Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017

No. 22, 2017

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017

No. 22, 2017

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

[*Assented to 4 April 2017*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017.*

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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**
Provisions	**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.	4 April 2017
2. Schedules 1 and 2	2 July 2018.	2 July 2018
3. Schedule 3, Part 1	The day after this Act receives the Royal Assent.	5 April 2017
4. Schedule 3, Part 2	1 July 2017.	1 July 2017
5. Schedule 4	The day after this Act receives the Royal Assent.	5 April 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Main amendments

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1)

Repeal the following definitions:

(a) definition of ***24 hour care***;

(b) definition of ***24 hour care limit***;

(c) definition of ***24 hour care period***;

(d) definition of ***absence***.

2 Subsection 3(1)

Insert:

ACCS: see ***additional child care subsidy***.

ACCS (child wellbeing): see ***additional child care subsidy***.

ACCS (grandparent): see ***additional child care subsidy***.

ACCS hourly rate cap has the meaning given by subclause 6(2) of Schedule 2.

ACCS (temporary financial hardship): see ***additional child care subsidy***.

ACCS (transition to work): see ***additional child care subsidy***.

activity test result has the meaning given by clause 11 of Schedule 2.

additional child care subsidy or ***ACCS*** means additional child care subsidy for which:

(a) an individual or an approved provider may become eligible under section 85CA (***ACCS (child wellbeing)***); or

(b) an individual may become eligible under section 85CG (***ACCS (temporary financial hardship)***); or

(c) an individual may become eligible under section 85CJ (***ACCS (grandparent)***); or

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(d) an individual may become eligible under section 85CK (***ACCS (transition to work)***).

annual cap has the meaning given by subclause 1(2) of Schedule 2.

applicable percentage has the meaning given by clause 3 of Schedule 2.

CCS: see ***child care subsidy***.

CCS fortnight means a period of 2 weeks beginning on:

(a) Monday 2 July 2018; or

(b) every second Monday after that Monday.

CCS hourly rate cap has the meaning given by subclause 2(3) of Schedule 2.

3 Subsection 3(1)

Repeal the following definitions:

(a) definition of ***child care benefit***;

(b) definition of ***child care rebate***.

4 Subsection 3(1)

Insert:

child care subsidy or ***CCS*** means child care subsidy for which an individual may become eligible under section 85BA.

child wellbeing result has the meaning given by clause 15 of Schedule 2.

deemed activity test result has the meaning given by clause 16 of Schedule 2.

extended child wellbeing period has the meaning given by subclause 15(3) of Schedule 2.

5 Subsection 3(1) (paragraphs (d) and (da) of the definition of *family assistance*)

Repeal the paragraphs, substitute:

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(d) child care subsidy; or

(da) additional child care subsidy; or

5A Subsection 3(1)

Insert:

fourth income threshold has the meaning given by subclause 3(4) of Schedule 2.

6 Subsection 3(1) (paragraph (b) of the definition of *FTB child*)

Repeal the paragraph, substitute:

(b) in relation to child care subsidy and additional child care subsidy—has the meaning given in Subdivision A of Division 1 of Part 3 (except for section 24), but in applying Subdivision D of that Division to CCS or ACCS, a reference in Subdivision D to a claim for payment of family tax benefit is taken to be a reference to a claim for CCS; and

7 Subsection 3(1)

Insert:

hourly rate of ACCS:

(b) for an individual—has the meaning given by subclause 6(1) of Schedule 2; or

(c) for an approved provider—has the meaning given by subclause 9(1) of Schedule 2.

hourly rate of CCS has the meaning given by subclause 2(1) of Schedule 2.

hourly session fee:

(a) for an individual—has the meaning given by subclause 2(2) of Schedule 2; and

(b) for an approved provider—has the meaning given by subclause 9(2) of Schedule 2.

8 Subsection 3(1) (definition of *lower income threshold*)

Repeal the definition, substitute:

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lower income threshold has the meaning given by subclause 3(4) of Schedule 2.

9 Subsection 3(1)

Insert:

low income result has the meaning given by clause 13 of Schedule 2.

Minister's rules has the meaning given by subsection 85GB(1).

Minister's rules result has the meaning given by clause 14 of Schedule 2.

10 Subsection 3(1)

Repeal the following definitions:

(a) definition of ***non-standard hours family day care***;

(b) definition of ***non-standard hours in-home care***.

11 Subsection 3(1) (definition of *paid work*)

Repeal the definition, substitute:

paid work (other than in paragraph 12(2)(a) of Schedule 2) has the meaning given by section 3B.

12 Subsection 3(1)

Repeal the following definitions:

(a) definition of ***part-time family day care***;

(b) definition of ***part-time in-home care***.

13 Subsection 3(1)

Insert:

provide, in relation to a session of care, has the meaning given by section 10.

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14 Subsection 3(1) (paragraph (b) of the definition of *receiving*)

Omit "for the purpose of construing references to a person receiving a social security pension or social security benefit that are references in sections 32AI, 50S and 50T of the Family Assistance Administration Act and clauses 1, 28B and 38L of Schedule 1, and in clause 7 of Schedule 2, to this Act:", substitute "for the purposes of a reference in section 85CJ of this Act or clause 1, 28B or 38L of Schedule 1 to this Act, or in section 32AI of the Family Assistance Administration Act, to a person receiving a social security pension or social security benefit:".

15 Subsection 3(1)

Insert:

> ***recognised activity*** has the meaning given by subclause 12(2) of Schedule 2.
>
> ***recognised activity result*** has the meaning given by subclause 12(1) of Schedule 2.

16 Subsection 3(1)

Repeal the following definitions:

(a) definition of ***recognised study commitments***;

(b) definition of ***recognised training commitments***;

(c) definition of ***recognised work or work related commitments***.

17 Subsection 3(1) (definition of *regular care child*)

Repeal the definition, substitute:

> ***regular care child***, of an individual (the ***adult***), means an individual:
>
> (a) who would be an FTB child of the adult but for the operation of section 25 (adult's percentage of care for the child during a care period is less than 35%); and
>
> (b) for whom the adult has a percentage of care during a care period that is at least 14%.
>
> Note: See also section 25A.

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18 Subsection 3(1)

Insert:

> ***reimbursement fringe benefit*** has the meaning given by subclause 2(5) of Schedule 2.

19 Subsection 3(1)

Repeal the following definitions:

(a) definition of ***satisfies the work/training/study test***;

(b) definition of ***school child***;

(c) definition of ***school holiday session***.

20 Subsection 3(1)

Insert:

> ***second income threshold*** has the meaning given by subclause 3(4) of Schedule 2.
>
> ***Secretary's rules*** has the meaning given by subsection 85GB(2).

21 Subsection 3(1)

Repeal the following definitions:

(a) definition of ***standard hours family day care***;

(b) definition of ***standard hours in-home care***.

22 Subsection 3(1)

Insert:

> ***State/Territory child welfare law*** has the meaning given by subsection 85ED(2).
>
> ***third income threshold*** has the meaning given by subclause 3(4) of Schedule 2.
>
> ***transition to work payment*** has the meaning given by subsection 85CK(3).

23 Subsection 3(1) (definition of *upper income threshold*)

Repeal the definition, substitute:

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upper income threshold has the meaning given by subclause 3(4) of Schedule 2.

24 Subsection 3(1) (definition of *week*)

Omit "benefit and child care rebate", substitute "subsidy and additional child care subsidy".

25 Subsection 3(1) (definition of *week concerned*)

Repeal the definition.

26 Subsections 3(5) and (6)

Repeal the subsections, substitute:

(6) A ***week***, for the purposes of child care subsidy and additional child care subsidy, begins on a Monday.

27 Subsection 3AA(1)

Repeal the subsection, substitute:

Scope

(1) This section applies for the purposes of a reference in section 85CJ or 85CK of this Act, or clause 1, 28B or 38L of Schedule 1 to this Act, to a person receiving payments (***affected schooling requirement payments***) covered by subsection (2).

28 Subsection 3B(1)

Omit "paragraph 15(1)(a) or section 17A", substitute "paragraph 12(2)(a) of Schedule 2".

29 Subsection 3B(1) (note)

Omit "paragraph 15(1)(a) and section 17A", substitute "paragraph 12(2)(a) of Schedule 2".

30 Subsection 6(1)

Repeal the subsection, substitute:

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(1) This section states when the child of an individual (the ***adult***) meets the immunisation requirements for the purposes of determining:

(a) whether the adult is eligible for child care subsidy under Division 2 of Part 4A; or

(b) whether an approved provider is eligible for ACCS (child wellbeing) for sessions of care provided to the child.

31 Subsection 8(1)

Repeal the subsection, substitute:

(1) The Secretary may, in accordance with the Minister's rules, determine:

(a) that an individual who is not an Australian resident is taken to be an ***Australian resident*** for the purposes of Division 2 of Part 4A (eligibility for CCS); and

(b) if the determination is for a period—the period in respect of which the person is taken to be an Australian resident.

32 Subsections 8(3) and (4)

Repeal the subsections, substitute:

(3) Minister's rules made for the purposes of subsection (1) may prescribe matters to which the Secretary must have regard in making determinations under subsection (1), including time limits for periods referred to in paragraph (1)(b).

33 Sections 10 to 18

Repeal the sections, substitute:

10 When a session of care is provided

Basic rule about when a session of care is provided

(1) For the purposes of this Act and the Family Assistance Administration Act, a child care service ***provides*** a session of care to a child if:

(a) the child is enrolled for care by the service and the child attends the session of care or any part of it; or

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(b) if the child does not attend any part of the session of care—the service is taken to have provided the session of care to the child under subsection (2) or (3).

Note: ***Enrolled*** is defined in section 200B of the Family Assistance Administration Act.

Up to 42 absences

(2) A child care service is taken to have provided a session of care to a child on a day in a financial year if:

(a) had the child attended the session of care, one or more of the hours in the session would have been taken into account in accordance with paragraph 4(1)(a) of Schedule 2; and

(b) the day is:

(i) a day on which the child is enrolled for care by the service; and

(ii) after the day the child first attended a session of care provided by the service; and

(iii) before the day the service permanently ceased providing care to the child; and

(iv) not a day prescribed by the Minister's rules; and

(c) there have been no more than 41 days in the financial year on which an approved child care service is taken to have provided a session of care to the child under this subsection.

More than 42 absences

(3) A child care service is taken to have provided a session of care to a child on a day in a financial year if:

(a) there have already been 42 days in the financial year on which an approved child care service is taken to have provided a session of care to the child under subsection (2); and

(b) had the child attended the session of care, one or more of the hours in the session would have been taken into account in accordance with paragraph 4(1)(a) of Schedule 2; and

(c) the day is:

(i) a day on which the child is enrolled for care by the service; and

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(ii) after the day the child first attended a session of care provided by the service; and

(iii) before the day the service permanently ceased providing care to the child; and

(iv) not a day prescribed by the Minister's rules; and

(d) the absence is for a reason specified in subsection (4); and

(e) if the absence is for an illness referred to in paragraph (4)(a) or (b)—the service has been given a certificate that was issued by a medical practitioner in relation to the illness.

(4) For the purposes of paragraph (3)(d), the reasons are the following:

(a) the child is ill;

(b) any of the following persons is ill:

(i) the individual in whose care the child is;

(ii) the partner of the individual in whose care the child is;

(iii) an individual with whom the child lives;

(c) the child is attending preschool;

(d) alternative care arrangements have been made for the child on a pupil-free day;

(e) a reason prescribed by the Minister's rules.

(5) If a service has permanently ceased providing care to a child, the service is taken to have done so on the day the child last attended a session of care provided by the service.

34 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Eligibility for family assistance (other than child care subsidy and additional child care subsidy)

35 Divisions 4 and 5 of Part 3

Repeal the Divisions.

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36 Subsection 57GI(1) (note 2)

Omit "benefit or child care rebate", substitute "subsidy or additional child care subsidy".

37 Section 57GQ

Repeal the section, substitute:

57GQ This Division does not apply to child care subsidy or additional child care subsidy

This Division does not apply in relation to child care subsidy or additional child care subsidy.

38 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Rate of family assistance (other than child care subsidy and additional child care subsidy)

39 Divisions 4 and 4A of Part 4

Repeal the Divisions.

40 After Part 4

Insert:

Part 4A—Child care subsidy

Division 1—Introduction

85AA Simplified outline of this Part

> An individual whose child is attending a child care service may be eligible for child care subsidy (CCS) in relation to the fees charged by the service.

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In some circumstances, the individual may be eligible for additional child care subsidy (ACCS) instead.

The child care service must be approved and the individual must meet the eligibility criteria for CCS or ACCS.

Generally, for CCS, the eligibility criteria relate to the child's relationship to the individual, the child's age and immunisation status and the individual's residency status.

For ACCS, the individual must be eligible for CCS and meet some additional criteria.

The approved provider of a child care service may be eligible for ACCS (child wellbeing) (relating to a child at risk of serious abuse or neglect) when there is no eligible individual, if the service is approved and certain additional criteria are met.

85AB Constitutional basis

(1) Without limitation, the provisions of this Act and the Family Assistance Administration Act in relation to child care subsidy and additional child care subsidy (including provisions in relation to approved providers) rely on:

(a) the Commonwealth's legislative powers under paragraphs 51(xxiiiA), (xxix) and (xxxix) of the Constitution; and

(b) any implied legislative powers of the Commonwealth.

(2) For the purposes of reliance on paragraph 51(xxix) of the Constitution and without limitation, the provisions of this Act and the Family Assistance Administration Act in relation to child care subsidy and additional child care subsidy (including provisions in relation to approved providers) are intended to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.

Note: The Convention on the Rights of the Child is in Australian Treaty Series 1991 No. 4 ([1991] ATS 4) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

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Division 2—Eligibility for child care subsidy

85BA Eligibility for CCS

(1) An individual is eligible for CCS for a session of care provided by an approved child care service to a child if:

(a) at the time the session of care is provided:

(i) the child is an FTB child, or a regular care child, of the individual or the individual's partner; and

(ii) the child is 13 or under and does not attend secondary school, or the requirements covered by subsection (2) are satisfied; and

(iii) the child meets the immunisation requirements in section 6; and

(iv) the individual, or the individual's partner, meets the residency requirements in section 85BB; and

(b) the individual, or the individual's partner, has incurred a liability to pay for the session of care under a complying written arrangement; and

(c) the session of care:

(i) is provided in Australia; and

(ii) is not provided as part of the compulsory education program in the State or Territory where the care is provided; and

(iii) is not provided in circumstances prescribed by the Minister's rules; and

(d) Division 5 does not prevent the individual being eligible for CCS for the session of care.

Note: ***Complying written arrangement*** is defined in subsection 200B(3) of the Family Assistance Administration Act.

(2) For the purposes of subparagraph (1)(a)(ii), the requirements covered by this subsection are that:

(a) the child is a member of a class prescribed by the Minister's rules; and

(b) the individual and the approved child care service satisfy any conditions prescribed by the Minister's rules in relation to the child.

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85BB Residency requirements

(1) For the purposes of subparagraph 85BA(1)(a)(iv), an individual or the individual's partner meets the residency requirements at a time if, at that time, the individual or partner:
  (a) is an Australian resident; or
  (b) is a special category visa holder residing in Australia; or
  (c) satisfies subsection (2) of this section; or
  (d) is undertaking a course of study in Australia and receiving financial assistance directly from the Commonwealth for the purpose of undertaking that study.

(2) The individual or the individual's partner satisfies this subsection if the individual or partner:
  (a) is the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the *Social Security Act 1991*; and
  (b) is either in Australia or temporarily absent from Australia for no more than 6 weeks on an allowable absence in relation to special benefit within the meaning of Part 4.2 of that Act.

Division 3—Eligibility for additional child care subsidy

Subdivision A—Eligibility for ACCS (child wellbeing)

85CA Eligibility for ACCS (child wellbeing)

Eligibility of individual

(1) An individual is eligible for ACCS for a session of care provided by an approved child care service to a child if:
  (a) the individual is eligible for CCS for the session of care; and
  (b) either of the following is in effect in relation to the child for the week in which the session of care is provided:
    (i) a certificate given by the approved provider of the service under section 85CB;
    (ii) a determination made by the Secretary under section 85CE; and

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(c) Division 5 does not prevent the individual being eligible for ACCS (child wellbeing) for the session of care.

Eligibility of approved provider

(2) The approved provider of an approved child care service is eligible for ACCS for a session of care provided by the service to a child if:

(a) either of the following is in effect in relation to the child for the week in which the session of care is provided:

(i) a certificate given by the provider under section 85CB;

(ii) a determination made by the Secretary under section 85CE; and

(b) at the time the session of care is provided:

(i) the provider is not able to identify an individual who is eligible for ACCS (child wellbeing) for the session of care; and

(ii) the child is 13 or under and does not attend secondary school, or the requirements covered by subsection (3) are satisfied; and

(iii) the child meets the immunisation requirements in section 6; and

(c) the session:

(i) is provided in Australia; and

(ii) is not provided as part of the compulsory education program in the State or Territory where the care is provided; and

(iii) is not provided in circumstances prescribed by Minister's rules made for the purposes of subparagraph 85BA(1)(c)(iii); and

(d) Division 5 does not prevent the provider being eligible for ACCS (child wellbeing) for the session of care.

(3) For the purposes of subparagraph (2)(b)(ii), the requirements covered by this subsection are that:

(a) the child is a member of a class prescribed by the Minister's rules; and

(b) the approved child care service satisfies any conditions prescribed by the Minister's rules in relation to the child.

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Child at risk of serious abuse or neglect

(4) The Minister's rules may prescribe circumstances in which a child is or is not taken to be at risk of serious abuse or neglect.

85CB Certification for ACCS (child wellbeing)

(1) The approved provider of an approved child care service may, if it considers that a child is or was at risk of serious abuse or neglect on a day (an ***at risk day***), give the Secretary a certificate to that effect.

Note: If the provider gives a certificate under this section, it must give notice to an appropriate State/Territory body in accordance with section 204K of the Family Assistance Administration Act.

(2) The certificate must:

(a) be given in a form and manner approved by the Secretary; and

(b) contain the information, and be accompanied by the documents, required by the Secretary; and

(c) specify the day it takes effect (which must be the Monday of a week that includes an at risk day and cannot be more than 28 days before the certificate is given); and

(d) specify the whole weeks for which it has effect (which must be weeks that include an at risk day); and

(e) identify the service to which, and the child to whom, it relates; and

(f) include any other matters prescribed by the Secretary's rules.

(3) A certificate given by an approved provider does not take effect if the certificate would have the effect that, in any period of 12 months, certificates given by the provider in relation to a particular child and a particular service would be in effect for more than 6 weeks (disregarding any days on which the provider's approval is suspended, or suspended in respect of the service).

(4) A certificate given by an approved provider does not take effect if the certificate would have the result that, on any particular day during the first week in which the certificate takes effect, certificates given by the provider, together with any determinations made on application by the provider under section 85CE, would be

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in effect in relation to more than the following percentage of children for whom the service is providing care that day:

(a) 50%;

(b) if the Secretary's rules prescribe a different percentage and paragraph (c) does not apply—the prescribed percentage;

(c) if the Secretary determines that it is appropriate to the circumstances of the service, and makes a written determination to that effect that applies on the day—the percentage specified in the determination.

(5) A certificate given by an approved provider does not take effect if a circumstance prescribed by the Minister's rules exists in relation to any or all of the provider, the service or the child.

(6) A determination made under paragraph (4)(c) is not a legislative instrument.

85CC Cancellation of certificate by approved provider

(1) If:

(a) a certificate given by an approved provider under section 85CB in relation to a child is in effect for a week; and

(b) the provider considers that the child is not at any risk of serious abuse or neglect during the week; and

(c) the time for varying, substituting or withdrawing the report under subsection 204B(6) (requirement to report about children for whom care is provided) of the Family Assistance Administration Act for the first week for which the certificate has effect has not expired;

the provider must, by written notice given to the Secretary, cancel the certificate.

(2) If the provider cancels a certificate, the certificate is taken never to have been in effect.

(3) The provider may cancel a certificate even if the certificate has ceased to have effect.

(4) Despite paragraph 85CB(2)(c), if:

(a) the provider cancels a certificate in relation to a child under this section (the ***original certificate***); and

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(b) the provider then gives a certificate under section 85CB in relation to the child for one or more weeks for which the original certificate was specified to have effect (the ***replacement certificate***);

the replacement certificate may take effect more than 28 days before the replacement certificate is given but no earlier than the day the original certificate took effect.

85CD Variation and cancellation of certificates by Secretary

(1) If:

(a) a certificate given by an approved provider under section 85CB in relation to a child is in effect for a week; and

(b) the Secretary considers that the child is not at any risk of serious abuse or neglect during the week;

the Secretary may, by written notice given to the provider, cancel or vary the certificate so that the certificate is not in effect for the week.

(2) If the Secretary cancels the certificate, the certificate ceases to have effect on the day specified in the notice (which must be a Monday and may be earlier than the day the notice is given).

(3) If the Secretary varies the certificate, the certificate is varied as specified in the notice with effect from the day specified in the notice (which must be a Monday and may be earlier than the day the notice is given).

(4) The Secretary may cancel or vary a certificate even if the certificate has ceased to have effect.

85CE Determination for ACCS (child wellbeing)

(1) An approved provider may apply to the Secretary for a determination under this section if the provider:

(a) considers that a child is or was at risk of serious abuse or neglect at the time an approved child care service of the provider provides or provided a session of care to the child; and

(b) is unable to give a certificate because of subsection 85CB(3) or (4).

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Note: Before making the application, the provider must give notice to an appropriate State/Territory body in accordance with section 204K of the Family Assistance Administration Act.

(2) The application must:
  (a) be made in a form and manner approved by the Secretary; and
  (b) contain the information, and be accompanied by the documents, required by the Secretary.

(3) The Secretary must, no later than 28 days after the day the application is made:
  (a) if satisfied that the child is or was at risk of serious abuse or neglect on a day (an ***at risk day***)—make a written determination to that effect; and
  (b) otherwise—refuse the application.

Note: Persons whose interests are affected by the decision must be notified of the decision and of their right to have it reviewed (see section 27A of the AAT Act).

(4) If the Secretary neither makes a determination nor refuses the application by the end of the 28 days after the day the application was made, the Secretary is taken at that time to have refused the application. Subsection 27A(1) of the AAT Act does not apply to such a refusal.

Note: This means the Secretary is not required to give notice of the refusal.

(5) A determination made under this section must:
  (a) specify the day it takes effect, which must be the Monday of a week that includes an at risk day and cannot be more than 28 days before the application was made; and
  (b) specify the whole weeks for which it has effect, which:
    (i) must be weeks that include an at risk day; and
    (ii) cannot exceed 13 weeks; and
  (c) identify the child to whom it relates.

(6) If:
  (a) a determination made under this section is in effect in relation to a child; and

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(b) the Secretary is satisfied that the child will still be at risk of serious abuse or neglect after the determination ceases to have effect;

the Secretary may make a written determination accordingly to take effect on the Monday immediately after the earlier determination ceases to have effect.

(7) A determination made under this section is not a legislative instrument.

85CF Variation and revocation of determinations

(1) If:

(a) a determination made under section 85CE in relation to a child is in effect for a week; and

(b) the Secretary considers that the child is not at any risk of serious abuse or neglect during the week;

the Secretary may, by written notice given in accordance with subsection (2), cancel or vary the determination so that the determination is not in effect for the week.

(2) The Secretary must give the written notice to the approved provider that made the application for the determination, or, if there has been more than one consecutive such determination, for the first determination in the series.

Note: Persons whose interests are affected by the decision must be notified of the decision and of their right to have it reviewed (see section 27A of the AAT Act).

(3) If the Secretary revokes a determination, the determination ceases to have effect on the day specified in the notice (which must be a Monday and may be earlier than the day the notice is given).

(4) If the Secretary varies a determination, the determination is varied as specified in the notice with effect from the day specified in the notice (which must be a Monday and may be earlier than the day the notice is given).

(5) The Secretary may vary or revoke a determination even if the determination has ceased to have effect.

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Subdivision B—Eligibility for ACCS (temporary financial hardship)

85CG Eligibility for ACCS (temporary financial hardship)

(1) An individual is eligible for ACCS for a session of care provided by an approved child care service to a child if:
  (a) the individual is eligible for CCS for the session of care; and
  (b) a determination of temporary financial hardship made by the Secretary under section 85CH is in effect in relation to the individual for the week in which the session of care is provided; and
  (c) Division 5 does not prevent the individual being eligible for ACCS (temporary financial hardship) for the session.

Temporary financial hardship

(2) The Minister's rules may prescribe circumstances in which an individual is taken to be experiencing temporary financial hardship.

85CH Determination of temporary financial hardship

Determinations on own initiative or on application

(1) The Secretary may make a determination that an individual is experiencing temporary financial hardship:
  (a) on application by the individual in accordance with this section; or
  (b) on the Secretary's own initiative, if the Secretary is satisfied that a circumstance prescribed by the Minister's rules for the purposes of subsection 85CG(2) (temporary financial hardship) exists in relation to the individual.

Applications

(2) An individual may apply to the Secretary for a determination under this section, if the individual considers that a circumstance prescribed by the Minister's rules for the purposes of

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subsection 85CG(2) (temporary financial hardship) exists in relation to the individual.

(3) The application must:
  (a) be made in a form and manner approved by the Secretary; and
  (b) contain the information, and be accompanied by the documents, required by the Secretary.

(4) The Secretary must, no later than 28 days after the day the application is made:
  (a) if satisfied that a circumstance prescribed by the Minister's rules for the purposes of subsection 85CG(2) (temporary financial hardship) exists in relation to the individual—make the determination referred to in subsection (1); and
  (b) otherwise—refuse the application.

Note: Persons whose interests are affected by the decision must be notified of the decision and of their right to have it reviewed (see section 27A of the AAT Act).

(5) If the Secretary neither makes a determination nor refuses the application by the end of the 28 days after the day the application was made, the Secretary is taken at that time to have refused the application. Subsection 27A(1) of the AAT Act does not apply to such a refusal.

Note: This means the Secretary is not required to give notice of the refusal.

Content etc. of determinations

(6) A determination made under this section must:
  (a) specify the day it takes effect, which must be a Monday and cannot be more than 28 days before:
    (i) if made on application—the application was made; or
    (ii) otherwise—the determination was made; and
  (b) specify the whole weeks for which it has effect; and
  (c) identify the child to whom it relates; and
  (d) identify the individual concerned and the reason why the circumstance causing the temporary financial hardship exists in relation to the individual.

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(7) A determination does not take effect if the determination would have the result that determinations made under this section would be in effect in relation to a particular child and a particular individual, and for a particular reason, for more than 13 weeks.

(8) A determination made under this section is not a legislative instrument.

85CI Revocation of determinations

(1) If:

(a) a determination made under section 85CH in relation to an individual is in effect for a week; and

(b) the Secretary considers that a circumstance prescribed by the Minister's rules for the purposes of subsection 85CG(2) (temporary financial hardship) does not exist in relation to the individual during the week;

the Secretary may, by written notice given to the individual, cancel or vary the determination so that the determination is not in effect for the week.

Note: Persons whose interests are affected by the decision must be notified of the decision and of their right to have it reviewed (see section 27A of the AAT Act).

(2) If the Secretary revokes a determination, the determination ceases to have effect on the day specified in the notice (which must be a Monday and may be earlier than the day the notice is given).

(3) If the Secretary varies a determination, the determination is varied as specified in the notice with effect from the day specified in the notice (which must be a Monday and may be earlier than the day the notice is given).

(4) The Secretary may vary or revoke a determination even if the determination has ceased to be in effect.

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Subdivision C—Eligibility for ACCS (grandparent)

85CJ Eligibility for ACCS (grandparent)

(1) An individual is eligible for ACCS for a session of care provided by an approved child care service to a child if:
  (a) the individual is eligible for CCS for the session of care; and
  (b) the individual, or the individual's partner, is the grandparent or great-grandparent of the child; and
  (c) at the start of the CCS fortnight in which the session of care is provided, the individual or the individual's partner is the principal carer of the child within the meaning of subsection (2); and
  (d) at the start of the CCS fortnight in which the session of care is provided, the individual, or the individual's partner, is receiving:
    (i) a social security pension; or
    (ii) a social security benefit; or
    (iii) a service pension; or
    (iv) an income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*; and
  (e) Division 5 does not prevent the individual being eligible for ACCS (grandparent) for the session.

(2) For the purposes of paragraph (1)(c), the individual or the individual's partner is the principal carer of the child if the individual or partner:
  (a) provides all or at least 65% of ongoing daily care for the child; and
  (b) has substantial autonomy for the day-to-day decisions about the child's care, welfare and development.

(3) In determining, for the purposes of this section, whether an individual is a ***grandparent*** or ***great-grandparent*** of another person, treat the following relationships as if they were biological child-parent relationships:
  (a) the relationship between an adopted child and his or her adoptive parent;

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(b) the relationship between a step-child and his or her step-parent;

(c) the relationship between a relationship child and his or her relationship parent.

(4) In this section:

adoptive parent, of a person (the ***child***), means the person who adopted the child under a law of any place (whether in Australia or not) relating to the adoption of children.

step-parent, of a person (the ***child***), means the person who:

(a) is the current or former partner of the biological parent, adoptive parent or relationship parent of the child; and

(b) is not the biological parent, adoptive parent or relationship parent of the child.

Subdivision D—Eligibility for ACCS (transition to work)

85CK Eligibility for ACCS (transition to work)

Eligibility of individual receiving transition to work payment

(1) An individual is eligible for ACCS for a session of care provided by an approved child care service to a child if:

(a) the individual is eligible for CCS for the session of care; and

(b) at the start of the CCS fortnight in which the session of care is provided:

(i) the individual is receiving (within the meaning of subsections 23(2) and (4) of the *Social Security Act 1991*) a transition to work payment referred to in subsection (3) of this section; and

(ii) if the transition to work payment is referred to in paragraph (3)(a)—an employment pathway plan within the meaning of the *Social Security Act 1991*, or a participation plan under section 94B of that Act, is in effect in relation to the individual; and

(c) any requirements prescribed by the Minister's rules are met; and

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(d) Division 5 does not prevent the individual being eligible for ACCS (transition to work) for the session.

Eligibility of individual who ceased receiving transition to work payment fewer than 12 weeks ago

(2) An individual is eligible for ACCS for a session of care provided by an approved child care service to a child if:
  (a) the individual is eligible for CCS for the session of care; and
  (b) the individual stopped receiving (within the meaning of subsections 23(2) and (4) of the *Social Security Act 1991*) a transition to work payment referred to in subsection (3) of this section less than 12 weeks before the start of the CCS fortnight in which the session of care is provided; and
  (c) any requirements prescribed by the Minister's rules are met; and
  (d) Division 5 does not prevent the individual being eligible for ACCS (transition to work) for the session.

Definition of ***transition to work payment***

(3) Each of the following is a ***transition to work payment***:
  (a) the following payments made under the social security law:
    (i) parenting payment;
    (ii) newstart allowance;
    (iii) disability support pension;
    (iv) youth allowance;
  (b) a payment (whether or not made under the social security law) prescribed by the Minister's rules.

Division 4—Eligibility in substitution for an individual who has died

85DA Eligibility for child care subsidy or additional child care subsidy in substitution for individual who has died

If:
  (a) an individual is eligible for CCS or ACCS; and
  (b) the individual dies; and

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(c) an amount of CCS or ACCS for which the individual was eligible has not been paid; and

(d) another individual (the ***substitute***) makes a claim under Part 3A of the Family Assistance Administration Act for CCS in substitution for the individual who has died; and

(e) the Secretary considers that the substitute ought to be eligible for so much of the unpaid amount as relates to sessions of care provided after the start of the income year before the income year in which the individual died;

the substitute is eligible for that much of the unpaid amount of CCS or ACCS.

Division 5—Limitations on eligibility for child care subsidy and additional child care subsidy

85EA Only one individual eligible at a time

(1) If, apart from this section, more than one individual would be eligible for CCS for the same session of care provided to a child, only the individual determined under subsection (2) is eligible for the CCS.

(2) For the purposes of subsection (1), the Secretary may, in accordance with any Minister's rules, determine in writing the individual eligible for the CCS for the session of care provided to the child.

(3) A determination made under subsection (2) is not a legislative instrument.

85EB Only eligible for one kind of ACCS at a time

If, apart from this section, an individual would be eligible for ACCS under more than one provision of Division 3 for the same session of care provided to a child, then the individual is only eligible for:

(a) ACCS (child wellbeing); or

(b) if the individual is not eligible for ACCS (child wellbeing)—ACCS (grandparent); or

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(c) if the individual is not eligible for ACCS (child wellbeing) or ACCS (grandparent)—ACCS (temporary financial hardship).

Note: An individual who would otherwise be eligible for ACCS (transition to work), as well as for one or more other kinds of ACCS, is instead eligible for the other kind, or one of the other kinds, of ACCS according to the priority set out in this section.

85EC Only one individual eligible in substitution for individual who has died

If an individual is eligible for an amount of CCS or ACCS because of section 85DA (eligibility in substitution for individual who has died), no other individual and no approved provider is or can become eligible for CCS or ACCS that is part of the amount.

85ED No eligibility for child who is in care of State or Territory or member of prescribed class

(1) An individual is not eligible for CCS or ACCS, and an approved provider is not eligible for ACCS (child wellbeing), for a session of care provided to a child if the child is:

(a) under the care (however described) of a person (other than a foster parent) under a State/Territory child welfare law; or

(b) a member of a class prescribed by the Minister's rules.

(2) A ***State/Territory child welfare law*** is:

(a) a law of a State or Territory which is prescribed by the Minister's rules; or

(b) if the Minister's rules do not prescribe a law for a State or Territory—a law of the State or Territory that relates to the welfare of children.

85EE Maximum period of eligibility for individual who is absent from Australia

(1) If an individual leaves Australia, the maximum period for which the individual can be eligible for CCS or ACCS during that absence from Australia is the period of 6 weeks beginning on the first day of that absence.

(2) If:

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(a) an individual is eligible for CCS or ACCS while the individual is absent from Australia; and
(b) the individual then ceases to be eligible for CCS or ACCS because of the application of subsection (1) or a previous application of this subsection; and
(c) the individual returns to Australia; and
(d) the individual leaves Australia again less than 6 weeks after returning to Australia;

the individual is not eligible for CCS or ACCS at any time during the absence from Australia referred to in paragraph (d).

(3) The Secretary may extend the 6 week period (the ***initial period***) referred to in subsection (1), to a period of no more than 3 years, if the Secretary is satisfied that the individual is unable to return to Australia within the initial period because of any of the following events:
(a) a serious accident involving the individual or a family member of the individual;
(b) a serious illness of the individual or a family member of the individual;
(c) the hospitalisation of the individual or a family member of the individual;
(d) the death of a family member of the individual;
(e) the individual's involvement in custody proceedings in the country in which the individual is located;
(f) a legal requirement for the individual to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the individual);
(g) robbery or serious crime committed against the individual or a family member of the individual;
(h) a natural disaster in the country in which the individual is located;
(i) political or social unrest in the country in which the individual is located;
(j) industrial action in the country in which the individual is located;
(k) a war in the country in which the individual is located.

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(4) The Secretary must not extend the initial period under subsection (3) unless:
  (a) the event occurred or began during the initial period; and
  (b) if the event is political or social unrest, industrial action or war—the individual is not willingly involved in, or willingly participating in, the event.

(5) The Secretary may extend the 6 week period referred to in subsection (1), to a period of no more than 3 years, if the Secretary is satisfied that, under the Medical Treatment Overseas Program administered by the Minister who administers the *National Health Act 1953*, financial assistance is payable in respect of the absence from Australia of the individual.

(6) The Secretary may extend the 6 week period referred to in subsection (1), to a period of no more than 3 years, if the Secretary is satisfied that the individual mentioned in the subsection is unable to return to Australia within the 6 week period because the individual is:
  (a) deployed outside Australia as a member of the Defence Force, under conditions specified in a determination made under the *Defence Act 1903* that relates to such deployment; or
  (b) deployed outside Australia, for the purpose of capacity-building or peacekeeping functions, as:
    (i) a member or a special member of the Australian Federal Police; or
    (ii) a protective service officer within the meaning of the *Australian Federal Police Act 1979*.

Division 6—Amount of child care subsidy and additional child care subsidy

85FA Amount of child care subsidy

If an individual is eligible for child care subsidy for at least one session of care provided by an approved child care service to a child in a week, the amount of child care subsidy for the individual for the week for the child is worked out under Part 1 of Schedule 2.

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85FB Amount of ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent) for an individual

If an individual is eligible for ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent) for at least one session of care provided by an approved child care service to a child in a week, the amount of additional child care subsidy for the individual for the week for the child is worked out under Part 2 of Schedule 2.

85FC Amount of ACCS (transition to work)

If an individual is eligible for ACCS (transition to work) for at least one session of care provided by an approved child care service to a child in a week, the amount of additional child care subsidy for the individual for the week for the child is worked out under Part 3 of Schedule 2.

85FD Amount of ACCS (child wellbeing) for an approved provider

If an approved provider is eligible for ACCS (child wellbeing) for at least one session of care provided by an approved child care service of the provider to a child in a week, the amount of additional child care subsidy for the provider for the week for the child is worked out under Part 4 of Schedule 2.

Division 7—Miscellaneous

85GA Funding agreements

(1) The Secretary may, on behalf of the Commonwealth, enter into, vary and administer written agreements with a person under which the Commonwealth makes one or more grants of money to the person for purposes that are related to both:
  (a) child care; and
  (b) either or both of the following:
    (i) the provision of child endowment or family allowances within the meaning of paragraph 51(xxiiiA) of the Constitution;

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(ii) giving effect to Australia's obligations under the Convention on the Rights of the Child done at New York on 20 November 1989 and, in particular, under articles 2, 3, 18 or 23 of the Convention.

Note: The Convention on the Rights of the Child is in Australian Treaty Series 1991 No. 4 ([1991] ATS 4) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

(2) A grant under this section is payable to a person:
  (a) at such time as is specified in the agreement; and
  (b) in full or in such instalments as are specified in the agreement.

(3) The Minister's rules may specify requirements with which the Secretary must comply in exercising powers under this section.

85GB Minister's and Secretary's rules

(1) The Minister may, by legislative instrument, make rules (the ***Minister's rules***) prescribing matters:
  (a) required or permitted by this Act or by the Family Assistance Administration Act to be prescribed by the Minister's rules; or
  (b) necessary or convenient to be prescribed for carrying out or giving effect to any or all of the following:
    (i) this Part or Schedule 2;
    (ii) Part 8 or 8A of the Family Assistance Administration Act;
    (iii) any other provision of the Family Assistance Administration Act in relation to child care subsidy or additional child care subsidy.

Note: The Minister cannot delegate this power (there is no power to delegate Minister's powers or functions under this Act).

(2) The Secretary may, by legislative instrument, make rules (the ***Secretary's rules***) prescribing matters:
  (a) required or permitted by this Act or by the Family Assistance Administration Act to be prescribed by the Secretary's rules; or

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(b) necessary or convenient to be prescribed for carrying out or giving effect to any or all of the following:
  (i) this Part or Schedule 2;
  (ii) Part 8 or 8A of the Family Assistance Administration Act;
  (iii) any other provision of the Family Assistance Administration Act in relation to child care subsidy or additional child care subsidy.

Note: The Secretary cannot delegate this power (see subsection 221(1) of the Family Assistance Administration Act).

(3) To avoid doubt, the Minister's rules and the Secretary's rules may not do the following:
  (a) create an offence or civil penalty;
  (b) provide powers of:
    (i) arrest or detention; or
    (ii) entry, search or seizure;
  (c) impose a tax;
  (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  (e) directly amend the text of this Act.

(4) Secretary's rules that are inconsistent with Minister's rules have no effect to the extent of the inconsistency, but Secretary's rules are taken to be consistent with Minister's rules to the extent that the Secretary's rules are capable of operating concurrently with the Minister's rules.

(5) Minister's rules and Secretary's rules that are inconsistent with regulations made under section 235 of the Family Assistance Administration Act have no effect to the extent of the inconsistency, but Minister's rules and Secretary's rules are taken to be consistent with those regulations to the extent they are capable of operating concurrently with those regulations.

41 Schedule 2

Repeal the Schedule, substitute:

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Schedule 2—Amounts of child care subsidy and additional child care subsidy

Note: See Division 6 of Part 4A.

Part 1—Amount of child care subsidy

1 Amount of child care subsidy

(1) If an individual is eligible for CCS for at least one session of care provided by an approved child care service to a child in a week, work out the amount of child care subsidy for the individual for the week, for sessions of care provided by the service to the child, using the following method statement.

Method statement

Step 1. Work out the individual's activity test result, in relation to the child, for the CCS fortnight that includes the week (see clause 11 of this Schedule).

If the activity test result is zero, the amount of child care subsidy for the individual for the week, for the sessions of care provided by the service to the child, is nil.

Otherwise, go to step 2.

Step 2. Work out whether the annual cap applies to the individual for the income year in which the CCS fortnight starts (see subclause (2)).

If the annual cap:

(a) applies; and

(b) has already been reached for the child for the income year (see subclause (3));

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the amount of child care subsidy for the individual for the week, for the sessions of care provided by the service to the child, is nil.

Otherwise, go to step 3.

Step 3. Identify all the sessions of care:

(a) provided by the service to the child in the week; and

(b) for which the individual is eligible for CCS.

Step 4. Work out the hourly rate of CCS for the individual for each of those sessions of care (see clause 2).

If the applicable percentage is 0% for each of those sessions of care, the amount of child care subsidy for the individual for the week, for those sessions, is nil.

Otherwise, go to step 5.

Step 5. Work out the activity-tested amount of CCS for those sessions of care (see clause 4).

Step 6. The amount of CCS for the individual for the week, for the sessions of care identified in step 3, is:

(a) the activity-tested amount; or

(b) if the annual cap applies to the individual for the income year in which the CCS fortnight that includes the week starts, and the difference between the annual cap and the total previous CCS (see subclause (3)) is less than the activity-tested amount—that difference.

Note: An individual who is receiving CCS by fee reduction might have a lower amount passed on than the amount worked out under this method statement, because of a withholding amount in relation to the payment. See sections 67EB and 201A of the Family Assistance Administration Act.

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(2) The ***annual cap*** of $10,000 applies to an individual for an income year if the adjusted taxable income of the individual for the income year exceeds the amount that is the lower income threshold plus $120,000.

Note: The $10,000 amount is indexed under Schedule 4.

(3) The annual cap that applies to an individual is reached for a child for an income year if the following amounts (the ***total previous CCS***) together equal the annual cap:

(a) CCS the individual is entitled to be paid for sessions of care provided to the child in CCS fortnights starting in the income year;

(b) if the individual is a member of a couple for the whole of the income year in which the CCS fortnight starts—CCS the other member of the couple is entitled to be paid for sessions of care provided to the same child in CCS fortnights starting in the income year.

2 Hourly rate of CCS

(1) For the purposes of step 4 of the method statement in clause 1, the ***hourly rate of CCS*** for the individual, for a session of care provided by the service to the child in the week, is the individual's applicable percentage (see clause 3) of the lower of:

(a) the hourly session fee for the individual; and

(b) the CCS hourly rate cap for the session;

rounded to the nearest cent (rounding 0.5 cents upwards).

Note: If the applicable percentage for a session of care is 0% (see table item 6 of subclause 3(1)), the hourly rate of CCS for the individual for the session of care is nil.

(2) The ***hourly session fee*** for an individual, for a session of care provided to a child, is the amount the individual or the individual's partner is liable to pay for the session of care:

(a) divided by the number of hours in the session of care; and

(b) reduced by:

(i) the hourly rate of any subsidy (other than CCS or ACCS) which the individual benefits from in respect of that session; and

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(ii) the amount per hour of any reimbursement fringe benefit in respect of the session of care (see subclause (5)).

(3) Work out the ***CCS hourly rate cap*** for a session of care using the following table.

CCS hourly rate cap		
Item	**If the session of care is provided by:**	**The CCS hourly rate cap is:**
1	a centre-based day care service	$11.55
2	a family day care service	$10.70
3	an outside school hours care service	$10.10
4	a type of service prescribed by the Minister's rules	the dollar amount prescribed by the Minister's rules

Note: The dollar amounts referred to in the table are indexed under Schedule 4.

(4) The Minister's rules may prescribe criteria for determining by which of the types of service mentioned in the table in subclause (3) any particular session of care is provided.

(5) A ***reimbursement fringe benefit*** in respect of a session of care is the amount by which an individual or the individual's partner is reimbursed by a person in respect of the individual's or partner's liability to pay for the session of care, if the reimbursement:

(a) is a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986*; or

(b) would be such a fringe benefit but for paragraph (g) of the definition of ***fringe benefit*** in subsection 136(1) of that Act.

3 Applicable percentage

(1) An individual's ***applicable percentage*** for a session of care provided to a child in a CCS fortnight is determined by the following table.

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Applicable percentage		
Item	**If the individual's adjusted taxable income for the income year in which the CCS fortnight starts is:**	**Then the applicable percentage for the individual is:**
1	equal to or below the lower income threshold	85%
2	above the lower income threshold and below the second income threshold	see subclause (2)
3	equal to or above the second income threshold and below the third income threshold	50%
4	equal to or above the third income threshold and below the fourth income threshold	see subclause (3)
5	equal to or above the fourth income threshold and below the upper income threshold	20%
6	equal to or above the upper income threshold	0%

(2) If table item 2 applies, work out the individual's ***applicable percentage*** for the session of care using the following formula and rounding the result to 2 decimal places:

$$85 - \left(\frac{\text{Individual's adjusted taxable income} - \text{Lower income threshold}}{3{,}000} \right)$$

(3) If table item 4 applies, work out the individual's ***applicable percentage*** for the session of care using the following formula and rounding the result to 2 decimal places:

$$50 - \left(\frac{\text{Individual's adjusted taxable income} - \text{Third income threshold}}{3{,}000} \right)$$

(4) In this Act:

lower income threshold means $65,710.

Note: This amount is indexed under Schedule 4.

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second income threshold means the lower income threshold plus $105,000.

third income threshold means the lower income threshold plus $184,290.

fourth income threshold means the lower income threshold plus $274,290.

upper income threshold means the lower income threshold plus $284,290.

4 Activity-tested amount of CCS

(1) For the purposes of step 5 of the method statement in clause 1, the ***activity-tested amount*** of CCS, for the sessions of care identified in step 3 of the method statement, is the amount worked out by:

(a) for each session of care—multiplying the hourly rate of CCS for the session by the number of hours in the session, up to the lower of:

(i) the balance of the activity test result worked out under subclause (2) in relation to the session; and

(ii) if the Secretary is satisfied that it is appropriate, for the CCS fortnight, to have regard to an election (if any) made under subclause (3)—the number determined in accordance with the election; and

(b) adding the results together.

(2) The balance of the activity test result, in relation to a particular session of care, is the individual's activity test result in relation to the child for the CCS fortnight, reduced (but not below zero) by:

(a) the number of hours (if any) for which either of the following is entitled to be paid CCS or ACCS for sessions of care provided to the child in the CCS fortnight:

(i) the individual;

(ii) if the individual was a member of a couple on each day in the CCS fortnight—the individual's partner; and

(b) the number of hours in any earlier sessions of care identified in step 3 of the method statement.

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(3) If a circumstance prescribed by the Minister's rules exists in relation to an individual, the individual may, in a form and manner approved by the Secretary, give the Secretary a written election for the purposes of subparagraph (1)(a)(ii).

Part 2—Amount of ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent) for an individual

5 Amount of ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent) for an individual

If an individual is eligible for ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent) for at least one session of care provided by an approved child care service to a child in a week, work out the amount of ACCS for the individual for the week, for sessions of care provided by the service to the child, using the method statement in clause 1 with the following modifications:

(a) read references to CCS as references to the kind of ACCS the individual is eligible for (except in subclause 4(2));

(b) do not use step 2 (annual cap);

(c) at steps 4 and 5, use the hourly rate of ACCS (see clause 6) instead of the hourly rate of CCS;

(d) replace step 6 with this:

Step 6.	The amount of ACCS for the individual for the week, for the sessions of care identified in step 3, is the activity-tested amount.

6 Hourly rate of ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent)

(1) For the purposes of paragraph 5(c), the ***hourly rate of ACCS*** for the individual, for a session of care provided by the service to the child in the week, is 100% of the lower of:

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(a) the hourly session fee for the individual (see subclause 2(2)); and
(b) the ACCS hourly rate cap for the session.

(2) The ***ACCS hourly rate cap*** for a session of care provided by a service to a child is the following percentage of the CCS hourly rate cap (see subclause 2(3)) for the session:
(a) 120%;
(b) if a higher percentage applies under the Secretary's rules and paragraph (c) does not apply—that higher percentage;
(c) if the Secretary is satisfied that exceptional circumstances exist in relation to an individual or the individual's partner, or the service, and makes a written determination to that effect that applies to the session—the higher percentage specified in the determination.

(3) A determination made under paragraph (2)(c) is not a legislative instrument.

Part 3—Amount of ACCS (transition to work)

7 Amount of ACCS (transition to work)

If an individual is eligible for ACCS (transition to work) for at least one session of care provided by an approved child care service to a child in a week, work out the amount of ACCS (transition to work) for the individual for the week, for sessions of care provided by the service to the child, using the method statement in clause 1 with the following modifications:
(a) read references to CCS as references to ACCS (transition to work) (except in subclause 4(2));
(b) do not use step 2 (annual cap);
(c) at step 4, work out the hourly rate of CCS for the individual using 95% instead of the applicable percentage in clause 3;
(d) replace step 6 with this:

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Step 6.	The amount of ACCS (transition to work) for the individual for the week, for the sessions of care identified in step 3, is the activity-tested amount.

Part 4—Amount of ACCS (child wellbeing) for an approved provider

8 Amount of ACCS (child wellbeing) for an approved provider

If an approved provider is eligible for ACCS (child wellbeing) for at least one session of care provided by an approved child care service of the provider to a child in a week, work out the amount of ACCS (child wellbeing) for the provider for the week, for sessions of care provided by the service to the child, using the following method statement.

Method statement

Step 1. Work out the provider's deemed activity test result for the child and service for the CCS fortnight that includes the week (see clause 16).

Step 2. Identify all the sessions of care:

(a) provided by the service to the child in the week; and

(b) for which the provider is eligible for ACCS (child wellbeing).

Step 3. Work out the hourly rate of ACCS for the provider for each of those sessions of care (see clause 9).

Step 4. Work out the activity-tested amount of ACCS for those sessions of care (see clause 10).

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Step 5.	The amount of ACCS (child wellbeing) for the provider for the week, for the sessions of care identified in step 2, is the activity-tested amount.

9 Hourly rate of ACCS for a provider

(1) For the purposes of step 3 of the method statement in clause 8, the ***hourly rate of ACCS*** for the provider, for a session of care provided to a child in a week, is 100% of the lower of:
  (a) the hourly session fee for the provider; and
  (b) the ACCS hourly rate cap for the session (see subclause 6(2)).

(2) The ***hourly session fee*** for a provider, for a session of care provided to a child, is the amount the provider would ordinarily charge an individual who is eligible for CCS for the session of care:
  (a) divided by the number of hours in the session of care; and
  (b) reduced by the hourly rate of any subsidy (other than CCS or ACCS) which the provider benefits or would have benefitted from in respect of that session.

10 Activity-tested amount of ACCS for an approved provider

(1) For the purposes of step 4 of the method statement in clause 8, the ***activity-tested amount*** of ACCS, for the sessions of care identified in step 2 of the method statement, is the amount worked out by:
  (a) for each session of care—multiplying the hourly rate of ACCS for the session by the number of hours in the session up to the balance of the deemed activity test result worked out under subclause (2) in relation to the session; and
  (b) adding the results together.

(2) The balance of the deemed activity test result, in relation to a particular session of care, is the provider's deemed activity test result for the child and the service for the CCS fortnight, reduced (but not below zero) by:

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(a) the number of hours (if any) for which the provider is entitled to be paid ACCS for sessions of care provided to the child by the service in the CCS fortnight; and

(b) the number of hours in any earlier sessions of care identified in step 2 of the method statement.

Part 5—Activity test

Division 1—Individual's activity test result

11 Individual's activity test result

(1) For the purposes of working out an amount of CCS or ACCS for an individual in relation to sessions of care provided to a child, an individual's ***activity test result***, in relation to the child, for a CCS fortnight is:

(a) the highest of:

(i) the result specified in item 1 of the following table for the amount; and

(ii) any other result specified in any other table item for the amount that applies to the individual in relation to the child; or

(b) if the individual is a member of a couple on the first day of the CCS fortnight—the lower of the following:

(i) the result worked out in accordance with paragraph (a) for the individual in relation to the child;

(ii) the result worked out in accordance with paragraph (a) for the individual's partner in relation to the child, assuming that any estimate of adjusted taxable income that applies for the individual also applies for the partner for the purposes of the low income result in clause 13.

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Individual's activity test result			
Item	**Results for amount of CCS**	**Results for amount of ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent)**	**Results for amount of ACCS (transition to work)**
1	recognised activity result in clause 12	100	recognised activity result in clause 12
2	low income result in clause 13		
3	Minister's rules result in clause 14	Minister's rules result in clause 14	Minister's rules result in clause 14
4	child wellbeing result in clause 15		child wellbeing result in clause 15
5	exceptional circumstances result in this clause	exceptional circumstances result in this clause	exceptional circumstances result in this clause

Note: See subclause (5) for an individual eligible for both CCS and ACCS in the same CCS fortnight.

Exceptional circumstances result

(2) The ***exceptional circumstances result*** is the result specified in a determination made under paragraph (3)(b).

(3) The exceptional circumstances result applies to an individual for a CCS fortnight, in relation to a particular child, if the Secretary:
  (a) is satisfied that exceptional circumstances exist in relation to the individual, the individual's partner or the child; and
  (b) makes a written determination to that effect that applies to the child.

(4) A determination made under paragraph (3)(b) is not a legislative instrument.

Individual eligible for CCS and ACCS in same CCS fortnight

(5) If an individual is eligible for an amount of:

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(a) CCS or ACCS (transition to work) for sessions of care provided to a child in a week of a CCS fortnight; and

(b) ACCS (child wellbeing) or ACCS (temporary financial hardship) for sessions of care provided to the child in the other week (whether the first or second week) of the CCS fortnight;

the individual's activity test result for the CCS fortnight, in relation to the child, is the activity test result for the amount referred to in paragraph (b).

12 Recognised activity result

(1) The ***recognised activity result*** for an individual for a CCS fortnight, in relation to any child, is the result specified in the following table for the individual's circumstances in the CCS fortnight.

Recognised activity result

Item	If an individual engages in this many hours of recognised activity in the CCS fortnight:	The result is:
1	fewer than 8	0
2	at least 8 and no more than 16	36
3	more than 16 and no more than 48	72
4	more than 48	100

Note: The number of hours of recognised activity for an individual to be counted towards the recognised activity result may be affected by Minister's rules made for the purposes of subclause (4), or a Secretary's determination made under subclause (5).

What is ***recognised activity***

(2) An individual engages in ***recognised activity*** if the individual engages in any one or more of the following:

(a) paid work (whether or not as an employee);

(b) a training course for the purpose of improving the individual's work skills or employment prospects, or both;

(c) an approved course of education or study;

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(d) an activity prescribed by the Minister's rules, in circumstances (if any) prescribed by those rules;

(e) an activity determined for the individual by the Secretary under subclause (5), in circumstances (if any) specified in the determination.

Note 1: The definition of ***paid work*** in section 3B does not apply in relation to paragraph (2)(a) of this clause. For the purposes of that paragraph, ***paid work*** has its ordinary meaning.

Note 2: For ***approved course of education or study***, see subsection 541B(5) of the *Social Security Act 1991* and subsection 3(1) of this Act.

Associated activities

(3) An individual who engages in recognised activity mentioned in any of paragraphs (2)(a) to (d) is taken also to engage in recognised activity of that kind while:

(a) engaging in other activity prescribed by the Minister's rules as being associated with recognised activity of that kind; or

(b) taking leave or another break from, or otherwise not performing, recognised activity of that kind in circumstances prescribed by the Minister's rules (whether or not the individual has engaged in recognised activity of that kind during the CCS fortnight).

Hours during which activities are engaged in

(4) For the purposes of working out the recognised activity result for an individual who engages in recognised activity mentioned in any of paragraphs (2)(a) to (d) during a CCS fortnight, the Minister's rules may prescribe either or both of the following:

(a) how to work out a number of hours of recognised activity of that kind that is taken to be counted towards the activity in that fortnight (which may be more or less than the actual number of hours during which the individual engaged in the activity during the fortnight);

(b) a maximum number of hours that are to be counted towards the activity in that fortnight (including a maximum number of hours taken to be so counted by the operation of rules made for the purposes of paragraph (a)).

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Secretary's determination

(5) The Secretary may, in writing, make a determination for an individual for the purposes of paragraph (2)(e). The determination may also provide for any matter covered by Minister's rules that may be made for the purposes of subclause (3) or (4) in relation to the individual.

(6) A determination made under subclause (5) is not a legislative instrument.

Changes in the number of hours of recognised activity

(7) In working out the recognised activity result, a change in the number of hours of recognised activity in which an individual engages in a CCS fortnight is to be disregarded until the CCS fortnight immediately after the CCS fortnight in which the change occurs.

13 Low income result

(1) The ***low income result*** is 24.

(2) The low income result applies to an individual for a CCS fortnight, in relation to any child, if, on the first day of the CCS fortnight:

(a) there is an estimate of adjusted taxable income that, under section 67DB of the Family Assistance Administration Act, the Secretary is permitted to use for the purposes of making a determination under Division 3 of Part 3A of that Act for the individual; and

(b) the estimate is equal to or below the lower income threshold.

Note: The meaning of this provision for members of couples is affected by section 67DE of the Family Assistance Administration Act.

14 Minister's rules result

(1) The ***Minister's rules result*** is the result prescribed by, or worked out by a method prescribed by, the Minister's rules.

(2) The Minister's rules result applies to an individual for a CCS fortnight, in relation to:

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(a) a particular child—if a circumstance prescribed by the rules exists and the application of the rules in the circumstance is limited to the particular child; and

(b) any child—if a circumstance prescribed by the rules exists and the application of the rules in the circumstance is not limited to a particular child.

(3) Minister's rules made for the purposes of subclause (2) may prescribe circumstances in relation to any or all of the following:

(a) individuals;

(b) individuals' partners;

(c) children.

15 Child wellbeing result

(1) The ***child wellbeing result*** is 100.

(2) The child wellbeing result applies to an individual for a CCS fortnight, in relation to a particular child, if:

(a) the individual is eligible for CCS for a session of care provided to the child in a CCS fortnight; and

(b) on the first day of the CCS fortnight, it has been less than 18 months since an extended child wellbeing period for the child ended.

(3) An ***extended child wellbeing period*** for a child is a period of at least 6 months during which instruments of either or both of the following kinds were continuously in effect in relation to the child:

(a) a certificate given by an approved provider under section 85CB;

(b) a determination made by the Secretary under section 85CE.

Division 2—Provider's deemed activity test result

16 Provider's deemed activity test result

(1) For the purposes of working out an amount of ACCS (child wellbeing) under Part 4 of this Schedule for sessions of care provided to a child by an approved child care service, the

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provider's ***deemed activity test result***, for the child and the service, for a CCS fortnight, is the highest of the following:

(a) 100;

(b) if a circumstance prescribed by the Minister's rules exists in relation to the child, the provider or the service and paragraph (c) does not apply—the result prescribed by, or worked out by a method prescribed by, the Minister's rules;

(c) if the Secretary is satisfied that exceptional circumstances exist in relation to the child, the provider or the service and makes a written determination to that effect that applies to the session—the result specified in the determination.

(2) Minister's rules made for the purposes of paragraph (1)(b) may prescribe circumstances in relation to any or all of the following:

(a) children;

(b) approved providers;

(c) approved child care services.

(3) A determination made under paragraph (1)(c) is not a legislative instrument.

42 Clause 1 of Schedule 3

Repeal the clause, substitute:

1 Adjusted taxable income relevant to family tax benefit, schoolkids bonus and child care subsidy

An individual's adjusted taxable income is relevant to eligibility for, and the rate or amount of, family tax benefit, schoolkids bonus and child care subsidy.

43 Clause 3 of Schedule 3 (heading)

Repeal the heading, substitute:

3 Adjusted taxable income of members of a couple—family tax benefit and schoolkids bonus

44 Before subclause 3(1) of Schedule 3

Insert:

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(1A) This clause applies in relation to working out eligibility for, and the rate of, family tax benefit and schoolkids bonus.

45 After clause 3 of Schedule 3

Insert:

3AA Adjusted taxable income of members of a couple—child care subsidy

(1) This clause applies in relation to working out eligibility for, and the rate of, child care subsidy for the purposes of this Act in relation to a child care decision.

(2) If an individual is a member of a couple with a TFN determination person on the first Monday (an ***applicable Monday***) of any CCS fortnight to which the child care decision relates in an income year, the individual's adjusted taxable income for that year is taken to include:

(a) if the individual is a member of the same couple on all applicable Mondays in the year—the TFN determination person's adjusted taxable income for that year; or

(b) in any other case—an amount equal to the percentage of the TFN determination person's adjusted taxable income for that year that corresponds to the percentage of applicable Mondays in that year on which the TFN determination person was a member of that couple.

Note: If paragraph (2)(b) applies in relation to a number of different TFN determination persons during an income year, the individual's adjusted taxable income for that year is taken to include the sum of the amounts worked out under that paragraph for each such person.

(3) This clause is subject to clause 3A.

46 Paragraph 3A(b) of Schedule 3

Omit "child care benefit", substitute "child care subsidy".

47 Clause 2 of Schedule 4 (table items 18 to 22)

Repeal the items, substitute:

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18	Lower income threshold for CCS	CCS lower income threshold	subclause 3(4) of Schedule 2 definition of ***lower income threshold***
19	CCS hourly rate cap	CCS hourly rate cap	subclause 2(3) of Schedule 2
20	Annual cap for CCS	CCS annual cap	subclause 1(2) of Schedule 2

48 Subclause 3(1) of Schedule 4 (table items 18 to 22)

Repeal the items, substitute:

18	CCS lower income threshold	1 July	December	highest December quarter before reference quarter (but not earlier than December quarter 2015)	$1.00
19	CCS hourly rate cap	1 July	December	highest December quarter before reference quarter (but not earlier than December quarter 2015)	$0.01
20	CCS annual cap	1 July	December	highest December quarter before reference quarter (but not earlier than December quarter 2015)	$1.00

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49 Subclauses 3(5) to (6C) of Schedule 4

Repeal the subclauses.

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

50 Subsection 3(1)

Insert:

> ***allocation rules*** means the Minister's rules prescribed under section 198A.

51 Subsection 3(1) (definition of *amount of the entitlement*)

Repeal the definition.

52 Subsection 3(1)

Insert:

> ***appropriate State/Territory body*** has the meaning given by subsection 204K(7).

53 Subsection 3(1) (definition of *approved centre based long day care service*)

Repeal the definition.

54 Subsection 3(1) (definition of *approved child care service*)

Repeal the definition, substitute:

> ***approved child care service*** has the meaning given by section 194G.

55 Subsection 3(1)

Repeal the following definitions:

(a) definition of ***approved family day care service***;

(b) definition of ***approved in-home care service***.

(c) definition of ***approved occasional care service***;

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(d) definition of ***approved outside school hours care service***.

56 Subsection 3(1)

Insert:

approved provider means a provider for which an approval is in effect under Division 1 of Part 8 (and does not include a provider whose approval as a provider under that Part is suspended).

57 Subsection 3(1) (definition of *audit team*)

Repeal the definition, substitute:

audit team, in relation to an audit of an approved provider, means the expert engaged to carry out the audit of the provider and any person (other than an authorised person) assisting the expert.

58 Subsection 3(1) (definition of *CCB %*)

Repeal the definition.

59 Subsection 3(1)

Insert:

CCS quarter has the meaning given by subsection 67CE(3).

CCS reconciliation conditions has the meaning given by section 103A.

60 Subsection 3(1) (definition of *ceases*)

Repeal the definition.

61 Subsection 3(1)

Insert:

ceases to be enrolled has the meaning given by section 200B.

child care decision has the meaning given by section 103.

62 Subsection 3(1) (definition of *child care service payment*)

Repeal the definition, substitute:

child care service payment means:

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(a) a fee reduction amount payable to a provider under section 67EB; or

(b) a payment prescribed by the Minister's rules that is made to approved providers under a scheme or program (however described) administered by the Department.

63 Subsection 3(1) (definition of *civil penalty order*)

Repeal the definition.

64 Subsection 3(1) (definition of *civil penalty provision*)

Repeal the definition, substitute:

civil penalty provision has the same meaning as in the Regulatory Powers Act.

65 Subsection 3(1)

Insert:

complying written arrangement has the meaning given by subsection 200B(3).

66 Subsection 3(1) (definition of *eligibility rules*)

Repeal the definition.

67 Subsection 3(1) (definition of *enrolled*)

Repeal the definition, substitute:

enrolled has the meaning given by section 200B.

68 Subsection 3(1)

Insert:

enrolment notice means a notice given under subsection 200A(1), (2) or (3).

69 Subsection 3(1) (definition of *executive officer*)

Repeal the definition.

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70 Subsection 3(1)

Insert:

> ***fee reduction amount*** has the meaning given by subsection 67EB(2).
>
> ***fee reduction decision*** has the meaning given by subsection 67EB(2).
>
> ***first deadline*** has the meaning given by section 103B.
>
> ***immunisation grace period*** has the meaning given by subsection 67CD(9).

71 Subsection 3(1) (paragraph (b) of the definition of *indexed actual income*)

Repeal the paragraph, substitute:

(b) for an individual in relation to child care subsidy—means the amount stated for the individual in a notice under subsection 67DD(2).

72 Subsection 3(1) (paragraph (b) of the definition of *indexed estimate*)

Repeal the paragraph, substitute:

(b) for an individual in relation to child care subsidy—means the amount stated for the individual in a notice under subsection 67DC(2).

73 Subsection 3(1)

Insert:

> ***large centre-based day care provider*** has the meaning given by section 4A.

74 Subsection 3(1) (definition of *large long day care centre operator*)

Repeal the definition.

75 Subsection 3(1)

Insert:

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listed child care information provision has the meaning given by section 219UB.

meets the information requirements has the meaning given by subsection 67CD(10).

person with management or control has the meaning given by section 194F.

provider:

(a) has the meaning given by subsection 194A(1); and

(b) is affected by sections 230A and 230B.

76 Subsection 3(1) (definition of *registered carer*)

Repeal the definition.

77 Subsection 3(1)

Insert:

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

related providers has the meaning given by subsection 4A(3).

relevant arrangement has the meaning given by subsection 200A(3).

78 Subsection 3(1)

Repeal the following definitions:

(a) definition of ***reporting period***;

(b) definition of ***schooling %***.

79 Subsection 3(1)

Insert:

second deadline has the meaning given by section 103C.

starts to be enrolled has the meaning given by section 200B.

statement period has the meaning given by subsection 201D(7).

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80 Subsection 3(1) (paragraph (b) of the definition of *TFN claim person*)

Repeal the paragraph, substitute:

(b) in relation to a claim made by a claimant for CCS, means:

(i) the claimant; and

(ii) the claimant's partner (if any) at the time the claim is made; or

81 Subsection 3(1) (paragraph (b) of the definition of *TFN determination person*)

Repeal the paragraph, substitute:

(b) for the purposes of a determination under Division 3 of Part 3A (payment of child care subsidy and additional child care subsidy) for an individual for a week—the individual and anyone who was the partner of the individual on the first Monday of the CCS fortnight to which the determination relates; or

82 Subsection 3(1) (paragraph (b) of the definition of *TFN substitution person*)

Repeal the paragraph, substitute:

(b) by an individual for CCS in substitution for an individual who has died; or

83 Subsection 3(1)

Insert:

withholding amount has the meaning given by subsection 67EB(3).

84 Subsections 3(4A), (4B), (5) and (6)

Repeal the subsections, substitute:

(5) For the purposes of the family assistance law:

(a) a reference to the approved provider of a child care service or of an approved child care service is a reference to the provider approved in respect of the service; and

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(b) a reference to the provider of a child care service is a reference to:

(i) the provider approved in respect of the service (if any); or

(ii) if a provider is not approved in respect of the service—the provider that operates the service.

(6) For the purposes of the family assistance law:

(a) a reference to an approved child care service of a provider or of an approved provider is a reference to a child care service in respect of which the provider is approved; and

(b) a reference to a child care service of a provider or of an approved provider is a reference to a child care service in respect of which the provider is approved or which is operated by the provider.

Note: A provider can only be approved in respect of a service it operates. See section 194B.

85 Section 4A

Repeal the section, substitute:

4A Large centre-based day care providers

(1) A provider is a ***large centre-based day care provider***, for a financial year, if, at any time in the financial year:

(a) the provider operates 25 or more approved child care services that are centre-based day care services; or

(b) the provider is one of 2 or more related providers who together operate 25 or more approved child care services that are centre-based day care services; or

(c) the provider proposes to operate, or is one of 2 or more related providers who propose to together operate, 25 or more approved child care services that are centre-based day care services.

(2) The Minister's rules may prescribe a number other than 25 for the purposes of paragraphs (1)(a), (b) and (c). If the Minister's rules do so, those paragraphs are taken to refer to the prescribed number.

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(3) The providers in a group of 2 or more providers are ***related providers*** for a financial year for the purposes of subsection (1) if, at any time during the financial year, each provider in the group is related to at least one other provider in the group in any of the following ways:

(a) the providers have in common 25% or more of the persons who are concerned in, or take part in, their management;

(b) one provider owns 15% or more of the other provider;

(c) one provider is entitled to receive 15% or more of any dividends paid by the other provider.

86 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Payment of family assistance (other than child care subsidy and additional child care subsidy)

87 Divisions 4 and 4AA of Part 3

Repeal the Divisions.

88 Paragraphs 66(1)(e) and (ea)

Repeal the paragraphs.

89 Paragraphs 66(1)(f), (faa), (fa) and (fb)

Repeal the paragraphs.

90 Paragraphs 66(2)(a), (aa), (aaa) and (ab)

Repeal the paragraphs.

91 Paragraphs 66(2)(cb), (cba) and (cc)

Repeal the paragraphs.

92 After Part 3

Insert:

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Part 3A—Payment of child care subsidy and additional child care subsidy

Division 1—Introduction

67AA Simplified outline of this Part

Individuals must make a claim for CCS in order to become entitled to be paid CCS or ACCS in relation to child care provided to a child.

In order to become entitled to be paid ACCS (grandparent) or ACCS (transition to work), an application is needed as well as the claim for CCS.

The Secretary will determine whether an individual is eligible for CCS for a child. If the individual is eligible, weekly determinations are then made about how much (if any) CCS or ACCS is to be paid each week.

Weekly payments are mostly made via the child care service provider, who will pass them on to the individual (usually as a fee reduction).

Broadly, recipients of CCS and ACCS have responsibilities to keep the Secretary informed about changes in their circumstances that might affect their eligibility for or entitlement to CCS or ACCS, and to respond to requests for information.

An approved provider who is eligible for ACCS (child wellbeing) for a child does not need to make a claim, but does need to make a declaration in order to become entitled to be paid the ACCS. Providers also have responsibilities to keep the Secretary informed and respond to requests for information.

It is also possible for individuals to claim CCS or ACCS in substitution for an individual who has died. If an individual is entitled to be paid such an amount, it is paid directly to the individual.

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Note: For the constitutional basis of the provisions of this Act in relation to child care subsidy and additional child care subsidy (including provisions in relation to approved providers), see section 85AB of the Family Assistance Act.

67AB Forms of CCS and ACCS

(1) An individual may, in accordance with this Part, become entitled to be paid:
  (a) CCS by fee reduction;
  (b) ACCS by fee reduction;
  (c) CCS or ACCS in substitution for an individual who has died.

(2) An approved provider may, in accordance with this Part, become entitled to be paid ACCS (child wellbeing).

Division 2—Making claims

67BA Simplified outline of this Division

Claims for CCS must include particular information and be made in a particular way. Among other things, information is needed about bank account details and tax file numbers.

A claim that does not meet the requirements is taken not to have been made.

67BB Need for a claim

The only way that an individual (other than an approved provider) can become entitled to be paid CCS or ACCS is to make a claim in respect of a child for CCS in accordance with this Division.

Note 1: As well as making a claim for CCS, an individual who wants to be paid ACCS (grandparent) or ACCS (transition to work) must apply for that kind of ACCS. See paragraphs 67CD(4)(a) and (6)(a).

Note 2: An approved provider does not have to make a claim to be entitled to be paid ACCS (child wellbeing), but does need to make a declaration. See paragraph 67CH(1)(c).

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67BC Who can claim

The only persons who can make a claim for CCS in accordance with this Division are individuals.

67BD Kinds of claims

An individual may make a claim in respect of a child for CCS:

(a) by fee reduction; or

(b) in substitution for an individual who has died.

67BE When a claim is effective

A claim made by an individual in respect of a child for CCS is effective if:

(a) the claim is made in a form and manner approved by the Secretary; and

(b) the claim contains the information, and is accompanied by the documents, required by the Secretary; and

(c) the bank account requirements in section 67BG are met for the purposes of the claim; and

(d) unless paragraph (e) applies—the tax file number requirements in section 67BH are met for the purposes of the claim; and

(e) if the claim is for CCS in substitution for an individual who has died—the tax file number requirements in section 67BI are met for the purposes of the claim; and

(f) if the claim is for CCS in substitution for an individual who has died—the claim is made before the end of the income year after the income year in which the individual died; and

(g) any other requirements in the Secretary's rules are met; and

(h) no other provision in this Division prevents the claim being effective.

67BF Claims that are taken not to have been made

(1) A claim that is not effective is taken not to have been made.

(2) A claim is taken not to have been made if:

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(a) in the claim, the individual makes a statement referred to in subparagraph 67BG(1)(a)(ii) (about providing bank account details); and

(b) at the end of the 28 days after the day the claim is made, the individual has not provided the details; and

(c) the Secretary has not exempted the individual under paragraph 67BG(1)(b).

(3) A claim is taken not to have been made if:

(a) in the claim or in a document accompanying it, an individual makes a statement referred to in paragraph 67BH(1)(b) or (c) or 67BI(1)(b) or (c) (about providing tax file number details); and

(b) at the end of the 28 days after the claim is made, the Commissioner of Taxation has not told the Secretary what the individual's tax file number is; and

(c) there is no determination in effect under paragraph 67BH(3)(b) or 67BI(3)(b) exempting the individual.

67BG Bank account requirements

For purposes of claim

(1) The bank account requirements are met for the purposes of a claim made by an individual if:

(a) in the claim, the individual:

(i) provides details of a bank account, maintained by the individual alone or jointly with someone else, into which amounts of CCS or ACCS can be paid; or

(ii) makes a statement that he or she will provide details of such a bank account within 28 days after the claim is made; or

(b) the Secretary is satisfied that it is appropriate to exempt the individual from the requirement in paragraph (a).

For purposes of determination

(2) The bank account requirements are met for the purposes of a determination under Division 3 for an individual if:

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(a) the Secretary has the details of a bank account, maintained by the individual alone or jointly with someone else, into which amounts of CCS or ACCS can be paid; or

(b) paragraph (1)(b) applies.

67BH Tax file number requirements—CCS by fee reduction

For purposes of claim

(1) The tax file number requirements in this section are met for the purposes of a claim if one of the following statements is made in relation to each TFN claim person:

(a) a statement, by the claimant, of the TFN claim person's tax file number;

(b) a statement, by a TFN claim person, that the TFN claim person:

(i) has a tax file number and has asked the Commissioner of Taxation to tell the person what it is; and

(ii) authorises the Commissioner of Taxation to tell the Secretary whether the person has a tax file number and, if the person has, what it is;

(c) a statement, by a TFN claim person, that the TFN claim person:

(i) has an application for a tax file number pending; and

(ii) authorises the Commissioner of Taxation to tell the Secretary the outcome of the application (including if the person withdraws the application).

(2) A statement referred to in subsection (1) must be made:

(a) if made by the claimant—in the claim; and

(b) otherwise—in a document accompanying the claim in a form approved by the Secretary.

(3) Subsection (1) does not apply in relation to a TFN claim person if the Secretary:

(a) is satisfied that the TFN claim person is or was the claimant's partner and that the claimant can obtain from the person neither the person's tax file number nor a statement referred to in paragraph (1)(b) or (c); and

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(b) makes a written determination to that effect.

(4) A determination made under paragraph (3)(b) is not a legislative instrument.

For purposes of determination

(5) The tax file number requirements in this section are met for the purposes of a determination under Division 3 for an individual if one of the following applies in relation to all TFN determination persons:

(a) the Secretary knows the TFN determination person's tax file number;

(b) a determination made under paragraph (3)(b) is in effect in relation to the TFN determination person.

67BI Tax file number requirements—CCS in substitution for an individual who has died

For purposes of claim

(1) The tax file number requirements in this section are met for the purposes of a claim if one of the following statements is made in relation to each TFN substitution person:

(a) a statement, by the claimant, of a TFN substitution person's tax file number;

(b) a statement, by a TFN substitution person who was the deceased individual's partner, that the person:

(i) has a tax file number and has asked the Commissioner of Taxation to tell the person what it is; and

(ii) authorises the Commissioner of Taxation to tell the Secretary whether the person has a tax file number and, if the person has, what it is;

(c) a statement, by a TFN substitution person who was the deceased individual's partner, that the person:

(i) has an application for a tax file number pending; and

(ii) authorises the Commissioner of Taxation to tell the Secretary the outcome of the application (including if the person withdraws the application).

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(2) A statement referred to in subsection (1) must be made:
  (a) if made by the claimant—in the claim; and
  (b) otherwise—in a document accompanying the claim in a form approved by the Secretary.

(3) Subsection (1) does not apply in relation to a TFN substitution person if the Secretary:
  (a) is satisfied that the claimant does not know the TFN substitution person's tax file number and cannot obtain a statement referred to in paragraph (1)(b) or (c); and
  (b) makes a written determination to that effect.

(4) A determination made under paragraph (3)(b) is not a legislative instrument.

For purposes of determination

(5) The tax file number requirements in this section are met for the purposes of a determination under Division 3 for an individual if one of the following applies in relation to all TFN substitution persons:
  (a) the Secretary knows the TFN substitution person's tax file number;
  (b) a determination made under paragraph (3)(b) is in effect in relation to the TFN substitution person.

Division 3—Determinations

Subdivision A—Entitlement to be paid CCS or ACCS

67CA Simplified outline of this Division

An individual or an approved provider who is eligible for CCS or ACCS is only entitled to be paid CCS or ACCS if the Secretary has made a determination to that effect.

For individuals who claim in respect of a child for CCS by fee reduction, the Secretary will make an initial determination of the individual's eligibility for CCS for the child. Once this is in effect,

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determinations are made, for each week, about the individual's entitlement to CCS or ACCS that week.

To be entitled to be paid for a week, the individual must:

(a) be eligible for CCS or ACCS (generally); and

(b) meet some additional entitlement conditions.

The additional entitlement conditions mean that not everyone who is eligible for CCS or ACCS will be entitled to be paid for every week. In particular, individuals need to have met the CCS reconciliation conditions for previous income years for which they were entitled to CCS (usually these conditions are met by obtaining a timely tax assessment) and to have kept the Secretary up to date about changes affecting eligibility or entitlement.

Even if the Secretary determines that an individual is entitled to be paid CCS for a week, the individual might later have to repay the CCS if the individual does not meet the CCS reconciliation conditions in time. (This does not apply to ACCS.)

Determinations are also made each week in relation to an approved provider's entitlement to be paid ACCS (child wellbeing) for a child.

One-off determinations are made in relation to an individual's entitlement to be paid CCS or ACCS in substitution for an individual who has died.

67CB Entitlement to be paid CCS or ACCS

(1) An individual or an approved provider is only entitled to be paid CCS or ACCS if the Secretary has made a determination to that effect under this Division.

(2) The Secretary is to make determinations under this Division on the basis of the information available to the Secretary at the time of making the determination.

Note: Part 5 provides for review of determinations, including in relation to the use of information in circumstances where information becomes available after a determination is made.

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(3) At any time, an individual or an approved provider is entitled to be paid, in accordance with this Part, the amount of CCS or ACCS (if any) for a week specified in whichever child care decision is in effect at the time for the week.

(4) However, an individual who is entitled to be paid CCS for sessions of care provided to a child in a week:

(a) ceases to be entitled to be paid that CCS, and is taken never to have been entitled to be paid that CCS, if the individual has not met the CCS reconciliation conditions, for the income year in which the CCS fortnight that includes the week starts, by the first deadline for the income year; and

(b) cannot again become entitled to be paid that CCS if the individual does not meet the CCS reconciliation conditions for the income year by the second deadline for the income year.

Note: See section 105E for the determinations the Secretary is required to make in these circumstances.

(5) Subsection (4) applies despite any other provision of this Act or the Family Assistance Act or any determination in effect to the contrary.

Subdivision B—Determinations for individuals claiming CCS by fee reduction

67CC Determination of individual's eligibility for CCS by fee reduction

Determination on effective claim

(1) If an individual makes an effective claim in respect of a child for CCS by fee reduction, the Secretary must determine:

(a) if, when making the determination, the Secretary is satisfied that the requirements in subparagraphs 85BA(1)(a)(i) to (iv) of the Family Assistance Act are met in relation to the claim—that the individual is eligible for CCS by fee reduction for the child; and

(b) if not so satisfied—that the individual is not eligible for CCS by fee reduction for the child.

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Cessation of eligibility

(2) The Secretary may determine that an individual for whom a determination under paragraph (1)(a) is in effect in relation to a child is not eligible for CCS by fee reduction for the child, if any of the following apply:

(a) the Secretary is satisfied that the individual has ceased to be eligible, and is not reasonably likely to become eligible again, for CCS by fee reduction for sessions of care provided to the child;

(b) the Secretary has made determinations under subsection 67CD(8) (the individual is not entitled to be paid CCS or ACCS for sessions of care provided to the child) for at least 52 consecutive weeks (otherwise than because of subsection 105E(2));

(c) the child ceased to meet the immunisation requirements in section 6 of the Family Assistance Act more than 63 days ago.

Cessation of eligibility on request

(3) The Secretary may determine that an individual for whom a determination under paragraph (1)(a) is in effect in relation to a child is not eligible for CCS by fee reduction for the child, if the individual requests the Secretary, in a form and manner approved by the Secretary, to do so. The Secretary may make the determination despite the individual being eligible.

Date of effect

(4) A determination made under paragraph (1)(a):

(a) takes effect on the day specified in the determination, which must be the first day for which the Secretary is satisfied that the requirements in subparagraphs 85BA(1)(a)(i) to (iv) of the Family Assistance Act are met that is also:

(i) the first Monday of a CCS fortnight; and

(ii) not more than 28 days before the day the claim was made; and

(b) continues in effect until any of the following happens:

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(i) it is superseded by a determination made under subsection (2) or (3);
(ii) it is set aside on review;
(iii) a day or event (if any) specified in the determination as the day or event on which the determination ceases to have effect;
(iv) the individual dies.

(5) A determination made under paragraph (1)(b) has effect from the day the determination is made.

(6) A determination made under subsection (2) or (3) has effect from the day specified in the determination (which may be earlier than the day the determination is made).

67CD Determination of individual's entitlement to be paid CCS or ACCS

Preconditions for making determinations

(1) The Secretary may make a determination under this section for an individual for a week, in relation to sessions of care provided to a child by an approved child care service, only if:
(a) a determination that the individual is eligible for CCS by fee reduction for the child is in effect under paragraph 67CC(1)(a) in relation to any day in the week; and
(b) the provider of the service has given the Secretary a report under section 204B (requirement to report about children for whom care is provided) in relation to the child for the week, including such a report as varied, substituted or corrected under subsection 204B(6) or section 204C; and
(c) if the individual's claim for CCS was made less than 28 days ago—the bank account requirements in section 67BG are met for the purposes of a determination under this Division for the individual; and
(d) if the individual's claim for CCS was made less than 28 days ago—the tax file number requirements in section 67BH are met for the purposes of a determination under this Division for the individual; and

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(e) if the Secretary gives the individual a notice under subsection (11) in relation to the child's enrolment for those sessions—the individual has complied with the notice.

Note: For paragraph (b), the report must be given in accordance with subsection 204B(2), and is not given in accordance with that subsection unless the required information is accurate and complete (see subsection 204B(3)).

Entitlement to be paid CCS

(2) If the Secretary is satisfied that:

(a) the individual is eligible for CCS under section 85BA of the Family Assistance Act for one or more of the sessions of care provided by the service to the child in the week, or would be eligible except that a session of care is provided on a day in an immunisation grace period for the child (see subsection (9)); and

(b) the individual meets the information requirements in subsection (10) for the week; and

(c) none of subsections (3), (4) and (6) apply in relation to the sessions of care; and

(d) the amount of CCS to which the individual will become entitled for the sessions of care is more than nil;

the Secretary must determine:

(e) that the individual is entitled to be paid CCS for the sessions of care referred to in paragraph (a); and

(f) the amount of CCS the individual is entitled to be paid.

Note: See subsection (1) for preconditions for making determinations under this subsection.

Entitlement to be paid ACCS (child wellbeing) or ACCS (temporary financial hardship)

(3) If the Secretary is satisfied that:

(a) the individual is eligible for ACCS under section 85CA or 85CG of the Family Assistance Act for one or more sessions of care provided by the service to the child in the week, or would be except that a session of care is provided on a day in an immunisation grace period for the child (see subsection (9)); and

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(b) there is no determination in effect under subsection 67CH(2) that a provider is entitled to be paid ACCS (child wellbeing) for those sessions of care; and

(c) the individual meets the information requirements in subsection (10) for the week;

the Secretary must determine:

(d) that the individual is entitled to be paid ACCS (child wellbeing) or ACCS (temporary financial hardship) (as applicable) for the sessions of care referred to in paragraph (a); and

(e) the amount of ACCS the individual is entitled to be paid.

Note: See subsection (1) for preconditions for making determinations under this subsection.

Entitlement to be paid ACCS (grandparent)

(4) If the Secretary is satisfied that:

(a) the individual has applied to the Secretary, in a form and manner approved by the Secretary, and within any time period approved by the Secretary, for ACCS (grandparent) in relation to the week; and

(b) the application contains the information, and is accompanied by the documents, required by the Secretary; and

(c) the individual is eligible for ACCS under section 85CJ of the Family Assistance Act for one or more sessions of care provided by the service to the child in the week, or would be except that a session of care is provided on a day in an immunisation grace period for the child (see subsection (9)); and

(d) there is no determination in effect under subsection 67CH(2) that a provider is entitled to be paid ACCS (child wellbeing) for those sessions of care; and

(e) the individual meets the information requirements in subsection (10) for the week;

the Secretary must determine:

(f) that the individual is entitled to be paid ACCS (grandparent) for the sessions of care referred to in paragraph (c); and

(g) the amount of ACCS (grandparent) the individual is entitled to be paid.

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Note: See subsection (1) for preconditions for making determinations under this subsection.

(5) A determination cannot be made under subsection (4) for an individual for a week if the CCS fortnight that includes the week starts more than 28 days before the individual made the application referred to in paragraph (4)(a).

Entitlement to be paid ACCS (transition to work)

(6) If the Secretary is satisfied that:

(a) the individual has applied to the Secretary, in a form and manner approved by the Secretary, and within any time period approved by the Secretary, for ACCS (transition to work) in relation to the week; and

(b) the application contains the information, and is accompanied by the documents, required by the Secretary; and

(c) the individual is eligible for ACCS under section 85CK of the Family Assistance Act for one or more sessions of care provided by the service to the child in the week, or would be except that a session of care is provided on a day in an immunisation grace period for the child (see subsection (9)); and

(d) there is no determination in effect under subsection 67CH(2) that a provider is entitled to be paid ACCS (child wellbeing) for those sessions of care; and

(e) the individual meets the information requirements in subsection (10) for the week;

the Secretary must determine:

(f) that the individual is entitled to be paid ACCS (transition to work) for the sessions of care referred to in paragraph (b); and

(g) the amount of ACCS (transition to work) the individual is entitled to be paid.

Note: See subsection (1) for preconditions for making determinations under this subsection.

(7) A determination cannot be made under subsection (6) for an individual for a week if the CCS fortnight that includes the week

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starts before the individual made the application referred to in paragraph (6)(a).

No entitlement to be paid CCS or ACCS

(8) If the Secretary is not satisfied as referred to in subsection (2), (3), (4) or (6), the Secretary must determine that the individual is not entitled to be paid CCS or ACCS for the sessions of care provided to the child by the service in the week.

Immunisation grace period

(9) A session of care is provided on a day in an ***immunisation grace period*** for a child if:
  (a) on the day, the child does not meet the immunisation requirements in section 6 of the Family Assistance Act; and
  (b) the day is no more than 63 days after the day the child ceased to meet the immunisation requirements.

Meeting the information requirements

(10) An individual ***meets the information requirements*** for a week if, on a day in the week:
  (a) either of the following apply:
    (i) the bank account requirements in section 67BG are met for the purposes of a determination under this Division for the individual;
    (ii) the Secretary made a request of the individual under section 67FE no more than 28 days ago; and
  (b) any of the following apply:
    (i) the tax file number requirements in section 67BH are met for the purposes of a determination under this Division for the individual;
    (ii) the Secretary made a request of the individual under section 67FG no more than 28 days ago;
    (iii) the Secretary made a request of the individual under section 67FG no more than 56 days ago and a statement of the kind referred to in paragraph 67BH(1)(b) or (c) was provided in response within 28 days of the request;

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(c) if, before the week, a period for giving information or producing a document required under Division 1 of Part 6 had ended without the individual giving the information or producing the document—the individual has given the information or produced the document; and

(d) if a determination was made for the individual under section 67CD for a week in the income year (the ***relevant income year***) that is 2 income years before the income year in which the CCS fortnight that includes the week starts—the individual has met the CCS reconciliation conditions for the relevant income year.

Notice requiring information about enrolments

(11) For paragraph (1)(e), the Secretary may, by written notice, require an individual to give to the Secretary, in a form and manner approved by the Secretary, information stated in the notice in relation to the child's enrolment for sessions of care provided, or to be provided, by an approved child care service.

67CE Notice of determinations under this Subdivision

Notice to individual

(1) The Secretary must give written notice to an individual for whom any of the following determinations are made, no later than 7 days after making the determination:

(a) a determination under section 67CC about the individual's eligibility for CCS for a child;

(b) a determination under section 67CD about the individual's entitlement to be paid CCS or ACCS for a week, if the determination is different from a determination made under that section for the individual for the previous week for any of the following reasons:

(i) a change in the individual's applicable percentage;

(ii) a change in the individual's activity test result;

(iii) the annual cap that applies to the individual being reached for a child for an income year.

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(2) At least once every CCS quarter, the Secretary must give written notice to an individual for whom determinations are made under section 67CD for weeks starting in the CCS quarter.

(3) A ***CCS quarter*** is the period of 3 months starting on the first Monday of the first CCS fortnight each January, April, July and October.

Notice to providers

(4) The Secretary must give written notice of a determination made under section 67CD to the provider of the child care service that provided the sessions of care to which the determination relates, as soon as practicable after making the determination.

(5) A notice under subsection (4) may be given to a provider by making the notice available to the provider using an electronic interface.

(6) If the Secretary has decided to pay the fee reduction amount in relation to a determination under section 67CD directly to the individual under subsection 67EC(2), the notice under subsection (4) of this section must include a statement to that effect.

Subdivision C—Determinations for individuals claiming CCS or ACCS in substitution for individual who has died

67CF Determination of individual's entitlement to be paid CCS or ACCS in substitution for individual who has died

Preconditions for making determinations

(1) The Secretary may make a determination under this section for an individual (the ***substitute***) only if:
   (a) the substitute has made an effective claim in respect of a child for CCS in substitution for an individual who has died; and
   (b) the provider of a child care service that provided sessions of care to the child in a week to which the claim relates has given the Secretary a report under section 204B (requirement

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to report about children for whom care is provided) in relation to the child for each week in which such sessions of care were provided, including such a report as varied, substituted or corrected under subsection 204B(6) or section 204C; and

(c) the bank account requirements in section 67BG are met for the purposes of a determination under this Division; and

(d) the tax file number requirements in section 67BI are met for the purposes of a determination under this Division.

Note: For paragraph (b), the report must be given in accordance with subsection 204B(2), and is not given in accordance with that subsection unless the required information is accurate and complete (see subsection 204B(3)).

Individual entitled to be paid CCS or ACCS in substitution

(2) If the Secretary is satisfied that the substitute is eligible for an amount of CCS or ACCS under section 85DA of the Family Assistance Act, the Secretary must determine in writing:

(a) that the substitute is entitled to be paid CCS or ACCS in substitution for the individual who has died; and

(b) the amount of CCS or ACCS that the substitute is entitled to be paid.

Individual not entitled to be paid CCS or ACCS in substitution

(3) If the Secretary is not satisfied as referred to in subsection (2), the Secretary must determine that the substitute is not entitled to be paid CCS or ACCS in substitution for the individual who has died.

67CG Notice of determinations under this Subdivision

The Secretary must give written notice to an individual for whom a determination is made under section 67CF about the individual's entitlement to be paid CCS or ACCS in substitution for an individual who has died, no later than 7 days after making the determination.

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Subdivision D—Determinations for approved providers

67CH Determination of provider's entitlement to be paid ACCS (child wellbeing)

Preconditions for making determinations

(1) The Secretary must make a determination under this section for an approved provider for a week, in relation to sessions of care provided by an approved child care service of the provider to a child, if:

(a) either of the following is in effect in relation to the child for the week:

(i) a certificate given by the provider under section 85CB of the Family Assistance Act;

(ii) a determination made by the Secretary under section 85CE of the Family Assistance Act; and

(b) the provider has given the Secretary a report for the week under section 204B (requirement to report about children for whom care is provided) in relation to the child, including such a report as varied, substituted or corrected under subsection 204B(6) or section 204C; and

(c) the provider has given the Secretary a declaration, in a form approved by the Secretary, that the provider has made reasonable endeavours to identify an individual who is eligible for ACCS (child wellbeing) for the sessions of care and has not been able to identify anyone.

Note: For paragraph (b), the report must be given in accordance with subsection 204B(2), and is not given in accordance with that subsection unless the required information is accurate and complete (see subsection 204B(3)).

Provider entitled to be paid ACCS (child wellbeing)

(2) If the Secretary is satisfied that the provider is eligible for ACCS under subsection 85CA(2) of the Family Assistance Act for sessions of care provided to the child in the week, the Secretary must determine in writing:

(a) that the provider is entitled to be paid ACCS (child wellbeing) for those sessions of care; and

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(b) the amount of ACCS (child wellbeing) that the provider is entitled to be paid.

Provider not entitled to be paid ACCS (child wellbeing)

(3) If the Secretary is not satisfied as referred to in subsection (2), the Secretary must determine in writing that the provider is not entitled to be paid ACCS (child wellbeing) for those sessions of care.

67CI Notice of determinations under this Subdivision

(1) The Secretary must give written notice of a determination made under this Subdivision to the approved provider for whom the determination was made as soon as practicable.

(2) A notice under subsection (1) may be given to an approved provider by making the notice available to the provider using an electronic interface.

Division 4—Estimates etc. of adjusted taxable income

67DA Simplified outline of this Division

To work out the amount of CCS an individual is entitled to be paid for a week, it is necessary to know the individual's adjusted taxable income for the income year the week relates to.

The final amount of the individual's income for the income year usually cannot be known until after the income year has ended.

In the meantime, the Secretary is able to rely on an estimate provided by the individual, or on an indexed estimate or the indexed actual income of an earlier income year.

After the individual meets the CCS reconciliation conditions, any underpayment to the individual will generally be topped up and any overpayments become debts due to the Commonwealth.

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67DB Determinations when adjusted taxable income is not known

Determinations under section 67CD

(1) This section applies if, at the time of making a determination under section 67CD for a week in a CCS fortnight, for an individual who is not eligible for any kind of ACCS, the individual has not met the CCS reconciliation conditions.

Estimate

(2) The Secretary may make the determination under section 67CD on the basis of the most recent of whichever of the following estimates (if any) exists on the first Monday of the CCS fortnight:
   (a) a reasonable estimate given to the Secretary by the individual;
   (b) the indexed estimate stated in a notice given to the individual under section 67DC and with a start day that has arrived or passed;
   (c) the indexed actual income stated in a notice given to the individual under section 67DD and with a start day that has arrived or passed.

No estimate

(3) If none of the estimates referred to in subsection (2) exists on the first Monday of the CCS fortnight, the Secretary must determine under subsection 67CD(8) that the individual is not entitled to be paid CCS or ACCS.

67DC Indexed estimates

(1) The Secretary may calculate an indexed estimate for an individual under subsection (5), with a start day chosen by the Secretary, if:
   (a) the individual, or the individual's partner, is a claimant for CCS by fee reduction; and
   (b) a determination is in effect under paragraph 67CC(1)(a) that the claimant is eligible for CCS for a child; and
   (c) information about the adjusted taxable income of the individual needed to make a determination under Division 3 for the claimant is not known; and

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(d) the claimant has given the Secretary an estimate of the amount needed that the Secretary considers to be reasonable.

(2) If the Secretary calculates an indexed estimate for the individual, the Secretary may give the claimant a notice:

(a) stating the indexed estimate for the individual; and

(b) specifying the start day used in the Secretary's calculation (which must be the first day of a CCS fortnight at least 14 days after the day the notice is given).

(3) The Secretary must not give a notice under subsection (2) stating an indexed estimate for the individual with a start day in an income year if the Secretary has already given a notice under subsection (2) stating an indexed estimate for that individual with a start day in the same income year.

(4) A notice given to a claimant under subsection (2) stating an indexed estimate for an individual has no effect if, before the start day specified in the notice for the indexed estimate, the Secretary gives the claimant a notice under subsection 67DD(2) stating an indexed actual income for the same individual. Any such notice under subsection 67DD(2) must specify a start day that is no earlier than the start day specified in the superseded notice.

(5) Calculate an indexed estimate (which may be nil) for the individual by multiplying the individual's current ATI number (see subsection (6)) by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

AWE means the amount published by the Australian Statistician in a document titled "Average Weekly Earnings" under the headings "Average Weekly Earnings, Australia—Original—Persons—All employees total earnings" (or, if any of those change, in a replacement document or under replacement headings).

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highest previous November means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

most recent November means the November of the income year before the income year in which the start day occurs.

reference period, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

(6) For the purposes of subsection (5), the individual's ***current ATI number*** is:

(a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 67DD(2) stating an indexed actual income for the individual with a start day that has not arrived—the indexed actual income stated in the notice; or

(b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 67DB (disregarding the effect for couples of section 67DE of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or

(c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 67DB if the individual were the claimant (disregarding the effect for couples of section 67DE of this Act and clause 3 of Schedule 3 to the Family Assistance Act).

(7) A notice under subsection (2) is not a legislative instrument.

67DD Indexed actual incomes

(1) The Secretary may calculate an indexed actual income for an individual under subsection (4), with a start day chosen by the Secretary, if:

(a) the individual, or the individual's partner, is a claimant for CCS by fee reduction; and

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(b) a determination is in effect under paragraph 67CC(1)(a) that the claimant is eligible for CCS; and

(c) information about the adjusted taxable income of the individual needed to make a determination under Division 3 for the claimant is not known; and

(d) the most recent such determination made for the claimant was made on the basis of an indexed estimate or an indexed actual income; and

(e) since the claimant was last given a notice under subsection 67DC(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for an individual, the claimant has not given the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and

(f) the adjusted taxable income for an income year (***actual income***) of the individual (disregarding the effect for couples of clause 3 of Schedule 3 to the Family Assistance Act) becomes known to the Secretary and it is the most recent income year for which the individual's actual income is known to the Secretary.

(2) If:

(a) the Secretary calculates an indexed actual income for the individual; and

(b) the indexed actual income is greater than the individual's current ATI number (see subsection (5));

the Secretary may give the claimant a notice:

(c) stating the indexed actual income for the individual; and

(d) specifying the start day used in the Secretary's calculation (which must be the start of a CCS fortnight at least 14 days after the day the notice is given).

(3) A notice given to a claimant under subsection (2) stating an indexed actual income for an individual has no effect if, before the start day specified in the notice, the Secretary gives the claimant another notice under that subsection or a notice under subsection 55AA(2) stating an indexed estimate or indexed actual income for the same individual. Any other such notice must specify a start day that is no earlier than the start day specified in the superseded notice.

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(4) Calculate an indexed actual income (which may be nil) for the individual by multiplying the actual income of the individual which became known to the Secretary by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

AWE means the amount published by the Australian Statistician in a document titled "Average Weekly Earnings" under the headings "Average Weekly Earnings, Australia—Original—Persons—All employees total earnings" (or, if any of those change, in a replacement document or under replacement headings).

highest previous November means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

most recent November means the November of the income year before the income year in which the start day occurs.

reference period, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

(5) For the purposes of paragraph (2)(b), the individual's ***current ATI number*** is:

(a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 67DC(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for the individual with a start day that has not arrived—the indexed estimate or indexed actual income stated in the notice; or

(b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for

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the individual under section 67DB (disregarding the effect for couples of section 67DE of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or

(c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 67DB if the individual were the claimant (disregarding the effect for couples of section 67DE of this Act and clause 3 of Schedule 3 to the Family Assistance Act).

(6) A notice under subsection (2) is not a legislative instrument.

67DE Indexed estimates and indexed actual incomes for members of couples

(1) This section applies in relation to any individual who is a member of a couple.

(2) For the purposes of this Act or the Family Assistance Act, any reference to a determination under section 67CD being made on the basis of an indexed estimate, or an indexed actual income, for an individual or stated in a notice, is affected by subsection (3).

(3) The reference is taken to be a reference to the determination being made on the basis of the indexed estimate, or the indexed actual income, for that individual or stated in that notice, combined with:

(a) the indexed estimate or indexed actual income for the individual's partner stated in a notice given to:

(i) if the individual is the claimant for CCS or ACCS (grandparent)—the individual; or

(ii) if the individual is the partner of the claimant—the individual's partner;

under subsection 67DC(2) or 67DD(2) with the most recent start day that has arrived or passed; or

(b) if there is no such indexed estimate or indexed actual income—a reasonable estimate of the adjusted taxable income of the individual's partner (disregarding the effect of clause 3 of Schedule 3 to the Family Assistance Act) that has been given to the Secretary by the individual.

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Division 5—Payments

67EA Simplified outline of this Division

If an individual is entitled to be paid CCS or ACCS by fee reduction for sessions of care provided to a child in a week:

(a) the Secretary pays the amount to the provider of the child care service (less a withholding amount in the case of CCS); and

(b) the provider must pass on the amount to the individual within 14 days (whether as a fee reduction or in any other way). The provider's obligation to pass on the amount is dealt with in section 201A.

If the individual does not receive their full entitlement in this way, the entitlement is paid directly to them, though usually not until after the CCS reconciliation conditions are met.

Approved providers who are entitled to be paid ACCS (child wellbeing), and individuals who are entitled to be paid CCS or ACCS in substitution for an individual who has died, are paid their entitlements directly.

67EB Payments to providers of individuals' entitlements to CCS or ACCS by fee reduction

(1) If a fee reduction decision is made for an individual in relation to sessions of care provided by a child care service to a child, the Secretary must pay the fee reduction amount for the decision to the credit of a bank account nominated and maintained by the provider of the service.

Note: However, the Secretary may instead pay the fee reduction amount directly to the individual (see subsection 67EC(2)).

(2) The following table sets out the decisions that are ***fee reduction decisions*** and the amount that is the ***fee reduction amount*** for each such decision. A reference to a provider being given notice of a fee reduction decision is a reference to the provider being given notice

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of the decision under the provision specified for the decision in the table.

Fee reduction decisions and fee reduction amounts			
Item	**Fee reduction decision**	**Fee reduction amount**	**Notice of the decision**
1	a determination made under subsection 67CD(2) of an amount of CCS the individual is entitled to be paid for sessions of care provided by a service to a child in a week, if made while the child is still enrolled for care by the service	the amount of CCS the individual is entitled to be paid less the withholding amount for the payment	subsection 67 CE(4)
2	a determination made under subsection 67CD(3), (4) or (6) of an amount of ACCS the individual is entitled to be paid for sessions of care provided by a service to a child in a week, if made while the child is still enrolled for care by the service	the amount of ACCS the individual is entitled to be paid	subsection 67 CE(4)
3	a decision on review under Part 5 of this Act or under the AAT Act that has the effect that the amount of CCS an individual is entitled to be paid for sessions of care provided by a service to a child in a week in a CCS fortnight is increased (including from nil), if the decision is made: (a) before the individual meets the CCS reconciliation conditions for the income year in which the CCS fortnight starts; and (b) while the child is still enrolled for care by the service	the amount by which the entitlement is increased, less the withholding amount for the payment	subsection 106A(2) or 109B(2A) or section 136

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Fee reduction decisions and fee reduction amounts			
Item	**Fee reduction decision**	**Fee reduction amount**	**Notice of the decision**
4	a decision on review under Part 5 of this Act or under the AAT Act that has the effect that the amount of ACCS an individual is entitled to be paid for sessions of care provided by a service to a child in a week in a CCS fortnight is increased (including from nil), if the decision is made: (a) before the individual meets the CCS reconciliation conditions for the income year in which the CCS fortnight starts; and (b) while the child is still enrolled for care by the service	the amount by which the entitlement is increased	subsection 106A(2) or 109B(2A) or section 136

(3) The ***withholding amount***, for a payment, is the following percentage of the payment:
  (a) 10%;
  (b) if the Minister's rules prescribe a different percentage and paragraph (c) does not apply—the prescribed percentage;
  (c) if a determination made under subsection (4) applies to the individual—the percentage specified in the determination.

(4) The Secretary may make a determination specifying a percentage for an individual for the purposes of paragraph (3)(c), if the Secretary is satisfied that the percentage is appropriate to manage a debt that has been or might be incurred by the individual under Part 4.

(5) A determination made under subsection (4) is not a legislative instrument.

(6) This section is subject to:
  (a) subsection 67EC(2) (direct payment to individuals); and
  (b) Part 4 (overpayments and debt recovery); and
  (c) paragraph 195H(1)(f) (suspension of payments); and

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(d) section 205B (setting off business continuity payments).

67EC Payment directly to individuals of entitlements to CCS or ACCS

Before CCS reconciliation conditions met

(1) If:

(a) a decision is made for an individual in relation to sessions of care provided by an approved child care service to a child; and

(b) the decision would be a fee reduction decision except that the child is not enrolled for care by the service when the decision is made;

the Secretary must pay the amount that would have been the fee reduction amount for the decision, in accordance with subsection (5):

(c) directly to the individual; or

(d) if the Secretary considers it appropriate—to another person:

(i) on the individual's behalf; or

(ii) to discharge or set off an obligation of the individual to the other person.

(2) If:

(a) a fee reduction decision is made for an individual in relation to sessions of care provided by an approved child care service to a child; and

(b) the Secretary considers that it is appropriate in the circumstances;

the Secretary may pay the fee reduction amount directly to the individual in accordance with subsection (5) instead of under subsection 67EB(1) (payment to credit of approved provider's bank account).

Fee reduction amounts not passed on

(3) If a provider:

(a) remits a fee reduction amount to the Secretary in accordance with paragraph 201A(1)(b); or

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(b) incurs a debt to the Commonwealth under section 71D in relation to a fee reduction amount;

the Secretary may pay the fee reduction amount directly to the individual in accordance with subsection (5).

After CCS reconciliation conditions met

(4) If:

(a) an individual is entitled to be paid CCS or ACCS by fee reduction for sessions of care provided by an approved child care service in CCS fortnights starting in an income year (the ***relevant income year***); and

(b) the individual meets the CCS reconciliation conditions for the relevant income year no later than the second deadline for the relevant income year; and

(c) the total of the fee reduction amounts passed on by the provider of the service to the individual under section 201A, for fee reduction decisions for weeks in CCS fortnights starting in the relevant income year, is less than the total amount of CCS or ACCS the individual is entitled to be paid for those weeks;

the Secretary must pay so much of the difference as has not already been paid under subsection (1), (2) or (3) to the individual under subsection (5).

How amounts are to be paid under this section

(5) The whole or any part of an amount mentioned in subsection (1), (2), (3) or (4) must be paid at such time as the Secretary considers appropriate:

(a) to the credit of a bank account nominated and maintained by:

(i) the individual; or

(ii) if the amount is to be paid to another person under paragraph (1)(b)—the other person; or

(b) if the Secretary so directs—in a different way.

(6) Without limitation, the Secretary may consider that it is not appropriate to make a payment under subsection (1), (2) or (3) until after the individual meets the CCS reconciliation conditions for the

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income year in which the CCS fortnight that includes the week to which the payment relates starts.

Provisions this section is subject to

(7) This section is subject to:
  (a) Part 4 (overpayments and debt recovery); and
  (b) Division 3 of Part 8B (payments to payment nominees).

67ED Payment of CCS or ACCS in substitution for an individual who has died

(1) If an individual is entitled to be paid CCS or ACCS in substitution for an individual who has died, the Secretary must pay the amount of the entitlement, at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the individual.

(2) The Secretary may direct that the whole or part of the amount is to be paid in a different way. If the Secretary does so, the amount must be paid in accordance with the direction.

(3) This section is subject to:
  (a) Part 4 (overpayments and debt recovery); and
  (b) Division 3 of Part 8B (payments to payment nominees).

67EE Payments to provider in respect of provider's own entitlement to be paid ACCS (child wellbeing)

(1) If a provider is entitled to be paid an amount of ACCS (child wellbeing) for sessions of care provided to a child in a week, the Secretary must pay the amount, at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the provider.

(2) This section is subject to:
  (a) Part 4 (overpayments and debt recovery); and
  (b) paragraph 195H(1)(f) (suspension of payments); and
  (c) section 205B (setting off business continuity payments).

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Division 6—Giving information

67FA Simplified outline of this Division

> Individuals who are eligible for CCS or ACCS have a duty to keep the Secretary informed about changes of circumstances that might affect their eligibility or entitlement.
>
> The Secretary may also request individuals from time to time to give information relevant to their eligibility or entitlement.
>
> Providers have a duty to notify the Secretary if they consider that a child who has been considered to be at risk of serious abuse or neglect is not at risk. The Secretary may also request them to give information about various matters.

67FB Notice of change of circumstances: individuals

(1) An individual must notify the Secretary as soon as practicable, in a manner set out in a notice given to the individual under section 67FD, if:

(a) a determination is in effect under paragraph 67CC(1)(a) that the individual is eligible for CCS for a child; and

(b) any of the following happens:

(i) an event that causes the individual to cease to be eligible for CCS for sessions of care provided by an approved child care service to the child;

(ii) if the individual was eligible for a kind of ACCS—an event that causes the individual to cease to be eligible for that kind of ACCS for sessions of care provided by an approved child care service to the child;

(iii) an event that affects whether the individual is entitled to be paid CCS or a kind of ACCS, or the amount of CCS or ACCS the individual is entitled to be paid, for the child;

(iv) the individual becomes aware that an event referred to in subparagraph (i), (ii) or (iii) is likely to happen.

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(2) An individual commits an offence if the individual contravenes subsection (1).

Penalty: Imprisonment for 6 months.

(3) Subsection (1) does not require an individual who has been eligible for ACCS (transition to work) to notify the Secretary of the end of the 12 week period referred to in paragraph 85CK(2)(b) of the Family Assistance Act.

67FC Notice if child not at risk of serious abuse or neglect: providers

(1) An approved provider must notify the Secretary as soon as practicable, in a manner set out in a notice given to the provider under section 67FD, if:

(a) a certificate given by the provider under section 85CB (certification for ACCS (child wellbeing)) of the Family Assistance Act is in effect in relation to a child for a week; and

(b) the provider considers that the child is not at any risk of serious abuse or neglect during the week; and

(c) the time for cancelling the certificate under section 85CC of the Family Assistance Act has passed.

(2) An approved provider must notify the Secretary as soon as possible, in a manner set out in a notice given to the provider under section 67FD, if:

(a) the provider knows that a determination made by the Secretary under section 85CE (determination for ACCS (child wellbeing)) of the Family Assistance Act is in effect in relation to a child for a week; and

(b) the provider considers that the child is not at any risk of serious abuse or neglect during the week.

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.

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(4) Subsection (1) and (2) apply even if the certificate or determination has ceased to have effect.

67FD Manner of notifying change of circumstances

(1) The Secretary must approve a manner of notification to be used to notify the Secretary of matters required to be notified under sections 67FB and 67FC.

(2) The Secretary must give individuals to whom section 67FB applies and approved providers to whom section 67FC applies written notice of the approved manner.

67FE Request for bank account details

If:

(a) a determination is in effect under paragraph 67CC(1)(a) that an individual is eligible for CCS for a child; and

(b) the Secretary is satisfied that the Secretary does not have the details of a bank account, maintained by the individual alone or jointly with someone else, into which amounts of CCS or ACCS can be paid;

the Secretary may, by written notice given to the individual, request the individual to give the Secretary the details of such a bank account within 28 days of the request.

67FF Request for tax file number etc. in claim forms

(1) The Secretary may request, in a claim form for CCS by fee reduction, that a statement of the kind referred to in paragraph 67BH(1)(a), (b) or (c) be made in relation to each TFN claim person.

(2) The Secretary may request, in a claim form for CCS in substitution for an individual who has died, that a statement of the kind referred to in paragraph 67BI(1)(a), (b) or (c) be made in relation to each TFN substitution person.

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67FG Request for tax file number etc. of TFN determination persons

(1) If:

(a) a determination is in effect under paragraph 67CC(1)(a) that an individual is eligible for CCS for a child; and

(b) the Secretary is satisfied that the tax file number requirements in section 67BH are not met for the purposes of a determination under Division 3 for the individual;

the Secretary may, by written notice given to the individual, request that a statement of the kind referred to in paragraph 67BH(1)(a), (b) or (c) be made in relation to a specified TFN determination person within 28 days of the request.

(2) For the purposes of subsection (1), a reference in subsection 67BH(1) to:

(a) the claimant—is taken to be a reference to the individual; and

(b) a TFN claim person—is taken to be a reference to a TFN determination person.

67FH Request for information about care provided

(1) The Secretary may, by written notice given to the approved provider of a child care service, require the provider to give the Secretary information in relation to any aspect of care provided or expected to be provided by the service.

(2) The notice must:

(a) specify the period in relation to which, or the intervals at which, the information is to be provided; and

(b) be given in a form and manner approved by the Secretary.

(3) Information given in response to the notice must be given in a form and manner approved by the Secretary.

67FI Request for information in relation to eligibility or entitlement for CCS or ACCS

The Secretary may, by written notice given to an individual for whom a determination is in effect under paragraph 67CC(1)(a) that

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the individual is eligible for CCS for a child, request the individual to give the Secretary, before the end of the period specified in the notice, the information specified in the notice in relation to the individual's present or future eligibility or entitlement for CCS or ACCS.

Division 7—Payment protection and garnishee orders

67GA Simplified outline of this Division

> Generally, a payment of CCS or ACCS is protected, subject to some exceptions related to debt management and payment to nominees.

67GB Protection of payments in relation to CCS and ACCS

(1) Payments of the following amounts are absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise:
  (a) child care subsidy;
  (b) additional child care subsidy;
  (c) payments under section 67EB (fee reduction amounts);
  (d) payments under section 205A (business continuity payments).

(2) Subsection (1) has effect subject to the following provisions:
  (a) paragraph 67EC(5)(b) and subsection 67ED(2) (about payment of CCS or ACCS in a different way);
  (b) section 84A (about setting off a person's entitlement to family assistance against a debt of the person);
  (c) section 87A (setting off debts against various payments);
  (d) Division 3 of Part 8B (about payments to payment nominee).

67GC Effect of garnishee etc. order

(1) If:
  (a) a person has an account with a financial institution; and

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(b) payments of any of the kinds mentioned in subsection 67GB(1) are being paid, or have been paid, to the credit of the account; and

(c) a court order in the nature of a garnishee order comes into force in respect of the account;

the court order does not apply to the saved amount (if any) in the account.

(2) The saved amount is worked out as follows:

Method statement

Step 1. Work out the total amount of the payments mentioned in subsection (1) that have been paid to the credit of the account during the 4 week period immediately before the court order came into force.

Step 2. Subtract from the step 1 amount the total amount withdrawn from the account during the same 4 week period: the result is the saved amount.

93 Sections 68, 68A and 69

Repeal the sections, substitute:

68 References to amount paid to person

For the purposes of this Part, an amount of family assistance is taken to be paid to a person if:

(a) the amount is applied against a liability of that person or another person for:

(i) a primary tax; or

(ii) a debt under this Act or the *Social Security Act 1991*; or

(b) the amount is set off under this Part against another amount.

Note: CCS or ACCS is also taken to have been paid to a person if a fee reduction amount is passed on to an individual (see section 201A).

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69 Special provisions relating to approved providers

For the purposes of this Part, a reference to an amount being paid to a person when the person is an approved provider includes a reference to an amount that, at the time when it was paid, was paid to an approved provider even if:

(a) the provider is no longer approved; or

(b) the provider is no longer approved in respect of the service concerned.

94 Section 70

Omit "section 219Q, subsection 219QA(2), section 219QC or subsection 219QD(2), a payment of an enrolment advance under section 219RA", substitute "section 67EB".

95 Section 70

Omit "section 219RD", substitute "section 205A".

96 Section 71 (heading)

Repeal the heading, substitute:

71 Debts in respect of family assistance other than CCS, ACCS and family tax benefit advance

97 Sections 71B to 71H

Repeal the sections, substitute:

71B Debts in respect of CCS or ACCS—no entitlement

(1) If:

(a) an amount is paid to an individual (the ***recipient***) by way of CCS for one or more sessions of care, but the recipient is not entitled to be paid CCS for the sessions of care; or

(b) an amount is paid to an individual (the ***recipient***) by way of a kind of ACCS for one or more sessions of care, but the recipient is not entitled to be paid that kind of ACCS for the sessions of care; or

(c) an amount is paid to a provider (the ***recipient***) by way of ACCS (child wellbeing) for a session of care provided to a

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child, but the recipient is not entitled to be paid ACCS (child wellbeing) for the session of care;

the amount is a debt due to the Commonwealth by the recipient.

(2) If:

(a) a payment is made under Division 5 of Part 3A to a financial institution for the credit of an account kept with the institution (an ***incorrect account***); and

(b) the Secretary is satisfied that the amount was intended to be paid for the credit of an account kept in the name of a person who is not the person, or one of the persons, in whose name the incorrect account is kept;

an amount equal to the amount of the payment made to the institution is, subject to subsection 93A(5), a debt due to the Commonwealth by the person, or jointly and severally by the persons, in whose name the incorrect account is kept.

71C Debts in respect of CCS or ACCS—overpayment

(1) If:

(a) an amount (the ***received amount***) is paid to an individual by way of CCS or ACCS for one or more sessions of care; and

(b) the received amount is greater than the amount (the ***correct amount***) of CCS or ACCS the individual was entitled to be paid for the sessions of care;

the difference between the received amount and the correct amount is a debt due to the Commonwealth by the individual.

(2) If:

(a) an amount (the ***received amount***) is paid to a provider under section 67EE by way of ACCS (child wellbeing) for one or more sessions of care; and

(b) the received amount is greater than the amount (the ***correct amount***) of ACCS (child wellbeing) the provider was entitled to be paid for the sessions of care;

the difference between the received amount and the correct amount is a debt due to the Commonwealth by the provider.

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71D Debts in respect of fee reduction amounts provider fails to pass on or remit

If a provider to whom notice of a fee reduction decision is given does not do one of the following within 14 days after the notice is given:

(a) pass on the fee reduction amount for the decision to the individual to whom the decision relates;

(b) remit the fee reduction amount to the Secretary in a manner approved by the Secretary;

an amount equal to the fee reduction amount is a debt due to the Commonwealth by the provider.

71E Debts in respect of ACCS (child wellbeing) for provider—individual at fault

(1) The Secretary may make a determination for an individual and a provider in the circumstances referred to in subsection (2). If the Secretary does so:

(a) the provider is taken not to have incurred a debt that, apart from the determination, was incurred by the provider under subsection 71B(1) or 71C(2); and

(b) the amount of the debt is instead a debt due to the Commonwealth by the individual.

(2) The circumstances are that:

(a) the individual makes a false or misleading statement; and

(b) because of the statement, the provider is paid an amount by way of ACCS (child wellbeing) for one or more sessions of care provided by a service to a child who was in the care of the individual immediately before the sessions of care were provided; and

(c) the provider incurs a debt under subsection 71B(1) or 71C(2) in relation to the payment.

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71F Debts in respect of CCS or ACCS for individual—provider at fault

(1) The Secretary may make a determination for an individual and a provider in the circumstances referred to in subsection (2). If the Secretary does so:

(a) the individual is taken not to have incurred a debt that, apart from the determination, was incurred by the individual under subsection 71B(1) or 71C(1); and

(b) the amount of the debt is instead a debt due to the Commonwealth by the provider.

(2) The circumstances are that:

(a) the provider:

(i) makes a false or misleading statement; or

(ii) fails to comply with the family assistance law; and

(b) because of the statement or failure, the individual is paid an amount of CCS or ACCS for one or more sessions of care provided by a child care service of the provider; and

(c) the individual incurs a debt under subsection 71B(1) or 71C(1) in relation to the payment.

71G Debts where provider approval is suspended, cancelled or varied

If:

(a) a fee reduction amount is paid to a provider under section 67EB in relation to a session of care provided by a child care service of the provider on a day; and

(b) after the payment is made, one of the following events occurs and takes effect on or before the day:

(i) the provider's approval is cancelled or suspended;

(ii) the provider's approval is varied so as to remove the service from the approval;

(iii) the provider's approval in respect of the service is suspended;

so much of the fee reduction amount as relates to the session of care is a debt due to the Commonwealth by the provider.

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71H Debts in respect of business continuity payments paid to provider

(1) If:

(a) an amount is paid under section 205A (business continuity payments) in respect of a child care service; and

(b) any of the following occurs:

(i) the approval of the provider of the service is suspended or cancelled;

(ii) the approval of the provider of the service is varied to remove the service from the approval;

(iii) the approval of the provider in respect of the service is suspended; and

(c) the whole or a part of the amount has not already been set off against another amount under section 205B by the day the suspension, cancellation or variation takes effect;

then that whole or part is a debt due to the Commonwealth by the provider immediately before the provider's approval was suspended, cancelled or varied.

(2) If:

(a) a payment under section 205A is made to a financial institution for the credit of an account kept with the institution (an ***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 the incorrect account was kept;

an amount equal to the amount of the payment made to the institution is, subject to subsection 93A(5), a debt due to the Commonwealth by the person, or jointly and severally by the persons, in whose name the incorrect account was kept.

98 Subsections 82(1) and (2)

Repeal the subsections, substitute:

(1) A debt owed by a person is recoverable by the Commonwealth by one or more of the following means:

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(a) deductions from instalments of family tax benefit to which the person is entitled;
(b) setting off family assistance to which the person is entitled against the debt;
(c) setting off against one or more child care service payments that are to be made to the person;
(d) repayment by instalments under an arrangement entered into under section 91;
(e) if section 92 applies to another person who is entitled to be paid family tax benefit by instalment—deductions from that other person's instalments of family tax benefit;
(f) if section 92A applies to another person who is entitled to family assistance—setting off (otherwise than as mentioned in paragraph (b)) the family assistance against the debt;
(g) the application of an income tax refund owed to the person;
(h) if section 93 applies to another person to whom an income tax refund is owed—the application of that refund;
(i) legal proceedings;
(j) garnishee notice.

Note: For ***child care service payment*** see subsection 3(1).

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

Omit "71CAA, 71CAB, 71CA, 71CB, 71CAC, 71D, 71E, 71G, 71GA, 71GB, 71H", substitute "71D, 71E, 71F, 71G, 71H".

100 Subsection 84A(3)

Repeal the subsection, substitute:

(3) Under subsection (2), the Secretary may set off a person's CCS or ACCS only against a debt the person incurs in relation to CCS or ACCS.

101 Section 87A (heading)

Repeal the heading, substitute:

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87A Setting off debts of an approved provider against child care service payments

102 Subsection 87A(1)

Repeal the subsection, substitute:

(1) This section applies if a debt owed by an approved provider is to be recovered by the Commonwealth by means of setting off the debt against a payment referred to in paragraph 82(1)(c) (child care service payments).

103 Subsections 91(1) and (1A)

Omit "child care service", substitute "provider".

104 Subsection 91(1A)

Omit "the service", substitute "the provider".

105 Subsection 92A(2)

Repeal the subsection, substitute:

(2) Subsection (1) does not apply to an entitlement to be paid CCS or ACCS.

106 Subsection 93A(6) (paragraph (a) of the definition of *family assistance payment*)

Repeal the paragraph, substitute:

(a) a payment of family tax benefit, stillborn baby payment, family tax benefit advance, CCS or ACCS; or

107 Subsection 93A(6) (paragraph (b) of the definition of *family assistance payment*)

Repeal the paragraph, substitute:

(b) a payment under section 67EB (fee reduction amount); or

108 Subsection 93A(6) (paragraphs (ba), (bb), (bd), (be) and (bf) of the definition of *family assistance payment*)

Repeal the paragraphs.

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109 After section 94

Insert:

94A Time for recovering certain CCS debts

(1) This section applies if:

(a) an individual incurs a debt under subsection 71B(1) or 71C(1) in relation to an amount of CCS; and

(b) the debt is incurred because the individual does not meet the CCS reconciliation conditions for an income year by the first deadline for the income year.

(2) The Secretary need not pursue recovery of the debt before the second deadline for the income year.

Note: It is possible for the individual to become entitled again to the amount of the CCS by meeting the CCS reconciliation conditions by the second deadline.

110 Subparagraph 95(3)(a)(iia)

Repeal the subparagraph, substitute:

(iia) setting off under section 87A against a payment referred to in paragraph 82(1)(c) (child care service payments); or

111 Paragraph 95(4)(d)

Repeal the paragraph, substitute:

(d) setting off under section 87A against a payment referred to in paragraph 82(1)(c) (child care service payments);

112 Subsection 95(4B)

Repeal the subsection, substitute:

Debt arising because of CCS reconciliation conditions not being met if claimant and partner separate

(4B) The Secretary may, under subsection (1), decide to write off a debt arising because of subsection 105E(2) (review if CCS reconciliation conditions not met) in relation to an income year (the ***relevant income year***) if:

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(a) the debtor, and an individual who was a TFN determination person for the purposes of a determination under Division 3 of Part 3A for the claimant in relation to sessions of care provided in CCS fortnights starting in the relevant income year, ceased to be members of the same couple after the end of the income year after the relevant income year; and

(b) if the debtor was required to lodge an income tax return for the relevant income year—the Commissioner of Taxation has made an assessment of the taxable income for the relevant income year of the debtor; and

(c) the other individual was required to lodge an income tax return for the relevant income year but had not done so at the time the debtor and the other individual ceased to be members of the same couple.

113 Paragraph 99(2)(c)

Repeal the paragraph, substitute:

(c) by setting off under section 87A against a payment referred to in paragraph 82(1)(c) (child care service payments).

114 Before Division 1 of Part 5

Insert:

Division 1A—Preliminary matters in relation to child care decisions

103 Child care decision

A ***child care decision*** is:

(a) a determination made by the Secretary under Division 3 of Part 3A; or

(b) a decision made on review under Part 5 or the AAT Act of:

(i) a determination mentioned in paragraph (a); or

(ii) a decision that is a child care decision under a previous application of this paragraph.

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103A CCS reconciliation conditions

(1) An individual (the ***claimant***) meets the ***CCS reconciliation conditions*** for an income year (the ***relevant income year***) if, by the second deadline for the relevant income year, subsection (2), (3) or (4) applies in relation to each of the following persons:
  (a) the claimant;
  (b) each person who was a TFN determination person for the purposes of a determination under Division 3 of Part 3A for the claimant in relation to sessions of care provided in CCS fortnights starting in the relevant income year.

Income tax assessment made

(2) This subsection applies to a person if the Commissioner of Taxation has made an assessment of the taxable income of the person for the relevant income year.

No requirement to lodge income tax return

(3) This subsection applies to a person if:
  (a) the relevant income year has ended; and
  (b) the person is not required to lodge an income tax return in respect of the income year; and
  (c) either:
    (i) the claimant has notified the Secretary of the amount of the claimant's adjusted taxable income for the relevant income year; or
    (ii) the Secretary is satisfied that the claimant's adjusted taxable income for the relevant income year can be worked out without such notification.

Former partner has not lodged income tax return

(4) This subsection applies to a person who was, but is no longer, a partner of the claimant if:
  (a) the person was a TFN determination person for the purposes of a determination under Division 3 of Part 3A for the claimant in relation to sessions of care (the ***relevant sessions***

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of care) provided in CCS fortnights starting in the relevant income year; and

(b) the relevant income year has ended; and

(c) the person is required to lodge an income tax return in respect of the relevant income year, but has not done so by the first deadline for the relevant income year; and

(d) the Secretary is satisfied that it is reasonable in all the circumstances to estimate the claimant's adjusted taxable income for the relevant income year; and

(e) the Secretary is otherwise satisfied that it is appropriate for this subsection to apply in all the circumstances.

Note: For subparagraph (3)(c)(ii) and paragraph (4)(d), the claimant's adjusted taxable income for the relevant year is worked out taking into account the adjusted taxable income of any TFN determination person who has been the claimant's partner during the relevant income year (see clauses 3AA and 3A of Schedule 3 to the Family Assistance Act).

103B First deadline

(1) The ***first deadline*** for an income year (the ***relevant income year***) is:

(a) the end of the first income year after the relevant income year; or

(b) if the Secretary allows the individual a longer period under subsection (2)—the end of the longer period.

(2) The Secretary may allow an individual a longer period if the Secretary is satisfied that special circumstances prevented the individual meeting the CCS reconciliation conditions for the relevant income year before the end of the first income year after the relevant income year.

(3) The end of the longer period must not be later than the end of the second income year after the relevant income year.

103C Second deadline

(1) The ***second deadline*** for an income year (the ***relevant income year***) is:

(a) the end of the second income year after the relevant income year; or

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(b) if the Secretary allows the individual a longer period under subsection (2)—the end of the longer period.

(2) The Secretary may allow an individual a longer period if the Secretary is satisfied that special circumstances prevented the individual meeting the CCS reconciliation conditions for the relevant income year before the end of the second income year after the relevant income year.

115 Section 104

Repeal the section, substitute:

104 Decisions that may be reviewed by Secretary on own initiative

Under section 105, the Secretary may review any decision of an officer under the family assistance law except:

(a) a decision under section 67EB to pay an amount; or

(b) a decision to give a person a notice under section 199E (notice about effect of non-compliance by provider on eligibility for CCS or ACCS); or

(c) a decision under section 205A (business continuity payments); or

(d) a decision under section 85GA of the Family Assistance Act (funding agreements) in relation to an agreement.

116 After section 105B

Insert:

105C Review of entitlement to be paid CCS or ACCS—taking account of changes of circumstances etc.

Favourable changes affecting individuals

(1) A decision on review under section 105 of a child care decision in relation to section 67CD as to an individual's entitlement to be paid CCS or ACCS for a week must not take into account information if:

(a) apart from this section, the information would have the effect that the amount of CCS or ACCS the individual is entitled to be paid for the week is increased (including from nil); and

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(b) either:
  (i) the individual was required to notify the Secretary of the information by subsection 67FB(1); or
  (ii) the Secretary required the individual to give the information or produce a document containing the information under Part 6 and the individual did not give the information or produce the document within the required period; and
(c) the CCS fortnight that includes the week started more than 28 days before the earlier of the following events:
  (i) the individual notified or gave the information or produced the document;
  (ii) the Secretary otherwise became aware of the information.

(2) Despite subsection (1), the Secretary may take the information into account if the Secretary is satisfied that the individual notified or gave the information, or produced the document, as soon as practicable.

(3) Subsection (1) does not apply if the information is the adjusted taxable income of the individual.

Favourable changes affecting providers

(4) A decision on review under section 105 of a child care decision in relation to section 67CH as to a provider's entitlement to be paid ACCS (child wellbeing) for a week must not take into account information if:
(a) apart from this section, the information would have the effect that the amount of ACCS (child wellbeing) the provider is entitled to be paid for the week is increased (including from nil); and
(b) either:
  (i) the provider was required to notify the Secretary of the information by section 204F; or
  (ii) the Secretary required the provider to give the information or produce a document containing the information under Part 6 and the provider did not give

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the information or produce the document within the required period; and

(c) the CCS fortnight that includes the week started more than 28 days before the earlier of the following events:

(i) the provider notified or gave the information or produced the document;

(ii) the Secretary otherwise became aware of the information.

(5) Despite subsection (4), the Secretary may take the information into account if the Secretary is satisfied that the provider notified or gave the information, or produced the document, as soon as practicable.

105D Review of entitlement to be paid CCS or ACCS—time limit on increase

(1) A decision on review under section 105 of a child care decision in relation to section 67CD as to an individual's entitlement to be paid CCS or ACCS must not have the effect that the amount of CCS or ACCS the individual is entitled to be paid for a week is increased (including from nil), if the CCS fortnight that includes the week started before the income year immediately before the income year in which the decision on review is made.

(2) Subsection (1) does not apply if:

(a) the decision on review is a child care decision made because of or in relation to section 105E, to the extent that the review relates to:

(i) the individual's adjusted taxable income for the income year in which the CCS fortnight starts; or

(ii) the individual's activity test result for the CCS fortnight; or

(b) the review is conducted:

(i) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income of the individual or another person in relation to whom the individual has met the CCS reconciliation conditions for the income year in which the CCS fortnight starts; and

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(ii) within 13 weeks after the individual or other person was notified by the Commissioner of the outcome of the review.

(3) A decision on review under section 105 of a child care decision in relation to section 67CH as to a provider's entitlement to be paid ACCS (child wellbeing) must not have the effect that the amount of ACCS (child wellbeing) the provider is entitled to be paid for a week is increased (including from nil), if the CCS fortnight that includes the week started before the income year immediately before the income year in which the decision on review is made.

105E Review of individual's entitlement to be paid CCS by fee reduction—meeting CCS reconciliation conditions

(1) If an individual meets the CCS reconciliation conditions for an income year (the ***relevant income year***) by the first deadline for the relevant income year:

(a) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the child care decisions (if any) in relation to subsection 67CD(2) or (8) for the individual in relation to sessions of care provided in each week in CCS fortnights starting in the relevant income year; and

(b) the Secretary must exercise the power conferred by subsection 105(1) to review those child care decisions; and

(c) the review must take into account:

(i) information obtained about the adjusted taxable income of the individual by the meeting of the CCS reconciliation conditions; and

(ii) subject to section 105C, any other information available about the individual's activity test result or any other matter relevant to the individual's entitlement.

(2) If an individual does not meet the CCS reconciliation conditions for an income year (the ***relevant income year***) by the first deadline for the relevant income year:

(a) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the child care decisions (if any) in relation to subsection 67CD(2)

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or (8) for the individual in relation to sessions of care provided in each week in CCS fortnights starting in the relevant income year; and

(b) the Secretary must exercise the power conferred by subsection 105(1) to review those child care decisions; and

(c) despite subsection 105(4), the Secretary must set the child care decisions aside and substitute them with determinations under subsection 67CD(8) that the individual is not entitled to be paid CCS or ACCS for the sessions of care.

(3) If an individual meets the CCS reconciliation conditions for an income year (the ***relevant income year***) after the first deadline for the relevant income year and by the second deadline for the relevant income year:

(a) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the child care decisions in relation to subsection 67CD(8) made for the individual in accordance with paragraph (2)(c) of this section; and

(b) the Secretary must exercise the power conferred by subsection 105(1) to review those child care decisions; and

(c) the review must take into account:

(i) information obtained about the adjusted taxable income of the individual by the meeting of the CCS reconciliation conditions; and

(ii) subject to sections 105C and 105D, any other information available about the individual's activity test result or any other matter relevant to the individual's entitlement.

117 Section 106 (heading)

Repeal the heading, substitute:

106 Notice of review decision not relating to CCS or ACCS

118 Subsections 106(1), (1A), (1B) and (2)

Repeal the subsections.

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119 Subsection 106(3) (heading)

Repeal the heading.

120 Paragraph 106(3)(b)

Repeal the paragraph, substitute:

(b) the review decision is not a decision to which section 106A applies (certain review decisions relating to CCS or ACCS);

121 Subsection 106(4) (heading)

Repeal the heading.

122 Subsections 106(5), (6) and (7)

Repeal the subsections, substitute:

(5) A contravention of this section in relation to a review decision does not affect the validity of the review decision.

123 After section 106

Insert:

106A Notice of certain review decisions relating to CCS or ACCS

(1) If the Secretary makes a review decision under section 105 to vary or substitute a child care decision in relation to section 67CC that an individual is or is not eligible for CCS for a child by fee reduction, the Secretary:

(a) must give written notice of the review decision to the individual (the ***affected person***); and

(b) may give written notice of the review decision to the provider of any approved child care service at which the child has been enrolled since the determination under section 67CC first took effect.

(2) If the Secretary makes a review decision under section 105 to vary or substitute a child care decision in relation to section 67CD (entitlement to be paid CCS or ACCS) for an individual in relation to sessions of care, or to affirm a child care decision in relation to section 67CD for an individual in relation to sessions of care when

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reviewing the child care decision because of section 105E, the Secretary:

(a) must give written notice of the review decision to the individual (the ***affected person***); and

(b) if the review decision is a fee reduction decision—must give written notice of the decision and the fee reduction amount for the decision to the provider of the approved child care service that provided the sessions of care; and

(c) if the review decision is not a fee reduction decision—may give written notice of the decision to the provider of the approved child care service that provided the sessions of care.

(3) If the review decision is a fee reduction decision, and the Secretary has decided to pay the fee reduction amount directly to the individual under subsection 67EC(2), a notice under subsection (2) of this section must include a statement to that effect.

(4) If the Secretary makes a review decision under section 105 to vary or substitute a child care decision in relation to section 67CF (entitlement to be paid CCS or ACCS in substitution for a person who has died), the Secretary must give written notice of the review decision to the individual for whom the determination under section 67CF was made (the ***affected person***).

(5) If the Secretary makes a review decision under section 105 to vary or substitute a child care decision in relation to section 67CH (entitlement of provider to be paid ACCS (child wellbeing)), the Secretary must give written notice of the review decision to the provider for whom the determination under section 67CH was made (the ***affected person***).

(6) If the Secretary makes a review decision under section 105 to vary or substitute a decision made under Part 8 or 8A in relation to a provider (or a decision made on review of such a decision), the Secretary must give written notice of the review decision to the provider (the ***affected person***).

(7) A notice under this section to an affected person must state the effect of the review decision and inform the affected person that

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the affected person may apply for review of the review decision in the manner set out in this Part.

(8) A notice under this section may be given to a provider by making the notice available to the provider using an electronic interface.

(9) A contravention of this section in relation to a review decision does not affect the validity of the review decision.

106B Notice to AAT

(1) If the Secretary makes a review decision under section 105 to vary or substitute a decision after a person has applied to the AAT for a review in relation to the decision, the Secretary must give written notice of the review decision to the Registrar of the AAT.

(2) A contravention of this section in relation to a review decision does not affect the validity of the review decision.

124 Section 107 (heading)

Repeal the heading, substitute:

107 Date of effect of certain decisions made under section 105 in relation to family tax benefit by instalment

125 Subsections 107(2), (3), (3AA), (3AB) and (4)

Repeal the subsections.

126 At the end of Subdivision A of Division 1 of Part 5

Add:

107A Date of effect of certain decisions made under section 105 in relation to eligibility for CCS

If:

(a) the Secretary makes a review decision under section 105 to vary, or set aside and substitute a new decision for, a child care decision in relation to section 67CC (eligibility for CCS) for an individual; and

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(b) the review decision has the effect that the individual becomes eligible for CCS for a child, or eligible for additional days;

the date of effect of the review decision cannot be earlier than the first day of the income year before the income year in which the review decision was made.

127 Subsection 108(1)

Omit "subsection (2)", substitute "subsection (2), (5) or (6)".

128 Paragraphs 108(2)(b) to (df)

Repeal the paragraphs, substitute:

(b) a decision under section 67EB to pay an amount; or

(c) a decision to give a person a notice under section 199E (notice about effect of non-compliance by provider on eligibility for CCS or ACCS); or

(d) a decision under section 205A (business continuity payments); or

129 Paragraph 108(2)(e)

Omit "child care benefit", substitute "CCS or ACCS".

130 Paragraphs 108(2)(f) to (g)

Repeal the paragraphs, substitute:

(f) a decision under section 199B to publicise information; or

(g) a decision under section 85GA of the Family Assistance Act (funding agreements) in relation to an agreement.

131 Subsection 108(3)

Repeal the subsection, substitute:

(3) A determination about a person's (the ***applicant's***) eligibility for, or entitlement to, family assistance other than CCS, to the extent the determination is based on an estimate of adjusted taxable income for an income year (the ***relevant income year***), is not to be reviewed under section 109A unless the applicant applies for the review after the end of the relevant income year and one of the following paragraphs applies:

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(a) the Commissioner of Taxation has, on the basis of income tax returns lodged before the end of the income year immediately after the relevant income year, made an assessment of the taxable income for the relevant income year of all persons whose taxable income was relevant in making the determination;

(b) there is no person whose taxable income was relevant in making the determination who was required to lodge an income tax return for the relevant income year.

132 At the end of section 108

Add:

(5) A child care decision about an individual's entitlement to be paid CCS for a week, to the extent the child care decision is based on:

(a) the individual's adjusted taxable income for the income year (the ***relevant income year***) in which the CCS fortnight that includes the week starts; or

(b) the individual's activity test result for the CCS fortnight that includes the week;

is not to be reviewed under section 109A unless the individual has met the CCS reconciliation conditions for the relevant income year.

(6) A child care decision made because of subsection 105E(2) is not to be reviewed under section 109A unless the individual has met the CCS reconciliation conditions for the relevant income year.

133 Subsection 109A(1)

Repeal the subsection, substitute:

(1) A person affected by a decision (the ***original decision***):

(a) that is not a care percentage decision; and

(b) that is not a decision under Part 8 (approval of providers of child care services); and

(c) that, under section 108, must be reviewed under this section;

may apply to the Secretary for review of the original decision.

134 After subsection 109A(1A)

Insert:

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(1B) If a decision (the ***original decision***):

(a) is made under Part 8 (approval of providers of child care services) in relation to a provider; and

(b) under section 108, must be reviewed under this section;

the provider may apply to the Secretary for review of the original decision.

135 Subsection 109A(2)

Omit "or (1A)", substitute ", (1A) or (1B)".

136 Paragraph 109A(4)(a)

Omit "or (1A)", substitute ", (1A) or (1B)".

137 Subsections 109B(2), (2A) and (2B)

Repeal the subsections, substitute:

Notice of decisions relating to CCS or ACCS

(2) If a review decision is a decision to affirm, vary or substitute a child care decision in relation to section 67CC that an individual is or is not eligible for CCS for a child by fee reduction, the decision reviewer:

(a) must give written notice of the review decision to the individual; and

(b) may give written notice of the review decision to the provider of any approved child care service at which the child has been enrolled since the determination under section 67CC first took effect.

(2A) If a review decision is a decision to affirm, vary or substitute a child care decision in relation to section 67CD (entitlement to be paid CCS or ACCS) for an individual in relation to sessions of care, the decision reviewer:

(a) must give written notice of the review decision to the individual; and

(b) if the review decision is a fee reduction decision—must give written notice of the decision and the fee reduction amount for the decision to the provider of the approved child care service that provided the sessions of care; and

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(c) if the review decision is not a fee reduction decision—may give written notice of the decision to the provider of the approved child care service that provided the sessions of care.

(2B) If the review decision is a fee reduction decision, and the Secretary has decided to pay the fee reduction amount directly to the individual under subsection 67EC(2), a notice under subsection (2A) of this section must include a statement to that effect.

(2C) A notice under subsection (2) or (2A) may be given to a provider by making the notice available to the provider using an electronic interface.

138 Subsection 109B(3)

After "subsection (2)", insert "or (2A)".

139 Subsection 109B(4)

Repeal the subsection.

140 Subsection 109D(1)

Repeal the subsection, substitute:

Time for making applications for review

(1) Subject to this section, an application for review under section 109A of any decision (other than an excepted decision) must be made no later than:

(a) for a decision in relation to CCS or ACCS (including a decision in relation to Part 8A)—13 weeks after the applicant is notified of the decision; and

(b) otherwise—52 weeks after the applicant is notified of the decision.

141 Subsection 109D(2)

Omit "52 weeks mentioned", substitute "period specified for the decision".

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142 Subsection 109D(3)

Omit "may also be made after the 52 weeks mentioned in subsection (1)", substitute "to which paragraph (1)(b) applies may also be made after the 52 weeks mentioned in that paragraph".

143 Paragraph 109D(3)(b)

Omit "or 19);", substitute "or 19).".

144 Paragraphs 109D(3)(c) to (h)

Repeal the paragraphs.

145 Subsection 109D(4)

After "excepted decision", insert "or a decision to which subsection (5A) relates".

146 Subsection 109D(4)

Omit "52 weeks mentioned", substitute "period specified for the decision".

147 Paragraph 109D(5)(a)

Omit ", or CCB %".

148 After subsection 109D(5)

Insert:

(5A) An application under section 109A for review of a decision (other than an excepted decision) relating to the payment to an individual of CCS for a week may also be made after the 13 weeks mentioned in paragraph (1)(a) if the application for review is made:

(a) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income of the individual or another person in relation to whom the individual has met the CCS reconciliation conditions for the income year in which the CCS fortnight that includes the week starts; and

(b) within 13 weeks after the individual or other person was notified by the Commissioner of the outcome of the review.

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149 Subsection 109D(6) (definition of *determination decision*)

Repeal the definition.

150 Subsection 109D(6) (paragraph (c) of the definition of *excepted decision*)

Repeal the paragraph, substitute:

(c) made under Part 8 (approval of providers of child care services).

151 Section 109DA

Repeal the section, substitute:

109DA Review applications—time limits on certain applications by providers

An application by a provider for review under subsection 109A(1) of a decision made under Part 8 (approval of providers of child care services) must be made no later than:

(a) 14 days after the provider is notified of the decision; or

(b) if the provider was not notified of the decision—14 days after the provider becomes aware of the decision.

109DB Review of entitlement to be paid CCS or ACCS—taking account of changes of circumstances etc.

Section 105C applies to a decision on review under section 109A of a child care decision in relation to section 67CD or 67CH as if the references to section 105 were references to section 109A.

Note: Section 105C limits the information that can be taken into account in the decision on review.

109DC Review of entitlement to be paid CCS or ACCS—time limit on increase

Section 105D applies to a decision on review under section 109A of a child care decision in relation to section 67CD or 67CH as if:

(a) the references to section 105 were references to section 109A; and

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(b) the references to the income year in which the decision on review is made were references to the income year in which the application for review is made; and

(c) subparagraph (2)(a)(ii) were omitted; and

(d) paragraph (2)(c) referred to the application being made instead of the review being conducted.

Note: Section 105D limits when a decision on review can increase the amount of CCS or ACCS an individual or provider is entitled to be paid.

152 After section 109E

Insert:

109EA Date of effect of certain decisions made under section 109A in relation to eligibility for CCS

Section 107A applies to a review under section 109A of a child care decision in relation to section 67CC as if:

(a) the reference to section 105 were a reference to section 109A; and

(b) the reference to the income year in which the review decision was made were a reference to the income year in which the application for review was made.

Note: Section 107A provides for the date of effect of a decision to vary, or set aside and substitute a new decision for, a child care decision in relation to section 67CC.

153 Paragraph 109G(1)(a)

Omit "referred to in paragraph (a) or (b) of the definition of ***adverse family assistance decision*** in subsection (5)".

154 Subsection 109G(2)

Repeal the subsection.

155 Paragraph 109G(5) (paragraph (b) of the definition of *adverse family assistance decision*)

Omit "reduced; or", substitute "reduced.".

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156 Subsection 109G(5) (paragraphs (c), (d) and (e) of the definition of *adverse family assistance decision*)

Repeal the paragraphs.

157 Subsection 111(1) (note)

Repeal the note.

158 Paragraph 111(1A)(a)

Omit "(except a decision under Division 2 of Part 8C (infringement notices))".

159 Paragraph 111(2)(a)

Repeal the paragraph, substitute:

(a) a decision about the form or manner in which an application or claim is to be made or a notice given;

(b) a decision about the kind of information or documents required to be given in or to accompany an application, claim or notice;

160 Paragraph 111(2)(d)

After "157,", insert "157A,".

161 After paragraph 111(2)(d)

Insert:

(da) a decision under section 67FE, 67FF, 67FG, 67FH or 67FI (Secretary requesting information in relation to CCS or ACCS) or subsection 204A(6) (Secretary requesting further information about a child care service stopping operations);

162 Paragraphs 111(2)(f) to (i)

Repeal the paragraphs, substitute:

(f) a decision under Part 8 (approved providers);

(g) a decision under section 203C (engaging expert for independent audit);

(h) a decision under section 204D (information about number of child care places).

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163 After subsection 111(2)

Insert:

(2A) A child care decision about an individual's entitlement to be paid CCS for a week, to the extent the child care decision is based on:

(a) the individual's adjusted taxable income for the income year (the ***relevant income year***) in which the CCS fortnight that includes the week starts; or

(b) the individual's activity test result for the CCS fortnight that includes the week;

is not to be reviewed on AAT first review unless the individual has met the CCS reconciliation conditions for the relevant income year.

(2B) A child care decision made because of subsection 105E(2) is not to be reviewed on AAT first review unless the individual has met the CCS reconciliation conditions for the relevant income year.

164 Subsection 111A(1) (heading)

Repeal the heading, substitute:

13 week time limit for most kinds of decision

165 Subsection 111A(1)

Omit "subsection (2)", substitute "subsections (2) and (2A)".

166 After subsection 111A(2)

Insert:

(2A) An application for AAT first review of a child care decision about an individual's entitlement to be paid CCS for a week, other than a decision excepted under subsection (5), may also be made after the 13 weeks mentioned in subsection (1) if the application for review is made:

(a) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income of the individual or another person in relation to whom the individual has met the CCS reconciliation conditions for the income year in which the CCS fortnight that includes the week starts; and

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(b) within 13 weeks after the individual or other person was notified by the Commissioner of the outcome of the review.

167 Subsection 111A(3)

Omit "Subsections (1) and (2)", substitute "Subsections (1), (2) and (2A)".

168 Paragraph 113(1)(a)

Omit "referred to in paragraph (a) or (b) of the definition of ***adverse family assistance decision*** in subsection (5)".

169 Subsection 113(2)

Repeal the subsection.

170 Subsection 113(5) (paragraph (b) of the definition of *adverse family assistance decision*)

Omit "reduced; or", substitute "reduced.".

171 Subsection 113(5) (paragraphs (c), (d) and (e) of the definition of *adverse family assistance decision*)

Repeal the paragraphs.

172 Subsection 120(1)

Omit "under section 154", substitute "under section 154 or 157A".

173 Subsections 124(2) and (3)

Repeal the subsections, substitute:

(2) Despite subsection (1), the AAT must ask the Secretary to assess, in accordance with any directions or recommendations of the AAT, the amount of CCS or ACCS an individual or provider is entitled to be paid, if:

(a) on AAT first review, the AAT:

(i) reviews a child care decision in relation to section 67CD, 67CF or 67CH as to an amount of CCS or ACCS that the individual or provider is entitled to be paid; and

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(ii) considers that the individual or provider is entitled to be paid a different amount of CCS or ACCS; or

(b) on AAT first review, the AAT:

(i) reviews a child care decision in relation to subsection 67CD(6), 67CF(3) or 67CH(3) that the individual or provider is not entitled to be paid CCS or ACCS; and

(ii) considers that the individual or provider is entitled to be paid an amount of CCS or ACCS.

(3) For the purposes of this Part and the definition of ***child care decision*** in subsection 3(1), the Secretary's assessment under subsection (2) forms part of the AAT's decision on the review.

174 After section 125

Insert:

125A Date of effect of certain AAT first review decisions relating to eligibility for CCS

If:

(a) the AAT makes a decision on AAT first review to vary, or set aside and substitute a new decision for, a child care decision in relation to section 67CC (eligibility for CCS) for an individual; and

(b) the AAT's decision has the effect that the individual becomes eligible for CCS for a child, or eligible for additional days;

the date of effect of the AAT's decision cannot be earlier than the first day of the income year before the income year in which the application for review was made.

175 At the end of section 128

Add:

(3) Subsection 111(2A) applies to an AAT second review of a child care decision about an individual's entitlement to be paid CCS for a week as if the reference to AAT first review were a reference to AAT second review.

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Note: Subsection 111(2A) provides that certain aspects of child care decisions are not to be reviewed unless the individual has met the CCS reconciliation conditions for the relevant income year.

(4) Subsection 111(2B) applies to an AAT second review of a child care decision made because of subsection 105AB(2) as if the reference to AAT first review were a reference to AAT second review.

Note: Subsection 111(2B) provides that certain decisions are not to be reviewed unless the individual has met the CCS reconciliation conditions for the relevant income year.

(5) Despite paragraph 29(1)(d) of the AAT Act, an application for AAT second review of a child care decision about an individual's entitlement to be paid CCS for a week may also be lodged with the AAT after the prescribed time mentioned in section 29 of the AAT Act if the application for review is made:

(a) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income of the individual or another person in relation to whom the individual has met the CCS reconciliation conditions for the income year in which the CCS fortnight that includes the week starts; and

(b) within the prescribed time (within the meaning of section 29 of the AAT Act) after the individual or other person was notified by the Commissioner of the outcome of the review.

176 After section 134

Insert:

134A Certain other decisions on AAT second review

Section 124 applies to an AAT second review of a child care decision in relation to section 67CD, 67CF or 67CH as if the references to AAT first review were references to AAT second review.

Note: Section 124 provides for the AAT to ask the Secretary to assess amounts of CCS or ACCS in certain circumstances.

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134B Date of effect of certain AAT second review decisions in relation to eligibility for CCS

Section 125A applies to an AAT second review of a child care decision in relation to section 67CC as if the reference to AAT first review were a reference to AAT second review.

Note: Section 125A provides for the date of effect of a decision to vary, or set aside and substitute a new decision for, a child care decision in relation to section 67CC.

177 Section 136

Repeal the section, substitute:

136 Notice by Secretary of certain AAT decisions in relation to CCS or ACCS by fee reduction

(1) This section applies to a decision on AAT first review or AAT second review of a child care decision in relation to section 67CD (entitlement to be paid CCS or ACCS) for an individual in relation to sessions of care.

(2) If the decision is a fee reduction decision, the Secretary must give written notice of the decision and the fee reduction amount for the decision to the provider of the approved child care service that provided the sessions of care.

(3) If the Secretary has decided to pay the fee reduction amount directly to the individual under subsection 67EC(2), the notice under subsection (2) of this section must include a statement to that effect.

(4) If the decision is not a fee reduction decision, the Secretary may give written notice of the decision to the provider of the approved child care service that provided the sessions of care.

(5) A notice under this section may be given to a provider by making the notice available using an electronic interface.

178 At the end of Subdivision F of Division 2 of Part 5

Add:

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137A AAT review of entitlement to be paid CCS or ACCS—taking account of changes of circumstances etc.

Favourable changes affecting individuals

(1) A decision on AAT first review or AAT second review of a child care decision in relation to section 67CD as to an individual's entitlement to be paid CCS or ACCS for a week must not take into account information if:

(a) apart from this section, the information would have the effect that the amount of CCS or ACCS the individual is entitled to be paid for the week is increased (including from nil); and

(b) either:

(i) the individual was required to notify the Secretary of the information by subsection 67FB(1); or

(ii) the Secretary required the individual to give the information or produce a document containing the information under Part 6 and the individual did not give the information or produce the document within the required period; and

(c) the CCS fortnight that includes the week started more than 28 days before the earliest of the following events:

(i) the individual notified or gave the information or produced the document;

(ii) the Secretary otherwise became aware of the information;

(iii) the AAT otherwise became aware of the information.

(2) Despite subsection (1), the decision on review may take the information into account if the Secretary is satisfied that the individual notified or gave the information, or produced the document, as soon as practicable.

(3) Subsection (1) does not apply if the information is the adjusted taxable income of the individual.

Favourable changes affecting providers

(4) A decision on AAT first review or AAT second review of a child care decision in relation to section 67CH as to a provider's

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entitlement to be paid ACCS (child wellbeing) for a week must not take into account information if:

(a) apart from this section, the information would have the effect that the amount of ACCS (child wellbeing) the provider is entitled to be paid for the week is increased (including from nil); and

(b) either:

(i) the provider was required to notify the Secretary of the information by section 204F; or

(ii) the Secretary required the provider to give the information or produce a document containing the information under Part 6 and the provider did not give the information or produce the document within the required period; and

(c) the CCS fortnight that includes the week started more than 28 days before the earliest of the following events:

(i) the provider notified or gave the information or produced the document;

(ii) the Secretary otherwise became aware of the information;

(iii) the AAT otherwise became aware of the information.

(5) Despite subsection (4), the decision on review may take the information into account if the Secretary is satisfied that the provider notified or gave the information, or produced the document, as soon as practicable.

137B AAT review of entitlement to be paid CCS or ACCS—time limit on increase

(1) A decision on AAT first review or AAT second review of a child care decision in relation to section 67CD as to an individual's entitlement to be paid CCS or ACCS must not have the effect that the amount of CCS or ACCS the individual is entitled to be paid for a week is increased (including from nil), if the CCS fortnight that includes the week started before the income year immediately before the income year in which the application for the review is made.

(2) Subsection (1) does not apply if:

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(a) the decision on review is a child care decision made because of or in relation to section 105E, to the extent that the review relates to the individual's adjusted taxable income for the income year in which the CCS fortnight starts; or

(b) the application for review is made:

(i) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income of the individual or another person in relation to whom the individual has met the CCS reconciliation conditions for the income year in which the CCS fortnight starts; and

(ii) within 13 weeks after the individual or other person was notified by the Commissioner of the outcome of the review.

(3) A decision on AAT first review or AAT second review of a child care decision in relation to section 67CH as to a provider's entitlement to be paid ACCS (child wellbeing) must not have the effect that the amount of ACCS (child wellbeing) the provider is entitled to be paid for a week is increased (including from nil), if the CCS fortnight that includes the week started before the income year immediately before the income year in which the application for the review is made.

179 Subsection 138(1)

Repeal the subsection, substitute:

Decision of Secretary or authorised review officer

(1) If:

(a) a decision made under Part 8 (approval of providers of child care services) in relation to a provider has been reviewed under section 109A; and

(b) the decision has been affirmed, varied or set aside and substituted by the Secretary or authorised review officer under subsection 109A(2);

the provider may apply to the AAT for review (***AAT single review***) of the decision of the Secretary or authorised review officer.

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180 Subsection 138(3)

Repeal the subsection, substitute:

Decision made personally by agency head

(3) If a decision under Part 8 (approval of providers of child care services) in relation to a provider is made by:
  (a) the Secretary personally; or
  (b) another agency head personally in the exercise of a delegated power; or
  (c) the Chief Executive Centrelink in the exercise of a delegated power; or
  (d) the Chief Executive Medicare in the exercise of a delegated power;

the provider may apply to the AAT for review (also an ***AAT single review***) of the decision.

181 Subsection 138(4)

Repeal the subsection.

182 Division 5 of Part 5

Repeal the Division.

183 Subsections 154(2) to (6)

Repeal the subsections, substitute:

(2) The Secretary may require a person to:
  (a) give information; or
  (b) produce a document that is in the person's custody or under the person's control;

to a specified agency if the Secretary considers that the information or document may be relevant to whether a person who has claimed family assistance, but who has not had the claim determined, is eligible for family assistance.

(3) The Secretary may require a person to:
  (a) give information; or
  (b) produce a document that is in the person's custody or under the person's control;

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to a specified agency if the Secretary considers that the information or document may be relevant to whether an approved provider is eligible for ACCS (child wellbeing) or the amount of ACCS (child wellbeing) an approved provider is entitled to be paid.

(4) The Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to a specified agency if the Secretary considers that the information or document may be relevant to:

(a) an application by the person, or any other person, for approval for the purposes of the family assistance law; or

(b) the question of whether an approved provider should continue to be approved; or

(c) an application by the person, or any other person, for the approval of an approved provider to be varied; or

(d) the question of whether a child care service should continue to be approved in respect of the person, or any other person; or

(e) the records that a person is required to keep under section 202D.

(5) The Secretary may require a person who is required to keep records under section 202D to produce to a specified agency such of those records as are specified in the notice given to the person under section 158.

184 Paragraph 157(1)(b)

Repeal the paragraph, substitute:

(b) to verify the eligibility, entitlement to be paid and amount of the entitlement of persons who have made claims for family assistance.

185 Paragraph 157(2)(k)

Repeal the paragraph, substitute:

(k) in relation to any other recognised activity (other than as an employee) that the person engages in for the person given the notice—any or all of the following:

(i) the date on which the recognised activity started;

(ii) the date on which the recognised activity ended;

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(iii) the number of hours each week in which the person engages in the recognised activity;

186 Paragraph 157(3)(c)

Omit “assistance; or”, substitute “assistance.”.

187 Paragraph 157(3)(d)

Repeal the paragraph.

188 After section 157

Insert:

157A Obtaining records supporting certificate under section 85CB

The Secretary may require an approved provider that has given the Secretary a certificate under section 85CB (certification for ACCS (child wellbeing)) of the Family Assistance Act to produce any records kept by the provider for the purposes of section 202C in relation to the certificate.

189 Subsection 158(3)

Repeal the subsection, substitute:

(3) For the purposes of paragraph (2)(b), the period must not end earlier than 14 days after the notice is given, unless the Secretary is satisfied that it is reasonable in the circumstances, for the purposes of the effective administration of the family assistance law, to specify a shorter period.

190 Subsection 158(5)

Repeal the subsection, substitute:

(5) If the notice requires the person to appear, the notice must specify a time and place at which the person is to appear.

(6) For the purposes of subsection (5), the time must be at least 14 days after the notice is given, unless the Secretary is satisfied that it is reasonable in the circumstances, for the purposes of the effective administration of the family assistance law, to specify an earlier time.

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191 After paragraph 162(2)(dad)

Insert:

(dae) the Education and Care Services National Law of a jurisdiction; or

192 Paragraph 171(c)

Omit “assistance; and”, substitute “assistance.”.

193 Paragraphs 171(d) and (e)

Repeal the paragraphs.

194 Section 172

Before “A person”, insert “(1)”.

195 At the end of section 172

Add:

(2) The reference in paragraph (1)(d) to a claim for family assistance includes the following:

(a) an application referred to in paragraph 67CD(4)(a) (ACCS (grandparent));

(b) an application referred to in paragraph 67CD(6)(a) (ACCS (transition to work));

(c) a declaration referred to in paragraph 67CH(1)(c) (ACCS (child wellbeing) for an approved provider).

196 Paragraph 173(1)(d)

Repeal the paragraph, substitute:

(d) the person is reckless as to whether the statement:

(i) deceives, or might deceive, an officer or an approved provider exercising powers, or performing duties, under the family assistance law; or

(ii) affects, or might affect, an entitlement to a payment of family assistance under the family assistance law; or

(iii) affects, or might affect, the rate or amount of a payment of family assistance under the family assistance law; or

(iv) affects, or might affect, eligibility for CCS for a child.

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197 Paragraph 174(1)(a)

Omit “child care service”, substitute “provider”.

198 Section 175

Before “A person”, insert “(1)”.

199 Paragraph 175(a)

Repeal the paragraph, substitute:

(a) the person obtains a payment of family assistance; and

200 At the end of section 175

Add:

(2) Paragraph (1)(a) is taken to include a reference to a provider or an individual who obtains a fee reduction amount.

201 Sections 175AA, 175A and 176

Repeal the sections, substitute:

176 Payment obtained by fraud

(1) A person contravenes this subsection if:
  (a) the person obtains a payment:
    (i) of family assistance; or
    (ii) under section 67EB (fee reduction amount); or
    (iii) under section 205A (business continuity payments); and
  (b) the person does so:
    (i) by means of impersonation; or
    (ii) by fraudulent means.

(2) A person contravenes this subsection if:
  (a) the person makes a statement; and
  (b) the statement is false or misleading; and
  (c) the person is reckless as to whether the statement is false or misleading; and
  (d) the person obtains, as a result, a payment:
    (i) of family assistance; or

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(ii) under section 67EB (fee reduction amount); or
(iii) under section 205A (business continuity payments).

202 Paragraph 178(1)(b)

Repeal the paragraph, substitute:

(b) order the person to pay the Commonwealth an amount equal to any amount obtained by way of family assistance or payments under section 67EB or 205A because of the act, failure or omission that constituted the offence.

203 Paragraph 183(2)(a)

After "paid", insert ", or who has obtained a fee reduction amount".

204 Paragraphs 183(2)(b) and (c)

After "paid", insert "or obtained".

205 Parts 8 and 8A

Repeal the Parts, substitute:

Part 8—Approval of provider of child care services

Division 1—Provider approval

194A Application for approval

Application

(1) Any of the following (a ***provider***):
(a) an individual;
(b) a body corporate;
(c) a partnership;
(d) an entity or body prescribed by the Minister's rules;
may apply to be approved for the purposes of the family assistance law in respect of one or more child care services that the provider operates or proposes to operate.

(2) The application must:

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(a) be given in a form and manner approved by the Secretary; and
(b) contain any information prescribed by the Secretary's rules; and
(c) contain any other information, and be accompanied by the documents, required by the Secretary.

(3) An application is taken not to have been made:
(a) if the application does not comply with subsection (2); or
(b) in circumstances prescribed by the Minister's rules.

194B Provider approval

Provider approval

(1) The Secretary may approve a provider for the purposes of the family assistance law if the Secretary is satisfied that:
(a) the provider satisfies the provider eligibility rules in section 194C; and
(b) the provider operates, or will operate, at least one child care service that satisfies the service eligibility rules in section 194D.

Approval in respect of child care service

(2) If the Secretary approves a provider under subsection (1), the Secretary:
(a) must approve the provider in respect of at least one child care service that meets the requirements in subsection (3); and
(b) may approve the provider in respect of one or more other child care services that meet the requirements in subsection (3).

(3) For a provider to be approved in respect of a child service, the Secretary must be satisfied that the service:
(a) is or will be operated by the provider; and
(b) satisfies the service eligibility rules in section 194D.

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Notice of approval

(4) If the Secretary approves the provider, the Secretary must give notice to the provider stating:
  (a) the child care services in respect of which the provider is approved; and
  (b) the type and address of each service; and
  (c) the day on which the provider's approval takes effect; and
  (d) the day on which the provider's approval in respect of each child care service takes effect.

(5) For the purposes of subsections (1) and (2), the day on which the approval takes effect:
  (a) must be:
    (i) a Monday; or
    (ii) if the Secretary considers it to be more appropriate—another day; and
  (b) must not be earlier than the day the application was made.

Refusal

(6) The Secretary must refuse to approve a provider for the purposes of the family assistance law if the Secretary is not satisfied of one or more of the matters referred to in subsection (1).

(7) The Secretary must refuse to approve a provider in respect of a child care service if the Secretary is not satisfied of one or more of the matters referred to in subsection (3) in respect of the service.

(8) If the Secretary refuses to approve a provider for the purposes of the family assistance law or refuses to approve the provider in respect of a child care service, the Secretary must give the applicant notice of:
  (a) the refusal; and
  (b) the reasons for the refusal.

194C Provider eligibility rules

A provider satisfies the provider eligibility rules if:

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(a) for each child care service in respect of which the provider is seeking approval—the provider holds any approvals or licences required to operate a child care service under the law of the State or Territory in which the service is situated; and

(b) the provider is a fit and proper person to be involved in the administration of CCS and ACCS; and

(c) any person with management or control of the provider is a fit and proper person to be involved in the administration of CCS and ACCS; and

(d) any person who will be a person with management or control of the provider on the day the provider's approval takes effect, or the day the provider's approval in respect of a child care service takes effect, is a fit and proper person to be involved in the administration of CCS and ACCS; and

(e) for a large centre-based day care provider—the provider is financially viable and is likely to remain so; and

(f) the provider satisfies any other criteria prescribed by the Minister's rules.

Note: See section 194F for the definition of ***person with management or control***.

194D Service eligibility rules

A child care service satisfies the service eligibility rules if:

(a) the service is of a type referred to in subclause 2(3) of Schedule 2 to the Family Assistance Act but is not any of the following:

(i) informal care provided through personal arrangements;

(ii) a service primarily conducted to provide instruction in an activity (such as sport or music);

(iii) a service primarily conducted to provide a disability or early intervention service;

(iv) a service where a parent primarily provides care or is readily available and retains responsibility for the child while the service is provided (such as a play group);

(v) a service primarily providing short-term irregular care at premises where the parent is a visitor or guest and the parent is readily available (such as a service provided by a gym);

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(vi) a service that primarily provides an early educational program to children in the year that is 2 years before grade 1 of school (such as a preschool or kindergarten); and

(b) the provider of the service holds any approvals or licences required to operate the service under the law of the State or Territory in which the service is situated; and

(c) each person who is responsible for the day-to-day operation of the service (whether or not the person is employed by the provider of the service) is a fit and proper person to be involved in the administration of CCS and ACCS; and

(d) each person who will be responsible for the day-to-day operation of the service (whether or not the person is employed by the provider of the service) on the day that the provider's approval in respect of the service takes effect is a fit and proper person to be involved in the administration of CCS and ACCS; and

(e) in the case where the service is covered by allocation rules—if the provider of the service were to be approved, child care places would be allocated to the service under section 198B; and

(f) the Secretary is satisfied that it is appropriate for the provider to be approved in respect of the service having regard to the following:

(i) if the provider is already an approved provider—any conditions imposed on the provider's approval;

(ii) any non-compliance by the provider with a law of the Commonwealth or a State or Territory;

(iii) the provider's record of administering payments under the family assistance law;

(iv) the provider's record of administering of Commonwealth, State or Territory funds;

(v) the capacity for staff working at the service to use the electronic system for managing child care payments under the family assistance law;

(vi) any other matter prescribed by the Minister's rules;

(vii) any other matter the Secretary considers relevant; and

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(g) the service satisfies any other criteria prescribed by the Minister's rules.

194E Fit and proper person considerations

(1) The Secretary must have regard to the following matters in determining whether a person is a fit and proper person for the purpose of paragraph 194C(b), (c) or (d) or 194D(c) or (d):

(a) any non-compliance by a relevant person with a law of the Commonwealth or a State or Territory;

(b) any proceedings currently before a court or tribunal that involve a relevant person;

(c) any decision made under a law of the Commonwealth or a State or Territory relating to child care which adversely affects a relevant person;

(d) subject to Part VIIC of the *Crimes Act 1914*, any conviction, or finding of guilt, against a relevant person for an offence against a law of the Commonwealth or a State or Territory, including (without limitation) an offence against children, or relating to dishonesty or violence;

(e) any order for a relevant person to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a State or Territory;

(f) any act of a relevant person involving fraud or dishonesty;

(g) the arrangements the person has:

(i) to ensure the person complies with the family assistance law; and

(ii) to ensure anyone the person is responsible for managing complies with the family assistance law;

(h) the record of administering of Commonwealth, State or Territory funds of a relevant person;

(i) any debts to the Commonwealth incurred by a relevant person (whether or not the debt has been discharged);

(j) the record of financial management of a relevant person, including any instances of bankruptcy, insolvency or external administration involving the person;

(k) any other matter prescribed by the Minister's rules;

(l) any other matter the Secretary considers relevant.

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(2) For the purposes subsection (1), a ***relevant person*** is:
  (a) the person; and
  (b) another person or body in respect of which the person is or has ever been a person with management or control.

Note: See section 194F for the definition of ***person with management or control***.

194F Meaning of *person with management or control*

(1) A person is a ***person with management or control*** of a body, if the person is any of the following:
  (a) a member of the group of persons responsible for the executive decisions of the body;
  (b) a person who has authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the body;
  (c) a person who is responsible for the day-to-day operation of the body (whether or not the person is employed by the body);
  (d) a person who is responsible for the day-to-day operation of a child care service in respect of which the body is approved or is seeking to be approved (whether or not the person is employed by the body).

(2) Without limiting paragraph (1)(a), the following persons are taken to be members of the group referred to in that paragraph:
  (a) if the body is a body corporate—an officer of the body corporate (within the meaning of the *Corporations Act 2001*);
  (b) if the body is a partnership—a partner;
  (c) in any other case—a member of the body's governing body.

194G Meaning of *approved child care service*

(1) A child care service is an ***approved child care service*** if an approved provider is approved in respect of the service under this Division and that approval is in effect.

(2) If the approved provider's approval under this Division is suspended or suspended in respect of the service, the service is not

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an ***approved child care service*** at any time when the suspension is in effect.

194H Obligations and permissions of an approved child care service are those of the approved provider

For the purposes of the family assistance law:

(a) an obligation imposed by that law on an approved child care service is taken to be imposed on the approved provider of the service; and

(b) a permission conferred by that law on an approved child care service is taken to be conferred on the approved provider of the service.

Division 2—Conditions for continued approval

195A Conditions for continued approval—compliance with rules and law

Continued satisfaction of eligibility rules

(1) It is a condition for continued approval of an approved provider that:

(a) the provider continues to satisfy the provider eligibility rules in section 194C; and

(b) each approved child care service of the provider continues to satisfy the service eligibility rules in section 194D.

Compliance with family assistance law

(2) It is a condition for continued approval of an approved provider that the provider not contravene the family assistance law (whether or not the contravention constitutes an offence or is a contravention of a civil penalty provision).

Note: Enforcement under this Part of this and other conditions is not limited or affected by other compliance measures in relation to these provisions (for example under the Regulatory Powers Act).

(3) It is a condition for continued approval of an approved provider that the provider cooperate with a person exercising powers under:

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(a) section 67FH (power to require information about children enrolled in child care); and
(b) section 154 (power to obtain information generally); and
(c) the Regulatory Powers Act in respect of a provision mentioned in subsection 219UA(1), or information mentioned in subsection 219UA(2), of this Act.

Compliance with Commonwealth, State and Territory laws

(4) It is a condition for continued approval of an approved provider that:
(a) the operation of each approved child care service of the provider; and
(b) the provision of care by each service;
comply with all requirements imposed by a law of the Commonwealth or a law of the State or Territory in which the service is situated.

195B Conditions for continued approval—child care places limit not to be exceeded

It is a condition for continued approval of an approved provider that, if an approved child care service of the provider is covered by the allocation rules:
(a) the service provides child care places; and
(b) the service provides no more child care places than the number allocated to the service.

195C Conditions for continued approval—operating period for each approved child care service

(1) It is a condition for continued approval of an approved provider that each child care service of the provider operates for the period determined in accordance with this subsection (the ***minimum period***).

(2) Subject to subsections (3) and (4), the minimum period is:
(a) 48 weeks per year; or
(b) if the service is an outside school hours care service—7 weeks per year.

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(3) If the Minister's rules prescribe an alternative period for a service and subsection (4) does not apply, then the minimum period for the service is the period prescribed by the Minister's rules.

(4) If the Secretary is satisfied that due to special circumstances affecting a service it is appropriate for the service to operate for a shorter period, the minimum period for the service is the number of weeks per year (which may be nil) that the Secretary determines, in writing, to be appropriate.

195D Conditions for continued approval—working with children card

(1) It is a condition for continued approval of an approved provider that, for each individual required to hold a working with children card in relation to care provided by a child care service of the provider, the provider give the Secretary details of the card issued to the individual.

(2) For the purposes of subsection (1), a working with children card is a card that permits the individual to work with children under the law of the State or Territory in which the service is situated.

195E Condition for continued approval—compliance with conditions imposed by Minister

It is a condition for continued approval of an approved provider that the provider complies with any conditions prescribed by the Minister's rules in respect of the provider or an approved child care service of the provider.

195F Condition for continued approval—compliance with conditions imposed by Secretary

(1) It is a condition for continued approval of an approved provider that the provider complies with any conditions imposed on the provider under subsection (2).

(2) The Secretary may impose conditions in respect of:
   (a) an approved provider; or
   (b) one or more approved child care services of a provider.

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(3) If the Secretary imposes a condition, the Secretary must give notice of the condition to the approved provider. The notice must specify the day the condition takes effect.

(4) A notice given under subsection (3) is not a legislative instrument.

195G Reassessment of continued approval

The Secretary may at any time assess whether a provider is complying with the conditions for continued approval of the provider.

195H Consequences of breach of conditions for continued approval

Sanctions

(1) If the Secretary is satisfied that an approved provider has not complied, or is not complying, with a condition for continued approval of the provider, the Secretary may do one or more of the following:

(a) suspend the provider's approval;

(b) cancel the provider's approval;

(c) suspend the provider's approval in respect of one or more child care services;

(d) vary the provider's approval so that the provider is not approved in respect of one or more child care services;

(e) reduce the number of any child care places allocated to the service under section 198B;

(f) suspend, for a maximum of 3 weeks, payments under section 67EB of fee reduction amounts in respect of sessions of care provided by one or more approved child care services of the provider.

Note 1: The Secretary may also decide to vary or impose additional conditions under subsection 195F(2).

Note 2: Before doing a thing mentioned in paragraphs (a) to (f), the Secretary must follow the procedure in section 199A.

(2) In exercising a power under subsection (1), the Secretary must have regard to any matters prescribed by the Minister's rules as

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matters to be taken into account by the Secretary in applying the subsection to approved providers.

Notice of sanction

(3) If the Secretary does any of the things mentioned in subsection (1), the Secretary must give notice to the provider that the Secretary has done so. The notice must specify the day the thing takes effect (which must be not earlier than the day the notice is given).

Revocation of suspension

(4) If the Secretary suspends the provider's approval or suspends the provider's approval in respect of one or more child care services, the Secretary may at any time revoke the suspension.

(5) If the Secretary revokes the suspension, the Secretary must give notice to the provider that the Secretary has done so. The notice must specify the day the revocation takes effect (which may be earlier than the day the revocation is done).

(6) In exercising a power under subsection (4), the Secretary must have regard to any matters prescribed by the Minister's rules as matters to be taken into account by the Secretary in specifying the day of effect of a revocation of a suspension.

Revocation of suspension of payment in respect of fee reduction

(7) If the Secretary suspends payment in respect of fee reduction, the Secretary may at any time revoke the suspension. If the suspension is revoked, all payments under section 67EB that would have been paid but for the suspension must be paid.

(8) If the Secretary revokes the suspension, the Secretary must give notice to the provider that the Secretary has done so. The notice must specify the day the revocation takes effect (which may be earlier than the day the revocation is done).

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Division 3—Adding or removing services

196A Application to add or remove service

(1) An approved provider may apply for a variation of the provider's approval to add a child care service to, or remove a child care service from, the provider's approval.

(2) The application must:
  (a) be given in a form and manner approved by the Secretary; and
  (b) contain any information prescribed by the Secretary's rules; and
  (c) contain any other information, and be accompanied by the documents, required by the Secretary.

(3) An application is taken not to have been made:
  (a) if the application does not comply with subsection (2); or
  (b) in circumstances prescribed by the Minister's rules.

196B Adding a service on application

Variation

(1) If:
  (a) an approved provider applies under section 196A to add a child care service to the provider's approval; and
  (b) the Secretary is satisfied that the service satisfies the requirements in subsection 194B(3);

the Secretary may vary the provider's approval by adding the service to the approval as a service in respect of which the provider is approved.

Notice of approval

(2) If the Secretary varies the provider's approval, the Secretary must give notice to the provider stating:
  (a) the child care services in respect of which the provider is approved as a result of the variation; and
  (b) the type and address of each service; and

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(c) the day on which the provider's approval in respect of each child care service takes effect.

(3) For the purposes of paragraph (2)(c), the day on which the approval takes effect must be a Monday. The day must not be earlier than the day the application was made.

Refusal

(4) If the Secretary is not satisfied of the matter referred to in paragraph (1)(b), the Secretary must refuse the application.

(5) If the Secretary refuses the application, the Secretary must give the applicant notice of:
(a) the refusal; and
(b) the reasons for the refusal.

196C Removing a service on application

Variation

(1) If an approved provider applies under section 196A to remove a child care service from the provider's approval, the Secretary may vary the provider's approval by removing the service from the approval as a service in respect of which the provider is approved.

(2) The Secretary must give notice to the provider that the Secretary has done so. The notice must specify the day the variation takes effect (which may be earlier than the day the variation was made).

Refusal

(3) If the Secretary refuses the application, the Secretary must give the applicant notice of:
(a) the refusal; and
(b) the reasons for the refusal.

Secretary to have regard to prescribed matters

(4) In exercising a power under subsection (1), the Secretary must have regard to any matters prescribed by the Minister's rules as

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matters to be taken into account by the Secretary in deciding whether to grant a request under subsection (1).

Division 4—Suspension, variation and cancellation of approval

197A Immediate suspension

(1) The Secretary may suspend the approval of an approved provider, or the approval of an approved provider in respect of one or more services, if the Secretary reasonably believes that:
  (a) the provider is not complying with subsection 195A(4) (compliance with Commonwealth, State and Territory laws); or
  (b) there is an imminent threat to the health or safety of a child because of the care provided by an approved child care service of the provider; or
  (c) due to urgent circumstances, it is no longer appropriate for one or more approved child care services of the provider to provide child care; or
  (d) due to urgent circumstances, it is no longer appropriate for the provider to administer payments under the family assistance law.

(2) If the Secretary suspends the provider's approval or suspends the provider's approval in respect of one or more services, the Secretary must give the provider notice of:
  (a) the day the suspension takes effect (which must not be earlier than the day the notice is given); and
  (b) the grounds for the suspension.

(3) The Secretary may revoke the suspension.

(4) If the Secretary revokes the suspension, the Secretary must give notice to the provider that the Secretary has done so. The notice must specify the day the revocation takes effect (which may be earlier than the day the revocation was done).

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197B Suspension for multiple infringement notices

(1) The Secretary may suspend the approval of an approved provider, or the approval of an approved provider in respect of one or more services, if:

(a) the provider has been given 10 infringement notices under Part 5 of the Regulatory Powers Act in respect of contraventions of civil penalty provisions of this Act within a period of 12 months; or

(b) the provider has been given 5 infringement notices under Part 5 of the Regulatory Powers Act in respect of contraventions of civil penalty provisions of this Act within a period of 12 months and the time for paying the penalty specified in each such notice has ended, without the penalty being paid.

(2) If the Secretary suspends the provider's approval or suspends the provider's approval in respect of one or more services, the Secretary must give the provider notice of:

(a) the day the suspension takes effect (which must not be earlier than the day the notice is given); and

(b) the grounds for the suspension.

(3) The Secretary may revoke the suspension.

(4) If the Secretary revokes the suspension, the Secretary must give notice to the provider that the Secretary has done so. The notice must specify the day the revocation takes effect (which may be earlier than the day the revocation was done).

197C Cancellation on request

(1) The Secretary may cancel the approval of an approved provider if the provider requests the Secretary in writing to do so.

(2) In exercising a power under subsection (1), the Secretary must have regard to any matters prescribed by the Minister's rules as matters to be taken into account by the Secretary in deciding whether to grant the request under subsection (1).

(3) If the Secretary cancels the approval, the Secretary must give notice to the provider that the Secretary has done so. The notice

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must specify the day the cancellation takes effect (which may be earlier than the day the notice is given).

197D Cancellation if provider should not have been approved

(1) The Secretary must cancel the approval of an approved provider if the Secretary is satisfied that, at the time the provider was approved, the provider did not satisfy the requirements in subsection 194B(1).

(2) If the Secretary cancels the provider's approval, the Secretary must give the provider notice of the day the cancellation takes effect (which may be earlier than the day the notice is given).

Note: Before cancelling the approval the Secretary must follow the procedure in section 199A.

197E Variation if provider should not have been approved in respect of a service

(1) The Secretary must vary the approval of an approved provider so that the provider is not approved in respect of a child care service if the Secretary is satisfied that, at the time the provider was approved in respect of the service, the service did not satisfy the requirements in subsection 194B(3).

(2) If the Secretary varies the provider's approval by removing the service from the approval, the Secretary must give the provider notice of the day the variation takes effect (which may be earlier than the day the notice is given).

Note: Before varying the approval the Secretary must follow the procedure in section 199A.

197F Cancellation for failure of provider to provide care for 3 continuous months

(1) The Secretary may cancel the approval of an approved provider if:
  (a) all approved child care services of the provider fail to provide child care for a continuous period of 3 months; and
  (b) neither of the following apply:

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(i) all approved child care services of the provider are subject to a determination under section 195C that the service need not operate for the period;

(ii) the Secretary is satisfied that, because of special circumstances affecting the provider, the provider's approval should not be cancelled.

(2) If the Secretary cancels the provider's approval, the Secretary must give the provider notice of the day the cancellation takes effect (which may be earlier than the day the notice is given).

(3) Before cancelling the provider's approval, the Secretary must request, in writing, that the provider provide within 14 days evidence that the provider is operating a child care service.

(4) The Secretary must have regard to any response to the request in deciding whether to cancel the approval.

197G Variation for failure of service to provide care for 3 continuous months

(1) The Secretary may vary the approval of an approved provider to remove an approved child care service from the approval if:

(a) the service fails to provide child care for a continuous period of 3 months; and

(b) neither of the following apply:

(i) the service is subject to a determination under section 195C that the service need not operate for the period;

(ii) the Secretary is satisfied that, because of special circumstances affecting the service, the provider's approval should not be so varied.

(2) If the Secretary varies the provider's approval, the Secretary must give the provider notice of the day the variation takes effect (which may be earlier than the day the notice is given).

(3) Before varying the provider's approval, the Secretary must request, in writing, that the provider provide, within 14 days, evidence that the provider is operating the service.

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(4) The Secretary must have regard to any response to the request in deciding whether to vary the approval.

197H Cancellation for ceasing to operate any approved child care service

(1) The Secretary must cancel the approval of an approved provider if the provider ceases to operate all the approved child care services of the provider.

(2) If the Secretary cancels the approval, the Secretary must give notice to the provider that the Secretary has done so. The notice must specify the day the cancellation takes effect (which may be earlier than the day the notice is given).

197J Variation for ceasing to operate a child care service

(1) The Secretary must vary the approval of an approved provider to remove an approved child care service from the approval if the provider ceases to operate the service.

(2) If the Secretary varies the approval, the Secretary must give notice to the provider that the Secretary has done so. The notice must specify the day the variation takes effect (which may be earlier than the day the notice is given).

197K Cancellation because no longer approved in respect of any child care service

(1) The approval of an approved provider is taken to be cancelled if there are no longer any child care services in respect of which the provider is approved.

(2) If the approval is cancelled under this section, the Secretary must give notice to the provider of the cancellation. The notice must specify the day the cancellation takes effect.

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Division 5—Allocation of child care places

198A Allocation of child care places to approved child care services

The Minister's rules may prescribe the following (the ***allocation rules***):

(a) procedures relating to the allocation of child care places to approved child care services;

(b) matters to be taken into account in working out the number (if any) of child care places to be allocated to approved child care services;

(c) child care services subject to the allocation rules;

(d) the maximum number of places that can be allocated to approved child care services in a specified class;

(e) any other matters to be taken into account in making such an allocation;

(f) procedures relating to the reduction under section 198C of the number of child care places allocated to approved child care services;

(g) matters to be taken into account in working out the number of child care places by which the number of child care places allocated to approved child care services may be reduced under section 198C;

(h) any other matters to be taken into account in reducing, or deciding whether to reduce, under section 198C the number of child care places allocated to approved child care services.

198B Secretary to allocate child care places

Initial allocation of child care places

(1) If an approved child care service is subject to the allocation rules, the Secretary must allocate child care places to the service in accordance with the rules.

Additional allocation of child care places

(2) If an approved child care service has been allocated a number of child care places, the approved provider of the service may apply to the Secretary for additional child care places.

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(3) The application must:
  (a) be given in a form and manner approved by the Secretary; and
  (b) contain any information prescribed by the Secretary's rules; and
  (c) contain any other information, and be accompanied by the documents, required by the Secretary.

(4) The Secretary must decide, in accordance with the allocation rules, whether or not to grant the application.

(5) The Secretary must give the applicant notice of the decision under subsection (4).

(6) If the Secretary decides to grant the application, the Secretary must allocate the additional child care places to the service.

198C Reduction of allocation of child care places by unused or unusable places

(1) The Secretary may reduce, in accordance with the allocation rules, the number of child care places allocated to an approved child care service if:
  (a) that number exceeds the number of child care places provided by the service; or
  (b) that number exceeds the number of child care places that the service is, under a law of a State or Territory, licensed to provide.

  The reduction must not be greater than the number of excess places.

(2) Before the reduction, the Secretary must (unless the provider has informed the Secretary in writing that the allocated number may be reduced) give a notice to the approved provider of the service that:
  (a) states that the Secretary proposes to make the reduction; and
  (b) states the number of places by which the Secretary proposes to reduce the number of places allocated to the service; and
  (c) invites the provider to make written submissions to the Secretary about the proposed reduction; and
  (d) is not inconsistent with the allocation rules.

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(3) If the approved provider of the service has informed the Secretary in writing that the number of child care places allocated to the service may be reduced, the Secretary may give the provider a notice under subsection (2) before making the reduction.

(4) The Secretary must have regard to any submissions made by the approved provider of the service in accordance with an invitation under paragraph (2)(c) in deciding whether to make the reduction.

(5) If the Secretary reduces the number of child care places allocated to an approved child care service, the Secretary must give the approved provider of the service a notice that states:
   (a) the number of places by which the number of places allocated to the service is reduced; and
   (b) the day on which the reduction takes effect, which must not be earlier than the day on which the notice is given; and
   (c) the number of places allocated to the service, taking account of the reduction.

Division 6—Miscellaneous

199A Procedure before certain consequences apply

(1) Before doing a thing mentioned in subsection 195H(1) or section 197D or 197E, the Secretary must give a notice to the provider concerned that:
   (a) states that the Secretary is considering doing the thing; and
   (b) sets out the grounds for doing the thing; and
   (c) summarises the evidence and other material on which those grounds are based; and
   (d) summarises the effect of doing of the thing on eligibility for CCS or ACCS in respect of a session of care provided by an approved child care service of the provider; and
   (e) summarises the provider's rights under this Act to seek a review of the decision to do the thing; and
   (f) invites the provider to make written submissions to the Secretary, within 28 days, stating why the thing should not be done.

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(2) The Secretary must have regard to any submissions made by the provider in accordance with an invitation under paragraph (1)(f) in deciding whether to do the thing.

199B Publicising sanctions or suspensions

(1) If any of the following events occur, the Secretary may publicise the event in any way the Secretary thinks appropriate:
  (a) the Secretary does one or more of the things mentioned in subsection 195H(1);
  (b) the Secretary suspends the approval of an approved provider under subsection 197A(1);
  (c) a person is ordered by a court to pay a pecuniary penalty in relation to a civil penalty provision of this Act;
  (d) a person is convicted of an offence against this Act (including an offence against Chapter 7 of the *Criminal Code* that relates to this Act).

(2) Without limiting subsection (1), the Secretary may publicise information that includes the following:
  (a) the name of the provider;
  (b) the name and address of an approved child care service or former approved child care service of the provider;
  (c) if the information relates to the doing of one or more of the things mentioned in subsection 195H(1):
    (i) the things done; and
    (ii) the day when each thing done takes effect; and
    (iii) each condition for continued approval of the provider with which the provider has not complied, or is not complying; and
    (iv) the day (if any) when each thing done ceases to have effect;
  (d) if the information relates to a suspension under subsection 197A(1):
    (i) the day when the suspension takes effect; and
    (ii) the grounds for the suspension; and
    (iii) the day (if any) when the suspension ceases to have effect.

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199C Notice to Secretary of matters affecting approval

(1) An approved provider must give the Secretary written notice of the following matters as soon as practicable after the provider becomes aware of the matter:

(a) the provider did not satisfy the requirements in subsection 194B(1) at the time the provider became approved;

(b) a service in respect of which the provider is or was approved did not satisfy the requirements in subsection 194B(3) at the time the provider became approved in respect of the service;

(c) the provider has not complied, or is not complying, with a condition for continued approval of the provider.

Note: Section 204F also requires an approved provider to notify the Secretary of certain matters.

Offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 80 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

199D Notice to provider of review rights for decisions under this Part

If the Secretary is required by a provision of this Part to give a provider notice of a decision, the notice must include a statement of the provider's rights under this Act to seek a review of the decision.

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199E Notifying individuals about effect on eligibility

(1) If the Secretary is satisfied that an approved provider has not complied, or is not complying, with a condition for continued approval of the provider, the Secretary may give a notice to an individual whose eligibility for CCS or ACCS may be affected if the Secretary were to cancel, suspend or vary the provider's approval because of the Secretary being so satisfied.

(2) A notice under subsection (1) must:

(a) state that the Secretary is satisfied that the provider has not complied, or is not complying, with a condition for continued approval of the provider; and

(b) set out the effect on the individual's eligibility if the Secretary were to cancel, suspend or vary the provider's approval.

The notice may set out any other information that the Secretary thinks relevant.

(3) If the Secretary cancels, suspends or varies the provider's approval under this Part, the Secretary may give a notice to an individual whose eligibility for CCS or ACCS may be affected because of that action.

(4) A notice under subsection (3) must:

(a) state that the Secretary has cancelled, suspended or varied the provider's approval; and

(b) set out the effect of the action on the individual's eligibility.

The notice may set out any other information that the Secretary thinks relevant.

(5) A notice under this section must be given in a form and manner approved by the Secretary.

199F Certain providers not required to comply with requirements

If the Minister's rules specify the provider of a child care service for the purposes of this section:

(a) the provider is not required to satisfy paragraph 194C(a) in order to satisfy the provider eligibility rules; and

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(b) the provider is not required to satisfy or comply with any other provision prescribed by the Minister's rules in order to become, or remain, approved for the purposes of the family assistance law.

199G Minister's rules in relation to backdating of approvals etc.

(1) The Minister's rules may prescribe modifications of this Act or the Family Assistance Act to apply in respect of the following persons and periods:

(a) approved providers whose approval takes effect on a day earlier than the day the Secretary gives the provider notice of the approval, for the period starting when the approval takes effect, and ending when the Secretary gives the notice;

(b) approved providers whose approval in respect of a child care service takes effect on a day earlier than the day the Secretary gives the provider notice of the approval, for the period starting when the approval in respect of the service takes effect and ending when the Secretary gives the notice;

(c) providers whose approval, or approval in respect of a child care service, is suspended, for the period of the suspension;

(d) approved providers whose suspension is revoked with effect from a day earlier than the day the Secretary gives the provider notice of the revocation, for the period starting when the revocation takes effect and ending when the Secretary gives the notice.

(2) Subsection (1) does not limit subsection 85GB(1) of the Family Assistance Act.

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Part 8A—Provider requirements and other matters

Division 1—Requirements in relation to enrolments and relevant arrangements

200A Enrolment notices

Notice if a child starts to be enrolled

(1) An approved provider of an approved child care service must give the Secretary a notice in accordance with subsection (4) if a child starts to be enrolled for care by the service.

Notice if a child starts to be enrolled before approval given or during suspension of approval

(2) An approved provider of an approved child care service must give the Secretary a notice in accordance with subsection (4) if:
  (a) on the day a child starts to be enrolled for care by the service:
    (i) the provider is not approved, or not approved in respect of the service; or
    (ii) the provider's approval, or approval in respect of the service, is suspended; and
  (b) after that day, the Secretary gives the provider notice:
    (i) that the provider has been approved, or approved in respect of the service; or
    (ii) that the suspension has been revoked; and
  (c) the child is enrolled for care by the service on any day on or after the day the approval or revocation takes effect.

Notice if relevant arrangement entered into

(3) An approved provider of an approved child care service must give the Secretary a notice in accordance with subsection (4) if the provider and an individual enter into an arrangement (a ***relevant arrangement***) other than a complying written arrangement for the service to provide care to a child.

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Content and timing of notices

(4) A notice is given in accordance with this subsection if:
  (a) it is given in a form and manner approved by the Secretary; and
  (b) it contains the information required by the Secretary; and
  (c) for a notice under subsection (1)—it is given by the later of:
    (i) 7 days after the end of the week in which the child started to be enrolled; or
    (ii) if the child started to be enrolled in a period, or a series of consecutive periods, to which a payment under section 205A relates—7 days after the end of the period, or the last such period; and
  (d) for a notice under subsection (2)—it is given no later than 7 days after the end of the week in which the Secretary gave the notice referred to in paragraph (2)(b); and
  (e) for a notice under subsection (3)—it is given no later than 7 days after the end of the week in which the relevant arrangement is entered into.

Offence

(5) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 60 penalty units.

Civil penalty

(6) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 30 penalty units.

200B When a child is *enrolled*

(1) A child:
  (a) ***starts to be enrolled*** for care by a child care service of a provider if:

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(i) the provider and an individual enter into a complying written arrangement for the service to provide care to the child; or

(ii) the service provides care to the child in the circumstances referred to in subsection (4); and

(b) ***ceases to be enrolled*** for care by that service when the earliest of the following events happens:

(i) for an enrolment that started as referred to in subparagraph (a)(i)—the arrangement ends;

(ii) for an enrolment that started as referred to in subparagraph (a)(ii)—the care ceases to be provided in those circumstances;

(iii) 8 weeks have passed since the child last attended any of the service's sessions of care;

(iv) an event prescribed by the Minister's rules.

(2) A child is ***enrolled*** for care by a service from the day the child starts to be enrolled until the child ceases to be enrolled. To avoid doubt, a child who ceases to be enrolled for care by a service is not ***enrolled*** for care by that service until the child starts to be enrolled for care by that service again.

(3) A written arrangement between a provider and an individual is a ***complying written arrangement*** if the arrangement complies with the requirements prescribed by the Secretary's rules.

(4) A service provides care to a child in the circumstances referred to in this subsection if:

(a) immediately before the service starts to provide the care, the child is not enrolled for care by the service; and

(b) any of the following applies in relation to the week in which the service starts to provide the care:

(i) a certificate given by the approved provider of the service under section 85CB (certification for ACCS (child wellbeing)) of the Family Assistance Act is in effect in relation to the child;

(ii) a determination made by the Secretary under section 85CE (determination for ACCS (child wellbeing)) of the Family Assistance Act is in effect in relation to the child;

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(iii) the approved provider of the service has applied for a determination under section 85CE of the Family Assistance Act and the application has not been refused; and

(c) the provider gives the Secretary a declaration referred to in paragraph 67CH(1)(c) in relation to sessions of care provided by the service to the child.

200C Variation of complying written arrangements

An approved provider must ensure that a variation of a complying written arrangement to which the provider is a party is done in writing, if the variation:

(a) has the effect that information in the enrolment notice given by the provider for the child to whom the arrangement relates becomes incorrect; or

(b) relates to a matter prescribed by the Minister's rules.

Civil penalty: 30 penalty units.

200D Updates in relation to enrolled children

(1) An approved provider must give the Secretary notice in accordance with subsection (3) of the following events in relation to complying written arrangements or relevant arrangements to which the provider is a party and enrolment notices given by the provider:

(a) a complying written arrangement is varied in a way that:

(i) has the effect that information in the enrolment notice given in relation to a child becomes incorrect; or

(ii) relates to a matter prescribed by the Minister's rules for the purposes of paragraph 200C(b);

(b) information in an enrolment notice otherwise becomes incorrect;

(c) information becomes available that, had it been available when an enrolment notice was given, should have been included in the notice;

(d) information becomes available that, had it been available when an enrolment notice was given, would have required the notice to be given in a different form;

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(e) a child for whom an enrolment notice has been given ceases to be enrolled for care by the service for the reason mentioned in subparagraph 200B(1)(b)(i) (complying written arrangement ends);

(f) a relevant arrangement in relation to a child has ended.

(2) An approved provider must give the Secretary a notice in accordance with subsection (3) if:

(a) on the day an event referred to in subsection (1) happens, the provider's approval, or approval in respect of the service, is suspended; and

(b) after that day, the Secretary gives the provider notice that the suspension has been revoked; and

(c) the child is enrolled for care by the service on any day on or after the day the revocation takes effect.

(3) A notice under subsection (1) or (2) is given in accordance with this subsection if it is given:

(a) in a form and manner approved by the Secretary; and

(b) for a notice under subsection (1)—no later than the later of:

(i) 7 days after the day the event happened; and

(ii) if the event happened in a period, or a series of consecutive periods, to which a payment under section 205A relates—7 days after the end of the period, or the last such period; and

(c) for a notice under subsection (2)—no later than 7 days after the Secretary gave the notice referred to in paragraph (2)(b).

Offence

(4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty

(5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 30 penalty units.

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Division 2—Requirements in relation to CCS and ACCS by fee reduction

201A Requirement to pass on fee reduction amount to individual entitled to be paid CCS or ACCS

Requirement to pass on or remit to Secretary fee reduction amount

(1) A provider to whom a notice is given of a fee reduction decision for an individual must, no later than 14 days after the notice is given:

(a) pass on the fee reduction amount for the decision to the individual; or

(b) if it is not reasonably practicable to do so—remit the fee reduction amount to the Secretary, in a manner approved by the Secretary.

(2) Subsection (1) does not apply in relation to a notice that includes a statement to the effect that the Secretary has decided to pay the fee reduction amount directly to the individual under subsection 67EC(2).

Note 1: See subsections 67CE(6), 106A(3), 109B(2B) and 136(3).

Note 2: In a prosecution for an offence under subsection (3), a defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).

Offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 80 penalty units.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

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Passing on

(5) A provider may pass on a fee reduction amount by reducing fees or in any other way. As long as the individual receives the benefit of the fee reduction amount from the provider:
   (a) the provider is taken to have passed on the fee reduction amount; and
   (b) the individual is taken to have been paid an amount of CCS or ACCS equal to the amount of the fee reduction amount.

Notice of remittal

(6) A provider that remits an amount in accordance with paragraph (1)(b) must give the Secretary written notice of the remittance:
   (a) in a form and manner approved by the Secretary; and
   (b) including any information required by the Secretary.

The provider's notice must be given no later than 14 days after the notice of the fee reduction decision is given.

201B Enforcing payment of hourly session fees

Duty to enforce payment of hourly session fees

(1) A provider to whom a notice is given of a fee reduction decision referred to in item 1 or 2 of the table in subsection 67EB(2) for an individual, for sessions of care provided by a service to a child in a week, must take all reasonable steps to ensure that the individual pays the provider the difference between:
   (a) the total of the hourly session fees for all sessions of care provided by the service to the child in the week to which the decision relates; and
   (b) the fee reduction amount for the decision.

Offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 80 penalty units.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

201C Charging no more than usual hourly session fee

Duty to charge no more than usual hourly session fee

(1) The approved provider of a child care service must not charge an individual who is eligible for ACCS for a session of care provided by the service an hourly session fee that exceeds the hourly session fee the provider would ordinarily charge an individual who is eligible for CCS for the session of care.

Offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 80 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

201D Requirement to give individuals statements of entitlement

(1) This section applies if a provider is given a notice under subsection 67CE(4) of a determination made under section 67CD for an individual for a week, in relation to sessions of care provided to a child by an approved child care service of the provider.

(2) The provider must give the individual a written statement in accordance with subsection (3) for the statement period that includes the week.

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(3) A statement is given in accordance with this subsection if:
  (a) it includes the following:
    (i) the start and end dates of the statement period;
    (ii) the hourly session fee for each session of care provided by the service to the child in the statement period;
    (iii) the total of the fee reduction amounts for the fee reduction decisions for the individual of which the provider was given notice for the weeks in the statement period;
    (iv) any other information prescribed by the Secretary's rules; and
  (b) it is given no later than 7 days after the day the provider is required to give a report under section 204B (requirement to report about children for whom care is provided) for the last week in the statement period.

(4) If the Secretary's rules prescribe another person to whom a statement must be given when a statement is given under subsection (2), the provider must give the prescribed person a written statement that includes the information prescribed for the person by the Secretary's rules, by the time prescribed by the Secretary's rules.

Offence

(5) A person commits an offence of strict liability if the person contravenes subsection (2) or (4).

Penalty: 60 penalty units.

Civil penalty

(6) A person is liable to a civil penalty if the person contravenes subsection (2) or (4).

Civil penalty: 30 penalty units.

(7) A ***statement period*** is:
  (a) a CCS fortnight; or
  (b) if the Secretary's rules prescribe a different period—the prescribed period.

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201E Statements following changes of entitlement

(1) This section applies if a provider is given notice under subsection 106A(2) or 109B(2A) of a decision on review that varies, or substitutes a new determination for, a determination made under section 67CD for an individual for a week.

(2) The provider must:
  (a) if it is reasonably practicable to do so—give the individual a written statement in accordance with subsection (3); and
  (b) otherwise—notify the Secretary that it is not reasonably practicable for the provider to do so and comply with any requirements prescribed by the Secretary's rules in the circumstances.

(3) A statement is given in accordance with this subsection if:
  (a) it does either of the following:
    (i) it is given in accordance with subsection 201D(3) taking into account the effect of the decision on review;
    (ii) it identifies the statement given under subsection 201D(2) in relation to the determination to which the review related and updates it to take into account the effect of the decision on review; and
  (b) it is given no later than the end of the statement period immediately after the statement period in which the provider was given the notice referred to in subsection (1).

(4) If the Secretary's rules prescribe another person to whom a statement must be given when a statement is given under subsection (2), the provider must give the prescribed person a written statement that includes the information prescribed for the person by the Secretary's rules, by the time specified in the Secretary's rules.

Offence

(5) A person commits an offence of strict liability if the person contravenes subsection (2) or (4).

Penalty: 60 penalty units.

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Civil penalty

(6) A person is liable to a civil penalty if the person contravenes subsection (2) or (4).

Civil penalty: 30 penalty units.

Division 3—Requirements in relation to records

202A Requirement to make records

(1) An approved provider must make a written record of information or an event of which it becomes aware if:
  (a) the provider would not otherwise have a written record of the information or event; and
  (b) the information or event relates to any of the following:
    (i) an individual's eligibility for CCS or ACCS;
    (ii) the eligibility of an approved child care service of the provider for ACCS (child wellbeing);
    (iii) the provider's compliance with the conditions for continued approval of the provider;
    (iv) any other matter prescribed by the Secretary's rules.

Offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 50 penalty units.

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202B Requirement to keep records

Requirement to keep records

(1) An approved provider must keep records, in accordance with the Secretary's rules, of information and events in relation to the following matters:
  (a) an individual's eligibility for CCS or ACCS;
  (b) the eligibility of an approved child care service of the provider for ACCS (child wellbeing);
  (c) the provider's compliance with the conditions for continued approval of the provider;
  (d) any other matter prescribed by the Secretary's rules.

Duration of record-keeping

(2) An approved provider must keep the records referred to in subsection (1) until at least:
  (a) the end of the period of 7 years starting at the end of the financial year in which the care to which the information or event relates was provided; or
  (b) the later time ordered by a court during proceedings for an offence against this Act (including an offence against Chapter 7 of the *Criminal Code* that relates to this Act) or for the contravention of a civil penalty provision, if an application for the order was made during:
    (i) the period referred to in paragraph (a); or
    (ii) proceedings relevant to a previous application of this paragraph.

Offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

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Civil penalty: 50 penalty units.

202C Requirement to keep records in relation to certification for ACCS (child wellbeing)

If a certificate is given

(1) If an approved provider gives the Secretary a certificate under section 85CB of the Family Assistance Act, the provider must:

(a) no later than 6 weeks after the day the certificate takes effect, obtain and make a record of:

(i) evidence to support the provider's view that the child concerned is or was at risk of serious abuse or neglect; and

(ii) evidence that the provider has given an appropriate State/Territory body notice in accordance with section 204K; and

(b) keep those records for at least the period of 7 years starting at the end of the financial year in which the certificate ceases to have effect.

If certificate is cancelled

(2) If an approved provider:

(a) cancels a certificate under section 85CC of the Family Assistance Act (whether or not the provider gives a replacement certificate within the meaning of that section); or

(b) gives the Secretary a notice under section 67FC (child not at risk of serious abuse or neglect);

the provider must:

(c) no later than 6 weeks after the day the provider cancels the certificate or gives the notice, obtain and make a record of evidence to support the provider's view that the child is not at risk of serious abuse or neglect for the period concerned; and

(d) keep those records for at least the period of 7 years starting at the end of the financial year in which the provider cancelled the certificate or gave the notice.

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Offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty: 80 penalty units.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 60 penalty units.

202D Requirement to keep Secretary informed about location of records after suspension or cancellation

Notice of location at which records are kept

(1) If, with effect from a particular day (the ***effective day***), the approval of a provider is:
   (a) cancelled or suspended; or
   (b) varied to remove a child care service from the approval; or
   (c) suspended in respect of a child care service;

   the provider must keep the Secretary informed, in accordance with subsection (2), of the location at which the provider's records, or the provider's records for the service, are kept.

(2) The provider must keep the Secretary informed by giving the Secretary written notice of the location:
   (a) no later than 14 days after the effective day; and
   (b) if the records are moved from the notified location—no later than 14 days after the move.

(3) If a suspension of a provider's approval is revoked, subsection (1) ceases to apply to the provider from the day the revocation takes effect.

(4) If a suspension of a provider's approval in respect of a child care service is revoked, subsection (1) ceases to apply to the provider in relation to the service from the day the revocation takes effect.

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Offence

(5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty

(6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 50 penalty units.

Division 4—Requirements relating to large centre-based day care providers

203A Secretary may require financial information relating to large centre-based day care providers

Notice requiring financial information

(1) The Secretary may, by written notice given in accordance with subsection (2), require a person referred to in section 203B to provide financial information in relation to the financial year in which the notice is given or any one or more of the 4 previous financial years, if:

(a) the information is for the purposes of determining whether a large centre-based day care provider is financially viable and likely to remain so; and

(b) the Secretary reasonably believes that the person is capable of giving the information.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

(2) A notice is given in accordance with this subsection if:

(a) it specifies the financial information required; and

(b) it specifies the period by which and the manner in which the person must comply with the notice.

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Civil penalty for non-compliance

(3) A person must comply with a notice given to the person under subsection (1).

Civil penalty: 60 penalty units.

(4) Subsection (3) does not apply to a person registered under the *Australian Charities and Not-for-profits Commission Act 2012* to the extent that:

(a) the notice under subsection (1) requires the person to provide particular financial information to the Secretary; and

(b) the person has provided, or provides, that particular financial information to the Commissioner within the meaning of that Act before the end of the period specified under paragraph (2)(b).

Disclosure of personal information

(5) For the purposes of:

(a) paragraph 6.2(b) of Australian Privacy Principle 6; and

(b) a provision of a law of a State or Territory that provides that information that is personal may be disclosed if the disclosure is authorised by law;

the disclosure of personal information by a person in response to a notice given under this section is taken to be a disclosure that is authorised by this Act.

203B Persons to whom a financial information notice may be given

The persons to whom a notice under subsection 203A(1) in relation to a large centre-based day care provider may be given are the following:

(a) the provider;

(b) a person who, at any time during the financial year, owns 15% or more of:

(i) the provider; or

(ii) if the provider consists of more than one person—any of those persons;

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(c) a person who, at any time during the financial year, is entitled to receive 15% or more of the dividends paid by:
  (i) the provider; or
  (ii) if the provider consists of more than one person—any of those persons;

(d) a person who, at any time during the financial year, is owed a debt by the provider;

(e) a person who:
  (i) acts, or is accustomed to act; or
  (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;

  in accordance with the directions, instructions or wishes of, or in concert with:
  (iii) the provider; or
  (iv) if the provider consists of more than one person—any of those persons;

(f) a person who directs or instructs:
  (i) the provider; or
  (ii) if the provider consists of more than one person—any of those persons;

  to act in accordance with those directions or instructions;

(g) a person, if:
  (i) the provider; or
  (ii) if the provider consists of more than one person—any of those persons;

  acts, or is accustomed to act, so as to give effect to the first-mentioned person's wishes;

(h) a person with whom:
  (i) the provider; or
  (ii) if the provider consists of more than one person—any of those persons;

  acts, or is accustomed to act, in concert;

(i) a person, if:
  (i) the provider; or
  (ii) if the provider consists of more than one person—any of those persons;

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is intended or expected to act under a contract or an arrangement or understanding (whether formal or informal) so as to give effect to the first-mentioned person's directions, instructions or wishes;

(j) a person with whom:

(i) the provider; or

(ii) if the provider consists of more than one person—any of those persons;

is intended or expected to act in concert under a contract or an arrangement or understanding (whether formal or informal).

203C Audit of approved provider

If, on the basis of information received under section 203A, the Secretary has concerns about the financial viability of an approved provider, the Secretary may engage an appropriately qualified and experienced expert to carry out an independent audit of the provider.

203D Report relating to an audit

(1) An expert who audits a provider under section 203C must prepare and give to the Secretary a report about the affairs of the provider.

(2) The expert's report must deal with the following:

(a) whether the provider's financial statements are based on proper accounts and records;

(b) whether the financial statements are in agreement with the accounts and records and show fairly the financial transactions and the state of the provider;

(c) any matter specified by the expert's terms of engagement;

(d) such other matters arising out of the financial statements as the expert considers should be reported;

(e) any recommendations relating to maintaining or improving the financial viability of the provider that the expert considers desirable.

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Division 5—Requirements in relation to information and reports

204A Requirements if approved provider stops operating an approved child care service

Notice if approved provider stops operating service

(1) At least 42 days before an approved provider stops operating a child care service in respect of which the provider is approved, the provider must notify the Secretary, in a form and manner approved by the Secretary, of the provider's intention to stop operating the service.

(2) Subsection (1) does not apply if the provider stops operating the service for either of the following reasons:

(a) to avoid being in breach of a law of the Commonwealth, a State or a Territory;

(b) due to circumstances beyond the provider's control.

(3) If the provider stops operating a child care service in respect of which the provider is approved for either of the reasons in subsection (2), the provider must notify the Secretary, in a form and manner approved by the Secretary, as soon as possible.

Offence

(4) A person commits an offence if the person contravenes subsection (1) or (3).

Penalty: 100 penalty units.

Civil penalty

(5) A person is liable to a civil penalty if the person contravenes subsection (1) or (3).

Civil penalty: 80 penalty units.

Requirement to give further information on request

(6) If:

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(a) an approved provider notifies the Secretary in accordance with subsection (1) or (3); and

(b) the Secretary requests the provider in writing to give the Secretary specified information in relation to the provider's notice;

the provider must give the Secretary the specified information in a form and manner approved by the Secretary and by the time specified in the Secretary's request (which must be at least 14 days after the request is made).

Offence

(7) A person commits an offence if the person contravenes subsection (6).

Penalty: 100 penalty units.

Civil penalty

(8) A person is liable to a civil penalty if the person contravenes subsection (6).

Civil penalty: 80 penalty units.

204B Requirement to report about children for whom care is provided

(1) An approved provider of an approved child care service must give the Secretary a report in accordance with subsection (2) for each week in which a session of care is provided to a child, if:

(a) the provider has given the Secretary an enrolment notice; and

(b) care was provided to the child by the service on a day in the week.

Note: The provider must give enrolment notices to the Secretary relating to all children for whom care is provided, including both enrolled children (for whom complying written arrangements are made) and others for whom a relevant arrangement is made (see section 200A).

(2) A report is given in accordance with this subsection if:

(a) it is given in a form and manner approved by the Secretary; and

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(b) if the child was enrolled for care on a day in the week—it includes the information required by the Secretary relevant to determining whether an individual is eligible for or entitled to be paid CCS or ACCS in relation to the session of care and, if so, the amount; and

(c) it includes any other information required by the Secretary; and

(d) it is given no later than:

(i) 14 days after the end of the week in which the session of care was provided; or

(ii) if the week is in a period, or a series of consecutive periods, to which a payment under section 205A relates—14 days after the end of the period, or the last such period; or

(iii) if the enrolment notice is given under subsection 200A(2)—the day the enrolment notice is required to be given under that subsection.

(3) For the purposes of paragraphs (2)(b) and (c), and to avoid doubt, a report is not given in accordance with subsection (2) unless the information included as required by those paragraphs is accurate and complete.

Offence

(4) A person commits an offence of strict liability if the person contravenes subsection (1) (regardless of whether the report is subsequently varied, substituted, withdrawn or corrected under subsection (6) of this section or section 204C).

Penalty: 70 penalty units.

Civil penalty

(5) A person is liable to a civil penalty if the person contravenes subsection (1) (regardless of whether the report is subsequently varied, substituted, withdrawn or corrected under subsection (6) of this section or section 204C).

Civil penalty: 50 penalty units.

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Updating and withdrawing reports

(6) An approved provider may:
  (a) vary the report or substitute it with an updated report; or
  (b) if the report was not required to be given—withdraw the report;

as long as the provider does so no later than:
  (c) the earlier of the following days:
    (i) the 28th day after the start of the week to which the report relates or;
    (ii) the last day of the financial year in which the CCS fortnight to which the report relates starts; or
  (d) if the Secretary agrees to a later day—the later day agreed by the Secretary.

(7) Subsection (6) does not prevent the Minister's rules under section 195E making provision for or in relation to approved providers varying, substituting or withdrawing reports given under this section.

204C Dealing with inaccurate reports

Requiring provider to withdraw report or substitute accurate report

(1) If the Secretary considers that a detail contained in a report given by an approved provider under subsection 204B(1) (requirement to report about children for whom care is provided) might not be accurate, the Secretary may, by written notice given to the provider, require the provider to withdraw the report, to vary it so that it becomes accurate or substitute it with an accurate report.

(2) A person must comply with a notice given to the person under subsection (1), no later than:
  (a) 14 days after the notice was given; or
  (b) if the notice specifies a longer period—the end of that period.

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Offence

(3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 70 penalty units.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 50 penalty units.

Correction of report by Secretary

(5) If the Secretary:
   (a) knows that a detail contained in a report given by an approved provider under subsection 204B(1) is not accurate; and
   (b) knows what the correct detail is; and
   (c) has (if practicable) given the provider at least 14 days written notice of the Secretary's intended correction of the report;

the Secretary may correct the report accordingly.

204D Requirement to give information about number of child care places

Notice to give information

(1) The Secretary may give an approved provider of an approved child care service a written notice requiring the provider to give the Secretary information the Secretary requires in order to determine whether to reduce the number of child care places allocated to the service.

(2) The notice must specify the following:
   (a) the information the Secretary requires;
   (b) the period, or each of the periods, in relation to which the information is required;

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(c) the time by which the information in relation to the period, or each of the periods, is required.

(3) The notice may specify either or both of the following:

(a) the form and manner in which the information is to be provided to the Secretary;

(b) the length of time for which the provider must continue to comply with the notice.

Requirement to comply with notice

(4) The provider must comply with the notice in relation to the period, or each of the periods, specified in the notice.

Civil penalty

(5) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 30 penalty units.

(6) The Secretary may, by written notice given to a provider, terminate the effect of a notice given to the provider under subsection (1).

204E Requirement to provide further information to Secretary about enrolled children

(1) If the Secretary requires an approved provider to give the Secretary further information under section 67FH (information about children enrolled in child care), the provider must comply with the notice.

Offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

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Civil penalty: 40 penalty units.

204F Requirement to notify Secretary of certain matters

(1) The approved provider of an approved child care service must give the Secretary written notice of a matter prescribed by the Minister's rules:
  (a) in a form and manner approved by the Secretary; and
  (b) by the time prescribed for the matter in the Minister's rules.

Offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 50 penalty units.

204G Requirements prescribed by Minister's rules in relation to children who are members of a prescribed class

(1) The Minister's rules may impose requirements on approved providers for the purposes of monitoring or investigating whether an approved child care service of the provider:
  (a) is providing care in circumstances prescribed by the Minister's rules for the purposes of subparagraph 85BA(1)(c)(iii) of the Family Assistance Act; or
  (b) is providing care to a child who is a member of a class prescribed by the Minister's rules for the purposes of paragraph 85ED(1)(b) of the Family Assistance Act.

(2) The requirements may relate to any of the following:
  (a) making and keeping records;
  (b) giving information to the Secretary;

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(c) any other matter the Minister considers appropriate for the purposes referred to in subsection (1).

(3) To avoid doubt, this section is subject to subsection 85GB(3) of the Family Assistance Act.

204H Requirements that continue after provider's approval is suspended, cancelled or varied

(1) If, with effect from a particular day (the ***effective day***), the approval of a provider is:

(a) cancelled or suspended; or

(b) varied so as to remove a child care service from the approval; or

(c) suspended in respect of a child care service;

the provider must continue to comply with a provision specified in an item of the following table, in relation to the matters specified in that item for the provision, on and after the effective day as if the cancellation, variation or suspension had not happened.

Requirements that continue after cancellation, variation or suspension

Item	Provider must continue to comply with this provision:	In relation to these matters:
1	section 200A	a child who started to be enrolled before the effective day, or for whom a relevant arrangement is entered into before the effective day
2	section 200C	a variation made before the effective day
3	section 200D	events mentioned in that section that occur before the effective day
4	section 201A	any notice given under subsection 67CE(4), whether given before, on or after the effective day
5	section 201B	sessions of care provided before the effective day, whether the notice under subsection 67CE(4) is given before, on or after the effective day

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Requirements that continue after cancellation, variation or suspension		
Item	**Provider must continue to comply with this provision:**	**In relation to these matters:**
6	section 201C	sessions of care provided before the effective day
7	section 201D	any notice given under subsection 67CE(4), whether given before, on or after the effective day
8	section 201E	any notice given under subsection 106A(2) or 109B(2A), whether given before, on or after the effective day
9	section 202B	matters mentioned in subsection 202B(1) in relation to sessions of care provided before the effective day
10	section 202C	certificates given or cancelled, and notices given under section 67FC, before the effective day
11	section 204B	sessions of care provided before the effective day
12	section 204C	report given under subsection 204B(1) or that subsection as it applies because of this section
13	section 204E	notices given to the provider: (a) before the effective day; or (b) on or after the effective day in relation to a period before the effective day

Offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: The number of penalty units that would apply if the contravention had been a contravention of the provision with which the provider is required to continue to comply.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: The number of penalty units that would apply if the contravention had been a contravention of the provision with which the provider is required to continue to comply.

204J Collection, use or disclosure of information for financial viability purposes

The collection, use or disclosure of personal information about an individual is taken to be authorised by this Act for the purposes of the *Privacy Act 1988* if the collection, use or disclosure is reasonably necessary for the purposes of determining whether a large centre-based day care provider is financially viable and likely to remain so.

204K Notice to State/Territory body of child at risk of serious abuse or neglect

Certification for ACCS (child wellbeing)

(1) An approved provider that gives the Secretary a certificate under section 85CB of the Family Assistance Act must, no later than 6 weeks after the day the certificate takes effect, give an appropriate State/Territory body notice that the provider considers the child to whom the certificate relates is or was at risk of serious abuse or neglect.

(2) Subsection (1) does not apply if:
   (a) the certificate is cancelled under section 85CC of the Family Assistance Act and a replacement certificate (within the meaning of paragraph (4)(b) of that section) is not given; or
   (b) the certificate is cancelled under section 85CD of the Family Assistance Act; or
   (c) the provider was notified of the risk by an appropriate State/Territory body.

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Determination for ACCS (child wellbeing)

(3) Before making an application for a determination under section 85CE of the Family Assistance Act, an approved provider must give an appropriate State/Territory body notice that the provider considers the child to whom the application relates is or was at risk of serious abuse or neglect.

(4) Subsection (3) does not apply if:
   (a) the provider gave an appropriate State/Territory body a notice in relation to the child under subsection (1) less than 6 weeks ago; or
   (b) the provider was notified of the risk by an appropriate State/Territory body.

Offence

(5) A person commits an offence of strict liability if the person contravenes subsection (1) or (3).

Penalty: 60 penalty units.

Civil penalty

(6) A person is liable to a civil penalty if the person contravenes subsection (1) or (3).

Civil penalty: 50 penalty units.

*Meaning of **appropriate State/Territory body***

(7) Any of the following is an ***appropriate State/Territory body*** for the State or Territory where care is provided to the child to whom a certificate relates:
   (a) a department or agency of the State or Territory that is responsible for dealing with matters relating to the welfare of children;
   (b) an organisation dealing with such matters on behalf of such a department or agency in accordance with an agreement between the department or agency and the organisation.

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Division 6—Business continuity payments

205A Business continuity payments

(1) The Secretary may determine that a payment is to be made to an approved provider in relation to a period if all of the following apply:

(a) the provider is required to give a report under subsection 204B(1) (requirement to report about children for whom care is provided) for a week in respect of one or more enrolments;

(b) the provider does not give the report for the week by the time required for that report under section 204B;

(c) the Secretary is satisfied that the failure to give the report is due to circumstances prescribed by the Minister's rules.

Note: Section 205B deals with the setting off of payments made under this section.

(2) The Minister's rules:

(a) must prescribe a method of determining the amounts of payments under this section; and

(b) may prescribe any other matters relating to the making of payments under this section.

(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 provider.

(4) The Secretary must give the approved provider written notice of the payment and of the period to which the payment relates.

205B Setting off business continuity payments

(1) This section applies if a payment is made under section 205A to an approved provider in respect of the enrolment of a child for care by an approved child care service (the ***first service***) of the provider.

(2) The Secretary must set off an amount equal to the payment against one or more child care service payments that are to be made in respect of an enrolment of a child for care:

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(a) by the first service; or
(b) by any other approved child care service of the provider.

Note: For ***child care service payment*** see subsection 3(1).

206 Section 219TA (paragraphs (f), (g), (h) and (ha) of the definition of *relevant benefit*)

Repeal the paragraphs, substitute:

(f) CCS by fee reduction; or
(g) ACCS by fee reduction; or
(h) CCS or ACCS in substitution for an individual who has died; or

207 Subsection 219TD(4)

Omit "an approved child care service or for the operator of such a service", substitute "an approved provider".

208 Part 8C

Repeal the Part, substitute:

Part 8C—Regulatory powers

Division 1—Monitoring powers

219UA Monitoring powers

Provisions subject to monitoring

(1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:
(a) a civil penalty provision;
(b) the following conditions for continued approval of an approved provider:
(i) subsections 195A(1), (2), (3) and (4);
(ii) subsection 195C(1);
(iii) subsection 195D(1);
(iv) section 195E;
(v) subsection 195F(1);

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(vi) section 203A;

(c) paragraphs 197A(1)(b), (c) and (d);

(d) a listed child care information provision (see section 219UB).

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions have been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with one or more of the listed child care information provisions (see section 219UB) is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

(3) For the purposes of Part 2 of the Regulatory Powers Act, each of the following provisions is related to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

(a) a provision of Division 6 of Part 3A that creates an offence;

(b) a provision of Part 8A that creates an offence;

(c) a provision of the *Crimes Act 1914* or the *Criminal Code* that relates to this Act and creates an offence.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(4) For the purposes of Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

(a) the Secretary is the authorised applicant; and

(b) a person appointed under section 219UD is an authorised person; and

(c) each of the following is an issuing officer:

(i) a Judge of the Federal Circuit Court of Australia;

(ii) a Judge of the Federal Court of Australia;

(iii) a magistrate; and

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(d) the Secretary is the relevant chief executive; and
(e) each of the following is a relevant court:
(i) the Federal Court of Australia;
(ii) the Federal Circuit Court of Australia.

Delegation by relevant chief executive

(5) The relevant chief executive may, in writing, delegate the power under section 35 of the Regulatory Powers Act to issue identity cards to authorised persons to an officer within the meaning of this Act.

(6) A person exercising powers or performing functions under a delegation under subsection (5) must comply with any directions of the relevant chief executive.

Person assisting

(7) An authorised person may be assisted by other persons (including members of an audit team) in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

219UB Meaning of *listed child care information provision*

A provision listed in the table is a ***listed child care information provision***.

Listed child care information provisions

Item	Provision	Description
1	section 67FC	notice if child not at risk of serious abuse or neglect
2	section 67FH	request for information about children enrolled in child care
3	subsection 154(3)	requirement to give information or produce a document that may be relevant to amount of ACCS (child wellbeing) an approved provider is entitled to be paid

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Listed child care information provisions		
Item	**Provision**	**Description**
4	subsection 154(4)	requirement to give information or produce a document that may be relevant to provider's approval etc.
5	subsection 154(5)	requirement to produce records kept under section 202D
6	section 155, if the person who owes the debt is the provider of a child care service	requirement for debtor to give information etc.
7	section 156, if the person who owes the debt is the provider of a child care service	requirement for person to give information etc. in relation to a debtor
8	section 157, to the extent that the required information relates to ACCS (child wellbeing) for which a provider is or might be eligible	requirement for person to give information to verify claims etc.
9	section 157A	records supporting certificate under section 85CB (certification for ACCS (child wellbeing)
10	section 199C	notification of matters affecting approval
11	section 200A, including that section as it applies because of section 204H	enrolment notices
12	section 200D, including that section as it applies because of section 204H	updating enrolment notices
13	section 203A	financial information relating to large day care providers
14	section 204A	provider decides to stop operating an approved child care service
15	section 204B, including that section as it applies because of section 204H	reports in relation to enrolled children and others for whom care is provided

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Listed child care information provisions		
Item	**Provision**	**Description**
16	section 204C, including that section as it applies because of section 204H	dealing with inaccurate reports
17	section 204D	information about child care places
18	section 204E, including that section as it applies because of section 204H	further information about enrolled children
19	section 204F	notice of certain matters
20	a Minister's rule made for the purposes of section 204G	requirements in relation to children who are members of a prescribed class

219UC Modification of Part 2 of the Regulatory Powers Act

(1) Paragraph 18(2)(a) of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection 219UA(1) and the information mentioned in subsection 219UA(2), is taken to include a reference to a person who apparently represents the occupier.

(2) If the consent referred to in paragraph 18(2)(a) of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection 219UA(1) and the information mentioned in subsection 219UA(2), is given by a person who apparently represents the occupier, references in the following provisions of the Regulatory Powers Act to the occupier are taken to be references to the person:

(a) subparagraph 20(4)(b)(ii);
(b) subsection 24(2);
(c) section 25;
(d) subsection 29(4).

219UD Appointment of authorised persons

(1) The Secretary may, in writing, appoint any of the following as an authorised person for the purposes of this Act:

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(a) a person who holds, or performs the duties of, an appointment, office or position under a law of the Commonwealth or of a State or Territory;

(b) an employee of an authority of the Commonwealth or of a State or Territory;

(c) a person performing services for the Commonwealth under a contract with the Commonwealth.

(2) The Secretary must not appoint a person as an authorised person unless the Secretary is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of an authorised person.

(3) An authorised person must, in exercising powers as such, comply with any directions of the Secretary.

(4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

Division 2—Civil penalties

219VA Civil penalty provisions

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act and the Family Assistance Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions in this Act.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

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(a) the Federal Court of Australia;
(b) the Federal Circuit Court of Australia.

219VB Requirement for person to assist with applications for civil penalty orders

(1) A person commits an offence if:
  (a) the Secretary requires, in writing, the person to give all reasonable assistance in connection with an application for a civil penalty order; and
  (b) the person fails to comply with the requirement.

Penalty: 10 penalty units.

(2) A requirement made under subsection (1) is not a legislative instrument.

(3) The Secretary may require a person to assist under subsection (1) only if:
  (a) it appears to the Secretary that the person is unlikely to have:
    (i) contravened the civil penalty provision to which the application relates; or
    (ii) committed an offence constituted by the same, or substantially the same, conduct as the conduct to which the application relates; and
  (b) the Secretary suspects or believes that the person can give information relevant to the application.

(4) The Secretary cannot require a person to assist under subsection (1) if the person is or has been a lawyer for the person suspected of contravening the civil penalty provision to which the application relates.

(5) The Federal Court of Australia or the Federal Circuit Court of Australia may order a person to comply with a requirement under subsection (1) in a specified way. Only the Secretary may apply to the court for an order under this subsection.

(6) For the purposes of this section, it does not matter whether the application for the civil penalty provision has actually been made.

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Note: Subsection (1) does not abrogate or affect the law relating to legal professional privilege, or any other immunity, privilege or restriction that applies to the disclosure of information, documents or other things.

Division 3—Infringement notices

219WA Infringement notices

Provisions subject to an infringement notice

(1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act, a person appointed under subsection (3) is an infringement officer in relation to the provisions mentioned in subsection (1).

(3) The Secretary may, in writing, appoint an officer of the Department as an infringement officer for the purposes of this Act.

Relevant chief executive

(4) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).

(5) The relevant chief executive may, in writing, delegate the powers and functions of the relevant chief executive under Part 5 of the Regulatory Powers Act to an officer within the meaning of this Act.

Single infringement notice may deal with more than one contravention

(6) Despite subsection 103(3) of the Regulatory Powers Act, a single infringement notice may be given to a person in respect of:

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(a) 2 or more alleged contraventions of a provision mentioned in subsection (1); or

(b) alleged contraventions of 2 or more provisions mentioned in subsection (1).

However, the notice must not require the person to pay more than one amount in respect of the same conduct.

Division 4—General rules about offences and civil penalty provisions

219XA Physical elements of offences

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct rule provision***) commits an offence.

(2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct rule provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

219XB Contravening an offence provision or a civil penalty provision

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct provision***) commits an offence or is liable to a civil penalty.

(2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

209 Subsection 221(1)

Repeal the subsection, substitute:

(1) Subject to this section, the Secretary may delegate to an officer all or any of the powers of the Secretary under the family assistance law, other than:

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(a) the power to make Secretary's rules under subsection 85GB(2) of the Family Assistance Act; and
(b) the power to engage an expert to carry out an independent audit as mentioned in section 203C of this Act.

210 Subsection 221(4)

Repeal the subsection, substitute:

(4) The Secretary must not delegate to an officer, other than an SES employee or acting SES employee, the Secretary's powers under:
(a) section 203A (power to require financial information);
(b) subsection 219UD(1) (power to appoint authorised person);
(c) subsection 219WA(3) (power to appoint infringement officer).

211 Sections 224 and 224A

Repeal the sections, substitute:

224 Notice of decisions

Decisions about entitlement to family assistance

(1) Notice of a decision of an officer affecting a person's eligibility for, or entitlement to be paid, family assistance under the family assistance law is taken, for the purposes of the family assistance law, to have been given to the person if the notice is:
(a) delivered to the person personally; or
(b) left at the address of the place of residence or business of the person last known to the Secretary; or
(c) sent by post to the address of the person last known to the Secretary.

Decisions about approval of providers of child care services

(2) Notice of a decision of an officer under Part 8 is taken to have been given to a provider if the notice is:
(a) left at the address of the place of business of the provider last known to the Secretary; or

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(b) sent by post to the address of the provider last known to the Secretary; or

(c) sent by email to the last known email address of the provider.

Service by post

(3) A notice referred to in subsection (1) or (2) is taken to have been sent by post if the notice giver properly addresses, prepays and posts the notice as a letter. Unless the contrary is proved, the notice is taken to have been given to the person to whom it is addressed at the time the letter would be delivered in the ordinary course of post.

212 Section 225

Omit "benefit", substitute "subsidy or additional child care subsidy".

213 Paragraph 226(1)(a)

Omit "benefit", substitute "subsidy or additional child care subsidy".

214 Paragraph 228A(1)(a)

Omit "benefit", substitute "subsidy or additional child care subsidy".

215 After section 230

Insert:

230A Application of family assistance law to providers that are partnerships

(1) The family assistance law applies to a partnership as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the partnership by the family assistance law is imposed on each partner instead, but may be discharged by any of the partners.

(3) A permission that would otherwise be conferred on the partnership by the family assistance law is conferred on each partner instead, but may be exercised by any of the partners.

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(4) An offence against the family assistance law that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership, at the time the offence was committed, who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

(5) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

(6) For the purposes of the family assistance law, a change in the composition of a partnership does not affect the continuity of the partnership.

(7) The Minister's rules may make provision in relation to the application of the family assistance law to a partnership, to the extent to which this section and section 231 do not do so.

230B Application of family assistance law to providers that are unincorporated

(1) The family assistance law applies to an unincorporated entity or body, other than a partnership, as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the entity or body by the family assistance law is imposed on each member of the entity or body's governing body instead, but may be discharged by any of the members.

(3) A permission that would otherwise be conferred on the entity or body by the family assistance law is conferred on each member of the entity or body's governing body instead, but may be exercised by any of the members.

(4) An offence against the family assistance law that would otherwise have been committed by the entity or body is taken to have been

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committed by each member of the entity or body's governing body, at the time the offence was committed, who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the member).

(5) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

(6) The Minister's rules may make provision in relation to the application of the family assistance law to an unincorporated entity or body, to the extent to which this section and section 231 do not do so.

216 Subsection 231(2)

Omit "Subject to subsection (2A), the", substitute "The".

217 Subsection 231(2A)

Repeal the subsection, substitute:

Permissions

(2A) A permission that would otherwise be conferred on the body by the family assistance law is conferred on:

(a) if the body is a partnership—each partner instead; and

(b) otherwise—each member of the entity or body's governing body instead;

but may be exercised by any of those partners or members.

218 At the end of section 231

Add:

Interaction with sections 230A and 230B

(5) Section 230A or 230B applies instead of this section if:

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(a) apart from this subsection, both section 230A or 230B and this section would apply to a situation; and

(b) in the situation, the family assistance law:

(i) expressly refers to a provider or an approved provider; or

(ii) operates in relation to a body that is applying to become, is, or has been, an approved provider.

219 Section 233

Before "Payments", insert "(1)".

220 At the end of section 233

Add:

(2) Subsection (1) does not apply to so much of a payment as is described in the table.

Amounts to which subsection (1) does not apply

Item	If this kind of payment is made:	Subsection (1) does not apply to this much of the payment:
1	a payment of ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent) to an individual	so much of the payment as exceeds the amount that would have been paid to the individual if: (a) the individual were entitled to be paid CCS instead of ACCS; and (b) the individual's applicable percentage for the purposes of the amount of that CCS were worked out under subsection (3); and (c) the activity test result for the individual had been 100
2	a payment of ACCS (transition to work)	so much of the payment as exceeds the amount that would have been paid to the individual if: (a) the individual were entitled to be paid CCS instead of ACCS; and (b) the individual's applicable percentage for the purposes of the amount of that CCS were worked out under subsection (3)

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Amounts to which subsection (1) does not apply		
Item	**If this kind of payment is made:**	**Subsection (1) does not apply to this much of the payment:**
3	a payment of ACCS (child wellbeing) to an approved provider of a service	so much of the payment as exceeds the amount that would have been paid to the provider if: (a) the percentage in subclause 9(1) of Schedule 2 to the Family Assistance Act were 85% instead of 100%; and (b) the deemed activity test result for the provider had been 100
4	a payment of an amount under an agreement entered into under section 85GA (funding agreements) of the Family Assistance Act	the whole of the payment

(3) For the purposes of paragraph (b) of table items 1 and 2, the individual's applicable percentage for the purposes of an amount of CCS is:

(a) worked out using the individual's adjusted taxable income for the income year concerned, if known at the time the payment is made; or

(b) if the individual's adjusted taxable income for the income year concerned is not known at the time the payment is made:

(i) worked out using an estimate of the individual's adjusted taxable income (if any) in accordance with Division 4 of Part 3A; or

(ii) if there is no such estimate—85%.

221 Paragraph 235(1A)(b)

Omit "for the purposes of this Act".

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Schedule 2—Consequential amendments

A New Tax System (Goods and Services Tax) Act 1999

1 Section 38-140

Repeal the section.

2 Paragraph 38-155(a)

Omit "38-140,".

Early Years Quality Fund Special Account Act 2013

3 Section 4

Repeal the section, substitute:

4 Definitions

In this Act:

approved provider has the same meaning as in the *A New Tax System (Family Assistance) (Administration) Act 1999*.

large centre-based day care provider has the same meaning as in the *A New Tax System (Family Assistance) (Administration) Act 1999*.

4 Section 7

Omit "approved centre based long day care services", substitute "approved providers that are large centre-based day care providers".

Fringe Benefits Tax Assessment Act 1986

5 Subparagraphs 47(8)(a)(v) to (viii)

Repeal the subparagraphs, substitute:

(v) an approved child care service within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*; and

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Income Tax Assessment Act 1997

6 Section 11-15 (table item headed "family assistance")

Omit:

family assistance

substitute:

family assistance

additional child care subsidy 52-150

7 Section 11-15 (table item headed "family assistance")

Omit:

child care benefit 52-150

child care rebate 52-150

substitute:

child care subsidy 52-150

8 Section 52-150

Omit "benefit, child care rebate", substitute "subsidy, additional child care subsidy".

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Schedule 3—Other amendments

Part 1—Amendments commencing day after Royal Assent

A New Tax System (Family Assistance) Act 1999

1 Section 4

Before "The Minister", insert "(1)".

2 At the end of section 4

Add:

(2) Despite subsection 14(2) of the *Legislation Act 2003*, a determination made for the purposes of subsection (1) of this section may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

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

3 At the end of section 194

Add:

(4) Despite subsection (1), an application is taken not to have been made if circumstances prescribed in an instrument under subsection (5) exist.

(5) The Minister may, by legislative instrument, prescribe circumstances for the purposes of subsection (4).

4 Application provision

The amendment of section 194 of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule applies in relation to applications made on or after the day this item commences.

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5 After section 199

Insert:

199A Reassessment of continued approval

The Secretary may at any time assess whether a child care service should continue to be approved for the purposes of the family assistance law.

6 Application provision

Section 199A of the *A New Tax System (Family Assistance) (Administration) Act 1999* as inserted by this Schedule applies to a child care service approved before, on or after the commencement of this item.

A New Tax System (Goods and Services Tax) Act 1999

7 Section 38-150

Repeal the section, substitute:

38-150 Other child care

(1) A supply is ***GST-free*** if it is a supply of child care specified in a determination made under subsection (2).

(2) The *Child Care Minister may, by legislative instrument, determine kinds of child care for the purposes of subsection (1). A kind of child care may only be included in a determination if the supplier of the care is eligible for Commonwealth funding in respect of the kind of care.

8 Subsection 177-10(2)

Omit “paragraph 38-150(e)”, substitute “section 38-150”.

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Part 2—Amendments commencing 1 July 2017

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

9 Paragraph 195(4)(b)

Omit "6 months", substitute "3 months".

10 Application provision

The amendment of section 195 of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule applies in relation to applications made on or after the day this item commences.

11 Paragraph 219Q(3)(c)

Repeal the paragraph, substitute:

(c) section 219RC (set off where enrolment ceases, where notification of decision to cease operating service or where enrolment began 4 years ago); and

12 Paragraph 219QC(3)(d)

Repeal the paragraph, substitute:

(d) section 219RC (set off where enrolment ceases, where notification of decision to cease operating service or where enrolment began 4 years ago); and

13 Subsection 219R(1)

Repeal the subsection, substitute:

(1) An approved child care service, other than an approved occasional care service, may, when giving notice in accordance with section 219A before 1 July 2017, elect to receive the payment of an enrolment advance in relation to an enrolment for sessions of care the first of which is to take place before 1 July 2017.

14 At the end of section 219R

Add:

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(3) If notice in accordance with section 219A is given on or after 1 July 2017:
  (a) subsection (1) does not apply (so that an election cannot be made when giving the notice); and
  (b) no payment of enrolment advance may be made in relation to the Secretary's confirmation of the notified enrolment.

15 Paragraph 219RA(2)(c)

Repeal the paragraph, substitute:

(c) section 219RC (set off where enrolment ceases, where notification of decision to cease operating service or where enrolment began 4 years ago); and

16 Section 219RC (heading)

Repeal the heading, substitute:

219RC Setting off enrolment advance

17 Subsection 219RC(2)

Repeal the subsection.

18 Paragraph 219RC(3)(c)

Repeal the paragraph.

19 At the end of section 219RC

Add:

Enrolment began at least 4 years ago

(4) If:
  (a) on a day, at least 4 years have passed since the day an enrolment of a child for care by an approved child care service (the ***first service***) began; and
  (b) either of the following occurred in respect of the enrolment:
    (i) an enrolment advance was paid;
    (ii) an enrolment advance would have been paid but for a set-off under subsection 82(2), section 219QA or

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section 219QD, this section or section 219RE or the imposition of a sanction under paragraph 200(1)(f);

the Secretary must set off an amount equal to the amount of the enrolment advance 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.

Note: For ***child care service payment*** see subsection 3(1).

One set-off per amount

(5) Despite subsection (1), (3) or (4), the Secretary must not set off, under the subsection, an amount equal to the amount of a particular enrolment advance if the Secretary has already set off that amount in relation to the enrolment advance under another subsection of this section.

20 Application provision

The amendments of section 219RC of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule apply in relation to enrolments beginning before, on or after the day this item commences.

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Schedule 4—Application, saving and transitional provisions

Part 1—Introduction

1 Definitions

In this Schedule:

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

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

commencement day means 2 July 2018.

Note: Schedule 1 commences on 2 July 2018.

pre-commencement period means the period commencing on 1 January 2018 and ending on 1 July 2018.

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Part 2—Child care subsidy and additional child care subsidy

2 Commencement of child care subsidy and additional child care subsidy

A person can only be eligible for child care subsidy or additional child care subsidy for a session of care provided on or after the commencement day.

3 Deemed claims for CCS

An individual is taken to have made a claim in respect of a child for CCS, in accordance with Division 2 of Part 3A of the Administration Act, if, immediately before the commencement day:

(a) a determination is in effect under section 50F of the Administration Act, that the individual is conditionally eligible under section 42 of the Assistance Act in respect of the child; or

(b) the individual has made an effective claim for child care benefit on which the Secretary has not yet made a determination.

4 Pre-commencement claims etc. for CCS

(1) The following things may be done during the pre-commencement period, for the purposes of ensuring that amounts of CCS and ACCS, and amounts under section 67EB of the Administration Act, can be paid promptly for weeks commencing on and after the commencement day:

(a) individuals may make claims for CCS, as if the amendments made by Schedule 1 were in force;

(b) the Secretary may exercise powers and perform functions under Part 4A of the Assistance Act and Part 3A of the Administration Act as inserted by Schedule 1, and under Part 6 of the Administration Act as amended by Schedule 1, as if the amendments made by Schedule 1 were in force.

(2) Subitem (1) does not limit the operation of section 4 of the *Acts Interpretation Act 1901*.

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(3) To avoid doubt, subitem (1) is subject to item 2.

5 Indexation of various amounts

(1) This item applies in relation to any of the following amounts (an ***unindexed amount***), as specified in the Assistance Act as in force on the commencement day:

(a) lower income threshold;

(b) CCS hourly rate cap;

(c) annual cap.

(2) The Assistance Act, as amended by this Act, applies, on and after the commencement day, in relation to an unindexed amount, as if the amount (the ***indexed amount***) worked out as provided by subitem (3) were substituted for the unindexed amount.

(3) The indexed amount to be substituted is the amount that would have been substituted for the unindexed amount on 1 July 2018 under subclause 4(1) of Schedule 4 to the Assistance Act if:

(a) Schedule 1 to this Act had commenced on 3 July 2017; and

(b) the first indexation of the unindexed amount had taken place on 1 July 2018.

Note: For the indexation method provided by the Assistance Act in relation to these amounts, see items 18, 19 and 20 of the table in subclause 3(1) of Schedule 4 to the Assistance Act (as amended by this Act) and related provisions in Part 2 of Schedule 4 to that Act.

(4) The first indexation of an indexed amount after the commencement day is to take place on 1 July 2019.

6 Requirement for enrolments to be in writing

References in the Assistance Act and the Administration Act to a complying written arrangement include references to an arrangement:

(a) in force immediately before the commencement day; and

(b) under which a child was enrolled for care by an approved child care service within the meaning of the Administration Act as in force immediately before the commencement day.

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Part 3—Child care benefit and child care rebate

7 End of child care benefit and child care rebate

No person can be eligible for child care benefit or child care rebate for care, or a session of care, provided on or after the commencement day.

8 Saving of law in relation to child care benefit and child care rebate

(1) The following Acts and instruments continue in force, on and after the commencement day, in relation to child care benefit or child care rebate for which a person was eligible before the commencement day, subject to any modifications prescribed by rules made under item 12 (together these are the ***continued law***):

(a) the Assistance Act, as in force immediately before the commencement day;

(b) the Administration Act, as in force immediately before the commencement day;

(c) an instrument (whether legislative or administrative) in force for the purposes of the Assistance Act or the Administration Act immediately before the commencement day;

(d) any other Act amended by this Act, as in force immediately before the commencement day.

(2) Without limitation, subitem (1) has the following effects:

(a) a person may make a claim for child care benefit or child care rebate on or after the commencement day, in relation to a session of care provided before the commencement day;

(b) the Secretary must make determinations on and after the commencement day of eligibility for, and entitlement to be paid, child care benefit or child care rebate in respect of sessions of care provided before the commencement day;

(c) payments must be made on and after the commencement day of, or in relation to, child care benefit and child care rebate for which a person was eligible before the commencement day;

(d) the person continues to be liable for any debt to the Commonwealth incurred before the commencement day;

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(e) the person may incur a debt to the Commonwealth after the commencement day in relation to payments made to the person before, on or after the commencement day;

(f) any such debts may be recovered on or after the commencement day in accordance with the continued law;

(g) decisions in relation to child care benefit and child care rebate that are reviewable may be reviewed on and after the commencement day in accordance with the continued law.

(3) Subitem (1) does not apply to the extent of any inconsistency with another provision of this Schedule.

(4) Subitem (1) does not limit the operation of section 7 of the *Acts Interpretation Act 1901* in relation to the repeals made by Schedule 1 to this Act.

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Part 4—Providers of child care services

9 Deemed approval of operators of existing approved child care services

(1) If, immediately before the commencement day, a person is the operator of an approved child care service within the meaning of the Administration Act as then in force, then, on and after the commencement day:

(a) the person is taken to be:

(i) an approved provider within the meaning of the Administration Act; and

(ii) approved in respect of the service; and

(b) the service is taken to be a service of a type determined by the Secretary under subitem (2).

(2) For paragraph (1)(b), the Secretary may, by instrument, determine an approved child care service within the meaning of the Administration Act as in force immediately before the commencement day to be a service of one of the following types, as described in the table in subclause 2(3) of Schedule 2 to the Assistance Act (CCS hourly rate cap):

(a) a centre-based day care service;

(b) a family day care service;

(c) an outside school hours care service;

(d) a type of service prescribed by the Minister's rules for the purposes of item 4 of that table.

(3) An instrument made under subitem (2):

(a) is not a legislative instrument if it is expressed to apply in relation to a particular approved child care service; and

(b) is a legislative instrument if it is expressed to apply in relation to a class of approved child care services.

(4) If, immediately before the commencement day, the approval of a child care service is suspended under Part 8 of the Administration Act, then, on and from the commencement day:

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(a) the approval of the operator of the service under subitem (1) is taken to be suspended in respect of the service; and
(b) the Secretary may deal with the operator in respect of the service in accordance with the Administration Act as amended by this Act.

10 Saving of law in relation to approved providers

(1) The following Acts and instruments continue in force, on and after the commencement day, subject to any modifications prescribed by rules made under item 12 (together these are the ***continued law***), in relation to things done, or matters arising, before the commencement day in relation to a person mentioned in subitem 9(1):
(a) the Assistance Act, as in force immediately before the commencement day;
(b) the Administration Act, as in force immediately before the commencement day;
(c) an instrument (whether legislative or administrative) in force for the purposes of the Assistance Act or the Administration Act immediately before the commencement day;
(d) any other Act amended by this Act, as in force immediately before the commencement day.

(2) Without limitation, subitem (1) has the following effects:
(a) the person must continue to comply with the continued law in relation to care provided before the commencement day;
(b) the person continues to be liable for any debt to the Commonwealth incurred before the commencement day;
(c) the person may incur a debt to the Commonwealth after the commencement day in relation to payments made to the person before, on or after the commencement day;
(d) any such debts may be recovered on or after the commencement day in accordance with the continued law;
(e) decisions in relation to the person that are reviewable may be reviewed on and after the commencement day in accordance with the continued law.

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Part 5—Miscellaneous

11 Delegations

The amendment of subsection 221(1) of the Administration Act by this Act does not affect a delegation in effect for the purposes of that subsection immediately before the commencement day.

12 Transitional rules

(1) The Minister may make rules prescribing matters:

(a) required or permitted by this Act to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, rules may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:

(a) the amendments or repeals made by any Schedule to this Act; or

(b) the enactment of this Act.

(3) Rules made within 2 years after the commencement day may provide that this Act or any other Act or instrument has effect with any modifications prescribed by the rules.

(4) Subsection 12(2) of the *Legislation Act 2003* does not apply in relation to a provision of the rules if:

(a) the rules are registered within 2 years after the commencement day; and

(b) the provision is taken to commence before the day the rules are registered, but on or after the commencement day.

(5) However, if:

(a) rules are registered to which paragraph (4)(a) and (b) applies; and

(b) a person engaged in conduct before the day the rules were registered; and

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(c) but for any retrospective effect of the rules, the conduct would not have contravened a provision of this Act, or another Act or instrument;

then a court must not convict the person of an offence, or impose a pecuniary penalty, in relation to the conduct on the grounds that it contravened a provision of this Act or another Act or instrument.

(6) This Schedule does not limit the rules that may be made under this item.

[*Minister's second reading speech made in—*
House of Representatives on 1 September 2016
Senate on 23 March 2017]

(105/16)

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