the service has, under subsection (1), given an individual or other person a statement (the ***earlier statement***) relating to a session or sessions of care provided by the service to a child in the statement period; and
- (b) under section 50ZA, the service is notified on a day (the ***notification day***) of a recalculated rate or amount in respect of any of those sessions; and
- (c) the service does not, before the end of the first statement period starting after the notification day, give the individual or other person either a statement setting out the matters specified in subsection (5) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

Penalty: 60 penalty units.

(9) Subsection (8) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **6 Saving provision**

Despite the amendments of section 219E of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule, that section as in force immediately before the commencement of those amendments continues to apply in relation to statement periods starting before that commencement.

## **Schedule 3—Suspension of approved child care services' approvals**

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

#### **1 Subsection 219TSQ(1)**

Omit “must”, substitute “may”.

#### **2 Application**

The amendment made by item 1 applies in relation to:

- (a) infringement notices given on or after the commencement of that item; and
- (b) infringement notices given before that commencement, other than notices in respect of which paragraphs 219TSQ(1)(a) and (b) of the *A New Tax System (Family Assistance) (Administration) Act 1999* were satisfied before that commencement.

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

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

#### **1 Subsection 219M(1)**

Repeal the subsection, substitute:

##### *Obligation to notify Secretary*

- (1) If a person who operates an approved child care service decides to cease operating the service, the operator must, in the manner provided for in subsection (2), notify the Secretary of that decision:
- (a) unless paragraph (b) applies—at least 42 days before the operator ceases to operate the service; or
  - (b) if the operator decides to cease operating the service:
    - (i) to avoid being in breach of a law of the Commonwealth, a State or a Territory; or
    - (ii) due to circumstances beyond the operator's control; as soon as possible after that decision.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

Note: The heading to section 219M is altered by omitting “**intends**” and substituting “**decides**”.

#### **2 Paragraph 219M(4)(a)**

Omit “intention”, substitute “decision”.

#### **3 Paragraph 219M(4)(b)**

Omit “intended cessation of the service”, substitute “decision”.

#### **4 Paragraph 219M(6)(b)**

Repeal the paragraph, substitute:

- (b) within:

- (i) if paragraph (1)(a) applies—7 days after the day on which the request was given; or
- (ii) otherwise—the period specified in the request.

## **5 Application**

The amendments made by this Schedule apply in relation to decisions made on or after the commencement of this Schedule.

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

### **Part 1—Amendments**

#### **Division 1—Amendments commencing on 29 June 2007**

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

##### **1 At the end of item 93 of Schedule 1**

Add:

Note: The *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999*, as they were in force immediately before the commencement of this Schedule, continue to apply to sessions of care provided by an approved child care service in a week starting before or on that application day.

##### **2 After item 96 of Schedule 1**

Insert:

##### **96A Recovering excess advances paid to approved child care service but not fully recouped before application day**

(1) This item applies if:

- (a) under section 219S of the Family Assistance Administration Act, as in force before the commencement of this Schedule, a comparison is or has been made of the following amounts relating to an approved child care service and a reporting period ending before the application day for the service:
  - (i) the amount of the advance determined by the Secretary under section 219Q of that Act, as in force before the commencement of this Schedule, in respect of the service and the period;
  - (ii) the amount passed on by the service in reduced fees during the period; and

- (b) the amount of the advance exceeds the amount passed on.
- (2) So much of the excess as is not offset as required by section 219S of the Family Assistance Administration Act, as in force before the commencement of this Schedule, before the application day for the service becomes a debt due to the Commonwealth by the service on:
  - (a) the application day for the service; or
  - (b) if the comparison is made after the application day for the service—the day the comparison is made.
- (3) Subsection 82(2) of the Family Assistance Administration Act (as amended by this Schedule) applies in respect of the recovery of the debt (as if it were a debt as defined in subsection 82(3) of that Act).
- (4) Division 4 (Non-recovery of debts) of Part 4 of the Family Assistance Administration Act applies in relation to the debt as if it were a debt recoverable by the Commonwealth under Division 2 of that Part.

### **3 Before item 98 of Schedule 1**

Insert:

#### **97B Debts arising under this Part may be set off against payments required by this Part**

- (1) A debt arising under item 96A or 97 may be recovered (wholly or partly) by setting the debt off against a payment required by:
  - (a) item 97; or
  - (b) section 219S of the Family Assistance Administration Act as in force before the commencement of this Schedule.
- (2) This item does not limit, and is not limited by, subsection 82(2) of the Family Assistance Administration Act as in force after the commencement of this Schedule.

### **Division 2—Amendments commencing on 16 May 2009**

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

### **4 At the end of item 96A of Schedule 1**

Add:

- (5) The debt is discharged if:
- (a) item 97A applies because of the comparison; and
  - (b) another comparison is made under that item in relation to the same approved child care service and the same period.

Note: A new debt may be created by item 97A as a result of the comparison under that item.

- (6) In this item:

*item 97A* means item 97A of this Schedule as modified by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009* as in force at the commencement of this definition.

## **5 Subitem 97B(1) of Schedule 1**

Omit “or item 97”, substitute “, item 97 or item 97A”.

## **6 Paragraph 97B(1)(a) of Schedule 1**

After “item 97”, insert “or item 97A”.

## **7 At the end of item 97B of Schedule 1**

Add:

- (3) In this item:

*item 97A* means item 97A of this Schedule as modified by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009*.



## **Part 2—Other provisions**

### **8 Comparisons of amounts of advances and amounts passed on**

- (1) This item applies if, before the commencement of this item, an officer (within the meaning of the Family Assistance Administration Act) did either or both of the following without authority from the Secretary:
  - (a) compared the amounts described in subitem (2) of item 97, or of item 97A, of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*;
  - (b) gave notice purporting to be notice of:
    - (i) a debt arising under subitem (4) of item 97, or of item 97A, of that Schedule; or
    - (ii) a payment under subitem (5) of item 97, or of item 97A, of that Schedule.
- (2) Whichever of those items is relevant applies, and is taken always to have applied, in relation to what the officer did as if it had been done by the Secretary.
- (3) In this item:  
**item 97A** of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007* means item 97A of that Schedule as modified by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009* as in force at the commencement of this definition.

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

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

#### **1 At the end of Part 2 of Schedule 1**

Add:

#### **102 Appropriation**

The Consolidated Revenue Fund is appropriated for the purposes of making payments under this Part.

#### **2 Application**

The amendment made by item 1 applies in relation to payments made on or after the commencement of that item.

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*[Minister's second reading speech made in—  
House of Representatives on 24 February 2010  
Senate on 16 March 2010]*