



Family Assistance Legislation Amendment (Building on the Child Care Package) Act 2019

No. 125, 2019

**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 (Building on the Child Care Package) Act 2019

No. 125, 2019

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

[Assented to 12 December 2019]

The Parliament of Australia enacts:

1 Short title

This Act is the *Family Assistance Legislation Amendment
(Building on the Child Care Package) Act 2019*.

*No. 125, 2019 Family Assistance Legislation Amendment (Building on the Child Care
Package) Act 2019* *1*

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.	12 December 2019
2. Schedule 1, Part 1	The start of the first CCS fortnight (within the meaning of the <i>A New Tax System (Family Assistance) Act 1999</i>) to occur wholly after the day this Act receives the Royal Assent.	16 December 2019
3. Schedule 1, Part 2	13 January 2020.	13 January 2020
4. Schedule 1, Part 3	13 July 2020.	13 July 2020
5. Schedule 2	The day after this Act receives the Royal Assent.	13 December 2019

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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—Amendments relating to child care subsidies

Part 1—Amendments commencing at the start of the first CCS fortnight after Royal Assent

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1) (definition of *session of care*)

Omit “a determination in force under”, substitute “Minister’s rules made for the purposes of”.

2 Subsection 9(1)

Omit “The Minister must, by legislative instrument, determine”, substitute “The Minister’s rules must prescribe”.

3 Subsection 9(2)

Omit “A determination under”, substitute “Minister’s rules made for the purposes of”.

4 Subparagraph 10(2)(b)(iii)

Repeal the subparagraph, substitute:

- (iii) not after the last day the child attended a session of care provided by the service before the child ceased to be enrolled for care by the service; and

5 At the end of subsection 10(2)

Add:

Note: *Ceases to be enrolled* is defined in section 200B of the Family Assistance Administration Act.

6 After subsection 10(2)

Insert:

- (2A) The Minister’s rules may prescribe circumstances in which subparagraph (2)(b)(ii) or (iii) does not apply.
-

7 Subparagraph 10(3)(c)(iii)

Repeal the subparagraph, substitute:

- (iii) not after the last day the child attended a session of care provided by the service before the child ceased to be enrolled for care by the service; and

8 At the end of subsection 10(3)

Add:

Note: *Ceases to be enrolled* is defined in section 200B of the Family Assistance Administration Act.

9 After subsection 10(3)

Insert:

- (3A) The Minister's rules may prescribe circumstances in which subparagraph (3)(c)(ii) or (iii) does not apply.

10 Subsection 10(5)

Repeal the subsection.

11 At the end of subsection 85BA(1)

Add:

- ; and (e) if the session of care is provided by an approved child care service of a kind prescribed by the Minister's rules—the Secretary determines that the requirements prescribed by the Minister's rules in relation to that kind of service are met.

12 At the end of section 85BA

Add:

- (3) A determination under paragraph (1)(e) is not a legislative instrument.

13 Subparagraph 85CA(2)(b)(i)

Omit "ACCS (child wellbeing)", substitute "CCS".

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14 Subsection 85CB(1) (note)

Omit “appropriate State/Territory body”, substitute “appropriate State/Territory support agency”.

15 Subsection 85CE(1) (note)

Omit “appropriate State/Territory body”, substitute “appropriate State/Territory support agency”.

16 Subparagraph 85CJ(1)(d)(v)

Omit “and”, substitute “or”.

17 At the end of paragraph 85CJ(1)(d)

Add:

(vi) a payment prescribed by the Minister’s rules; and

18 After section 85EC

Insert:

85ECA No eligibility for in home care unless certain requirements met

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 by an in home care service to a child unless any requirements prescribed by the Minister’s rules are met.

19 After subsection 85GB(2)

Insert:

(2A) Despite subsection 14(2) of the *Legislation Act 2003*, the Minister’s rules and the Secretary’s rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

20 Subclause 1(1) of Schedule 2 (method statement, step 5)

Repeal the step, substitute:

Step 5. Work out:

- (a) the activity-tested amount of CCS for those sessions of care (see clause 4); and
- (b) if at least one of those sessions of care is a session of care to which clause 4A applies—the adjusted activity-tested amount of CCS for those sessions of care (see clause 4A).

If paragraph (b) applies, go to step 7.

Otherwise, go to step 6.

21 Subclause 1(1) of Schedule 2 (method statement, after step 6)

Insert:

Step 7. If at least one of the sessions of care identified in step 3 is a session of care to which clause 4A applies, the amount of CCS for the individual for the week, for the sessions of care, is:

- (a) the adjusted 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 adjusted activity-tested amount—that difference.

22 Subparagraph 2(2)(b)(i) of Schedule 2

Repeal the subparagraph, substitute:

- (i) the hourly rate of any payment (other than a payment mentioned in subclause (2A)) which the individual benefits from in respect of that session; and

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23 After subclause 2(2) of Schedule 2

Insert:

(2A) Subparagraph 2(2)(b)(i) does not apply to the following payments:

- (a) CCS;
- (b) ACCS;
- (c) a payment prescribed by the Minister's rules.

24 Subclause 2(3) of Schedule 2 (table)

Repeal the table (including the note), substitute:

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	\$11.98
2	a family day care service	\$11.10
3	an outside school hours care service	\$10.48
4	an in home care service	\$32.58
5	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 and reflect the indexation applied on 1 July 2019.

25 At the end of Part 1 of Schedule 2

Add:

4A Adjusted activity-tested amount of CCS

- (1) This clause applies in relation to a session of care if the amount (the *actual fee*) the individual or the individual's partner is liable to pay for the session of care is less than the sum of:
 - (a) the activity-tested amount of CCS for the individual for the session; and
 - (b) the amount of a payment prescribed by the Minister's rules for the purposes of paragraph 2(2A)(c) which the individual benefits from in respect of the session.

- (2) For the purposes of step 5 of the method statement in clause 1, the **adjusted activity-tested amount** of CCS, for the sessions of care identified in step 3 of the method statement, is the sum of:
- (a) for each session of care to which this clause applies—the amount worked out by reducing the activity-tested amount of CCS for the session by the excess amount; and
 - (b) for each session of care to which this clause does not apply—the activity-tested amount of CCS for the session.
- (3) For the purposes of paragraph (2)(a), the **excess amount**, in relation to a session of care, is:
- (a) an amount equal to the difference between:
 - (i) the sum of the amounts mentioned in paragraphs (1)(a) and (b) for the session; and
 - (ii) the actual fee for the session; or
 - (b) if another method for working out the amount is prescribed by the Minister’s rules—an amount worked out in accordance with that method.

26 At the end of clause 5 of Schedule 2

Add:

- (e) replace step 7 with this:

<p>Step 7. If at least one of the sessions of care identified in step 3 is a session of care to which clause 4A applies, the amount of ACCS for the individual for the week, for the sessions of care, is the adjusted activity-tested amount.</p>
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27 At the end of clause 7 of Schedule 2

Add:

- (e) replace step 7 with this:

<p>Step 7. If at least one of the sessions of care identified in step 3 is a session of care to which clause 4A applies, the amount of ACCS (transition to work) for the individual for the week, for the sessions of care, is the adjusted activity-tested amount.</p>

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28 Paragraph 9(2)(b) of Schedule 2

Omit “subsidy”, substitute “payment”.

29 Subclause 3AA(2) of Schedule 3

Repeal the subclause, substitute:

- (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 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:
 - (i) on which the TFN determination person was a member of that couple; and
 - (ii) that was included in a week for which a determination under section 67CD of the Family Assistance Administration Act about the individual’s entitlement to be paid CCS or ACCS was made.

30 Subclause 3(1) of Schedule 4 (cell at table item 18, column 2)

Repeal the cell, substitute:

first day of first CCS fortnight of income
year

31 Subclause 3(1) of Schedule 4 (cell at table item 19, column 2)

Repeal the cell, substitute:

first day of first CCS fortnight of income
year

32 Subclause 3(1) of Schedule 4 (cell at table item 20, column 2)

Repeal the cell, substitute:

first day of first CCS fortnight of income
year

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

33 Subsection 3(1) (definition of *appropriate State/Territory body*)

Repeal the definition.

34 Subsection 3(1)

Insert:

appropriate State/Territory support agency has the meaning given
by subsection 204K(7).

34A Section 67BE

Before “A claim”, insert “(1)”.

35 Paragraphs 67BE(c) to (e)

Repeal the paragraphs, substitute:

- (c) the claim contains 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; and
- (d) unless paragraph (e) applies—the claim contains the tax file number of each TFN claim person; and
- (e) if the claim is for CCS in substitution for an individual who has died—the claim contains the tax file number of each TFN substitution person; and

35A At the end of section 67BE

Add:

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Part 1 Amendments commencing at the start of the first CCS fortnight after Royal Assent

- (2) The Secretary may make a written determination that paragraph (1)(d) does not apply in relation to a claim for 28 days after the day the determination is made, if the Secretary is satisfied that it is appropriate in the circumstances to do so.
- (3) If:
- (a) a determination under subsection (2) is made in relation to a claim; and
 - (b) the Secretary is satisfied that it is appropriate in the circumstances that paragraph (1)(d) not apply in relation to the claim indefinitely;
- the Secretary may, before the end of the 28 days after the day the determination is made, make a further written determination accordingly.

36 Subsections 67BF(2) and (3)

Repeal the subsections, substitute:

- (2) A claim is taken not to have been made by an individual if:
- (a) the Secretary has made a determination under subsection 67BE(2) in relation to the claim; and
 - (b) at the end of the 28 days after the day the determination was made:
 - (i) if the Secretary has made a further determination under subsection 67BE(3) in relation to the claim—the individual has not provided the individual’s tax file number; or
 - (ii) if the Secretary has not made a further determination under subsection 67BE(3) in relation to the claim—the individual has not provided the tax file number of each TFN claim person.
- (3) The Secretary’s rules may prescribe other circumstances in which a claim is taken not to have been made.

37 Sections 67BG, 67BH and 67BI

Repeal the sections.

38 Paragraphs 67CD(1)(c) and (d)

Repeal the paragraphs.

39 Subsection 67CD(1) (note)

Repeal the note.

40 After subsection 67CD(1)

Insert:

- (1A) For the purposes of paragraph (1)(b), the provider of the service is taken to have given the Secretary a report under section 204B in relation to the child for the week even if the report is not given by the day required under paragraph 204B(2)(d).

Note: The report must still be given in accordance with paragraphs 204B(2)(a), (b) and (c), and the information included in the report as required by those provisions must be accurate and complete (see subsection 204B(3)).

41 Paragraphs 67CD(10)(a) and (b)

Repeal the paragraphs, substitute:

- (a) either of the following applies:
- (i) 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;
 - (ii) the Secretary made a request of the individual under section 67FE no more than 28 days ago; and
- (b) any of the following applies:
- (i) the Secretary has the tax file number of each TFN determination person;
 - (ii) the Secretary made a determination under subsection 67BE(2) or (3) in relation to the individual's claim no more than 28 days ago;
 - (iii) the Secretary made a request of the individual under section 67FG no more than 28 days ago;
 - (iv) the Secretary has the tax file number of the individual and is satisfied that it is unreasonable in the circumstances for the individual to provide the tax file

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number of each TFN determination person other than the individual;

42 Paragraphs 67CF(1)(c) and (d)

Repeal the paragraphs, substitute:

(c) either of the following applies:

- (i) 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;
- (ii) the Secretary made a request of the individual under section 67FE no more than 28 days ago.

43 Subsection 67CF(1) (note)

Repeal the note.

44 After subsection 67CF(1)

Insert:

- (1A) For the purposes of paragraph (1)(b), the provider of the child care service is taken to have given the Secretary a report under section 204B in relation to the child for a week even if the report is not given by the day required under paragraph 204B(2)(d).

Note: The report must still be given in accordance with paragraphs 204B(2)(a), (b) and (c), and the information included in the report as required by those provisions must be accurate and complete (see subsection 204B(3)).

45 Subsection 67CH(1) (note)

Repeal the note.

46 After subsection 67CH(1)

Insert:

- (1A) For the purposes of paragraph (1)(b), the provider is taken to have given the Secretary a report for the week under section 204B in relation to the child even if the report is not given by the day required under paragraph 204B(2)(d).
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Note: The report must still be given in accordance with paragraphs 204B(2)(a), (b) and (c), and the information included in the report as required by those provisions must be accurate and complete (see subsection 204B(3)).

47 Paragraphs 67DC(6)(b) and (c)

Omit “clause 3”, substitute “clause 3AA”.

48 Paragraphs 67DD(1)(f) and (5)(b) and (c)

Omit “clause 3”, substitute “clause 3AA”.

49 Paragraph 67DE(3)(b)

Omit “clause 3”, substitute “clause 3AA”.

50 Section 67FF

Repeal the section.

51 Section 67FG

Repeal the section, substitute:

67FG Request for tax file number etc. of TFN determination persons

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 does not know the tax file number of one or more of the TFN determination persons;

the Secretary may, by written notice given to the individual, request that the individual provide the tax file number of a specified TFN determination person within 28 days of the request.

52 Subsection 93A(6) (paragraph (bc) of the definition of family assistance payment)

Omit “section 219RD”, substitute “section 205A”.

53 Section 110

Omit:

Schedule 1 Amendments relating to child care subsidies

Part 1 Amendments commencing at the start of the first CCS fortnight after Royal Assent

If a person is dissatisfied with a decision of a decision reviewer under Division 1, the person may apply to the AAT for review of the decision (an “AAT first review”) (certain decisions are excepted).

substitute:

If a person is dissatisfied with a decision of a decision reviewer under Subdivision B of Division 1, the person may apply to the AAT for review of the decision (an “AAT first review”) (certain decisions are excepted).

54 Subsection 111(1)

Before “Division 1”, insert “Subdivision B of”.

55 Paragraph 111(2)(c)

Omit “section 108”, substitute “section 109G”.

56 Paragraph 111(2)(d)

Omit “section 219GA”, substitute “section 203A”.

57 Paragraph 111(2)(da)

Omit “67FF,”.

58 Subsection 111(2B)

Repeal the subsection.

59 Subsection 111(3)

Repeal the subsection, substitute:

(3) In this section:

decision reviewer means a person who, in accordance with subsection 109A(2), reviewed a decision that was the subject of an application under section 109A.

60 Subsection 128(4)

Repeal the subsection.

61 Paragraph 154(4)(e)

Omit “section 202D”, substitute “section 202B or 202C”.

62 Subsection 154(5)

Omit “section 202D”, substitute “section 202B or 202C”.

63 Paragraph 162(1)(b)

Omit “Pilot; or”, substitute “Pilot.”.

64 Paragraphs 162(1)(c) and (2)(db)

Repeal the paragraphs.

65 Paragraph 195A(3)(a)

Omit “(power to require information about children enrolled in child care)”, substitute “(power to require information about care provided)”.

66 After paragraph 198A(b)

Insert:

- (ba) what constitutes a child care place in respect of a specified class of approved child care services;

67 Subsection 200A(3)

Omit “an individual”, substitute “a person”.

68 After subsection 200A(4)

Insert:

- (4A) If an approved provider of an approved child care service fails to give a notice under subsection (1), (2) or (3) by the day required under paragraph (4)(c), (d) or (e) (as the case requires):
 - (a) the failure does not affect the validity of a notice given after that day; and
 - (b) the notice is taken to have been given on the last day the notice was required to be given under paragraph (4)(c), (d) or (e) (as the case requires), other than for the purposes of subsections (5) and (6).

69 Section 200D (heading)

Repeal the heading, substitute:

200D Notice of change in circumstances—providers

70 After subsection 200D(3)

Insert:

- (3A) If an approved provider of an approved child care service fails to give a notice under subsection (1) or (2) by the day required under paragraph (3)(b) or (c) (as the case requires):
- (a) the failure does not affect the validity of a notice given after that day; and
 - (b) the notice is taken to have been given on the last day the notice was required to be given under paragraph (3)(b) or (c) (as the case requires), other than for the purposes of subsections (4) and (5).

71 Paragraph 201B(1)(b)

Repeal the paragraph, substitute:

- (b) the sum of:
- (i) the fee reduction amount for the decision; and
 - (ii) the amount of any payment prescribed by the Minister's rules for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act that the individual benefited from in respect of the sessions of care.

72 After subsection 201C(1)

Insert:

- (1A) The approved provider of a child care service must not charge an individual who benefits from a payment prescribed by the Minister's rules for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act (a *prescribed payment*) in respect of 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 does not receive a prescribed payment.
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73 Subsections 201C(2) and (3)

After “subsection (1)”, insert “or (1A)”.

74 Subparagraph 202C(1)(a)(ii)

Omit “appropriate State/Territory body”, substitute “appropriate State/Territory support agency”.

75 Subsection 204B(1)

Repeal the subsection, substitute:

- (1) An approved provider of an approved child care service must give the Secretary a report in accordance with subsection (2) for a week if:
- (a) the provider has given the Secretary an enrolment notice for a child; 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).

- (1A) For the purposes of paragraph (1)(b), the care may be a session of care.

76 After subsection 204B(6)

Insert:

- (6A) For the purposes of subsection (6), a reference to a report includes a report that is given after the last day the report was required to be given under paragraph (2)(d).

77 After subsection 204C(1)

Insert:

- (1A) For the purposes of subsection (1), a report is taken to have been given by an approved provider under subsection 204B(1) even if the report is not given by the day required under paragraph 204B(2)(d).

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Note: The report must still be given in accordance with paragraphs 204B(2)(a), (b) and (c), and the information included in the report as required by those provisions must be accurate and complete (see subsection 204B(3)).

78 Section 204E (heading)

Repeal the heading, substitute:

204E Requirement to give information about care provided

79 Subsection 204E(1)

Omit “further information under section 67FH (information about children enrolled in child care)”, substitute “information under section 67FH (information about care provided)”.

80 At the end of subsection 204H(1) (after the table)

Add:

Note: For item 12, a report is taken to have been given under subsection 204B(1) for the purposes of subsection 204C(1) even if the report is given late (see subsection 204C(1A)).

81 Section 204K

Repeal the section, substitute:

204K Notice to appropriate State/Territory support agency 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 support agency 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 support agency.

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 support agency 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 support agency 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 support agency.

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).

Meaning of appropriate State/Territory support agency

- (7) Any of the following is an **appropriate State/Territory support agency** 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;

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- (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.

82 Section 219UB (cell at table item 2, column headed “Description”)

Omit “information about children enrolled in child care”, substitute “information about care provided”.

83 Section 219UB (cell at table item 5, column headed “Description”)

Omit “section 202D”, substitute “section 202B or 202C”.

84 At the end of subsection 224(2)

Add:

; or (d) sent by other electronic means to the provider.

85 Saving of instruments

Despite the amendments of the *A New Tax System (Family Assistance) Act 1999* made by this Part, an instrument in force under section 9 of that Act immediately before the commencement of this item continues in force (and may be dealt with), on and after commencement, as if it were Minister’s rules made for the purposes of that provision as amended by this Act.

86 Application—adjusted taxable income of members of a couple

The amendments of clause 3AA of Schedule 3 to the *A New Tax System (Family Assistance) Act 1999* made by this Part apply in relation to the income year beginning on 1 July 2019 and later income years.

87 Application—claims for CCS made before commencement

The amendments of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by items 35, 36 and 37 of this Part apply in relation to:

- (a) claims made on or after the commencement of this item; and
(b) claims made before the commencement of this item if, immediately before that commencement, a determination has
-

not been made by the Secretary under section 67CC of the *A New Tax System (Family Assistance) (Administration) Act 1999* in relation to the claim.

Part 2—Amendments commencing 13 January 2020

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

88 Subparagraph 200B(1)(b)(iii)

Omit “8 weeks”, substitute “14 weeks”.

Part 3—Amendments commencing 13 July 2020

A New Tax System (Family Assistance) Act 1999

89 Subsection 85CB(4)

Repeal the subsection, substitute:

- (4) A certificate given by an approved provider does not take effect if the certificate would have the result that any certificates given by the provider, together with any determinations made under section 85CE, that are in effect on any day of the first week in which the certificate takes effect, would be in effect in relation to more than the percentage of children for whom the service is providing care specified in a determination made under subsection (4A).
- (4A) For the purposes of subsection (4), if the Secretary determines that it is appropriate to the circumstances of the service, the Secretary may make a written determination specifying:
 - (a) a percentage of children for whom the service is providing care; and
 - (b) the period for which the determination is to have effect.

90 Subsection 85CB(6)

Omit “paragraph (4)(c)”, substitute “subsection (4A)”.

Schedule 2—Amendments relating to ensuring the integrity of the child care subsidy system

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

1 Subsection 3(1)

Insert:

Education and Care Services National Law means the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* (Vic.).

2 Sections 71F and 71G

Repeal the sections, substitute:

71F Debts in respect of CCS or ACCS for individual—provider at fault

If:

- (a) an individual is paid an amount of CCS or ACCS for one or more sessions of care provided by a child care service of a provider; and
- (b) all or part of the amount (the *attributable amount*) is paid to the individual because the provider has:
 - (i) made a false or misleading statement; or
 - (ii) failed to comply with the family assistance law; and
- (c) the individual incurs a debt under subsection 71B(1) or 71C(1) that is wholly or partly comprised of the attributable amount;

then:

- (d) the individual is taken not to have incurred as a debt under subsection 71B(1) or 71C(1) so much of the amount of the debt as is equal to the attributable amount; and

- (e) the attributable amount is instead a debt due to the Commonwealth by the provider.

71G Debts where provider approval is suspended cancelled or varied

- (1) If:
 - (a) an amount is paid to a provider under the family assistance law; and
 - (b) before the payment is made:
 - (i) the provider's approval, or the provider's approval in respect of a service, is suspended by operation of section 197AB; or
 - (ii) the provider's approval is cancelled by operation of subsection 197L(1); or
 - (iii) the provider's approval is varied to remove a service from the approval by operation of subsection 197L(3); and
 - (c) because of that suspension, cancellation or variation, the recipient should not have been paid the amount;the amount paid is a debt due to the Commonwealth by the provider.
 - (2) 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 (other than by operation of section 197AB or subsection 197L(1));
 - (ii) the provider's approval is varied to remove the service from the approval (other than by operation of subsection 197L(3));
 - (iii) the provider's approval in respect of the service is suspended (other than by operation of section 197AB);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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3 Paragraph 73(a)

After “AAT second review”, insert “or AAT single review”.

4 At the end of subsection 109D(6)

Add:

Note: Applications by providers for review of decisions made under Division 2 of Part 4 relating to CCS or ACCS or decisions made under Part 8 are subject to the time limits set out in section 109DA.

5 Section 109DA

Repeal the section, substitute:

109DA Review applications—time limits on certain applications by providers

- (1) An application by a provider for review under subsection 109A(1) of a decision made under Division 2 of Part 4 relating to CCS or ACCS must be made no later than:
 - (a) 52 weeks after the provider is notified of the decision; or
 - (b) if the provider was not notified of the decision—52 weeks after the provider becomes aware of the decision.
- (2) An application by a provider for review under subsection 109A(1B) 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.

6 Subsection 111A(1)

After “other than a decision”, insert “covered by subsection (3A) or”.

7 After subsection 111A(3)

Insert:

52 week time limit for certain provider debt decisions

- (3A) An application by a provider for AAT first review in respect of a decision under Division 2 of Part 4 relating to CCS or ACCS must be made no later than:
- (a) 52 weeks after the provider is notified of the decision; or
 - (b) if the provider was not notified of the decision—52 weeks after the provider becomes aware of the decision.
- (3B) Subsection (3A) applies despite paragraph 29(1)(d) and subsections 29(7) to (10) of the AAT Act.

8 Paragraph 111A(5)(b)

After “Division 2 of Part 4”, insert “(other than a decision referred to in subsection (3A))”.

9 Paragraph 138(1)(a)

After “in relation to a provider”, insert “(other than a decision made under section 197H or 197J)”.

10 Subsection 138(3)

After “in relation to a provider”, insert “(other than a decision under section 197H or 197J)”.

11 Subsection 161(1B)

Repeal the subsection.

12 Paragraph 162(2)(dae)

Repeal the paragraph, substitute:

(dae) for the purposes of the Education and Care Services National Law; or

13 Subsection 194B(5)

Repeal the subsection, substitute:

- (5) For the purposes of subsections (1) and (2), the day on which the approval takes effect must not be earlier than the day the application was made.

14 Section 195D

Repeal the section, substitute:

195D Conditions for continued approval—working with children check

- (1) It is a condition for continued approval of an approved provider that, for each individual required under a law of a State or Territory to hold a working with children check in relation to care provided by a child care service of the provider, the provider must ensure that the individual has a current working with children check.
- (2) For the purposes of subsection (1), a working with children check is a check that permits the individual to work with children under a law of the State or Territory in which the service is situated.

15 Subsection 196B(3)

Repeal the subsection, substitute:

- (3) For the purposes of paragraph (2)(c), the day on which the approval takes effect must not be earlier than the day the application was made.

16 Section 197A (heading)

Repeal the heading, substitute:

197A Immediate suspension after Secretary's decision

17 After section 197A

Insert:

197AA Suspension on request

Application

- (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 provider requests the Secretary in writing to do so.
 - (2) The request must:
-

- (a) be given in a form and manner approved by the Secretary;
and
- (b) specify a proposed day for the suspension to take effect (the *start day*); and
- (c) specify a proposed day for the suspension to cease to have effect (the *end day*), which must not be later than 12 months after the start day; and
- (d) contain any other information prescribed by the Secretary's rules.

Suspension

- (3) The Secretary may suspend the approval if the Secretary:
 - (a) agrees with the start day and the end day specified in the application; and
 - (b) is satisfied that the suspension is reasonable in the circumstances.
- (4) If the Secretary suspends the approval, the Secretary must give notice to the provider that the Secretary has done so. The notice must specify:
 - (a) the day the suspension takes effect (which may be earlier than the day the notice is given); and
 - (b) the day the suspension ceases to have effect.

Revocation

- (5) The Secretary may revoke the suspension if the Secretary is satisfied that the revocation is reasonable in the circumstances.
- (6) If the Secretary revokes the suspension, the Secretary must give notice to the provider of the day the revocation takes effect (which must not be earlier than the day the notice is given).

197AB Suspension if approval suspended under Education and Care Services National Law

Suspension of provider approval

- (1) If:
-

- (a) an approved provider holds a provider approval within the meaning of the Education and Care Services National Law; and
 - (b) the provider approval is suspended under the Education and Care Services National Law (the *National Law provider suspension*);
- the approval of the approved provider is taken to be suspended under this section for the same period during which the National Law provider suspension is in effect.
- (2) Subsection (1) does not apply if the provider approval is voluntarily suspended under section 37 of the Education and Care Services National Law.

Suspension of service approval

- (3) If:
- (a) an approved provider holds a service approval within the meaning of the Education and Care Services National Law; and
 - (b) the service approval is suspended under the Education and Care Services National Law (the *National Law service suspension*);
- the approval of the approved provider in respect of the service covered by the service approval is taken to be suspended under this section for the same period during which the National Law service suspension is in effect.
- (4) Subsection (3) does not apply if the service approval is voluntarily suspended under section 85 of the Education and Care Services National Law.

Secretary must give notice of suspension

- (5) If the approval of an approved provider, or the approval of an approved provider in respect of one or more services, is suspended under this section, the Secretary must give the provider notice of the suspension.

18 Section 197B

Repeal the section, substitute:

197B Suspension, cancellation or variation for multiple infringement notices

- (1) If an approved provider has been given 10 infringement notices under Part 5 of the Regulatory Powers Act in respect of alleged contraventions of civil penalty provisions of this Act within a period of 12 months, the Secretary may do one or more of the following:
- (a) suspend the approval of the approved provider;
 - (b) suspend the approval of the approved provider in respect of one or more services;
 - (c) cancel the approval of the approved provider;
 - (d) vary the provider's approval so that the provider is not approved in respect of one or more child care services.

Note: Before doing a thing mentioned in paragraphs (a) to (d), the Secretary must follow the procedure in section 199A.

- (2) For the purposes of subsection (1):
- (a) an infringement notice is taken to have been given to an approved provider under Part 5 of the Regulatory Powers Act whether it has been paid or not; and
 - (b) an infringement notice is taken not to have been given to an approved provider under Part 5 of the Regulatory Powers Act if the infringement notice is withdrawn in accordance with section 106 of that Act.

Suspension

- (3) 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 the day the suspension takes effect (which must not be earlier than the day the notice is given).
- (4) The Secretary may 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 was done).

Cancellation

- (6) If the Secretary cancels the provider's approval, the Secretary must give the provider notice of the day the cancellation takes effect (which must not be earlier than the day the notice is given).

Variation

- (7) If the Secretary varies the provider's approval by removing a child care service from the approval, the Secretary must give the provider notice of the day the variation takes effect (which must not be earlier than the day the notice is given).

19 Paragraph 197F(1)(b)

Repeal the paragraph, substitute:

- (b) none of the following apply:
- (i) the provider's approval is suspended under section 197AA for any part of the 3 month period;
 - (ii) 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;
 - (iii) the Secretary is satisfied that, because of special circumstances affecting the provider, the provider's approval should not be cancelled.

20 Paragraph 197G(1)(b)

Repeal the paragraph, substitute:

- (b) none of the following apply:
- (i) the provider's approval with respect to the service is suspended under section 197AA for any part of the 3 month period;
 - (ii) 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;
 - (iii) the Secretary is satisfied that, because of special circumstances affecting the provider, the provider's approval should not be cancelled.

21 At the end of section 197H

Add:

(3) In this section:

ceases to operate has the meaning given by the Minister's rules.

22 At the end of section 197J

Add:

(3) In this section:

ceases to operate has the meaning given by the Minister's rules.

23 At the end of Division 4 of Part 8

Add:

**197L Cancellation or variation if approval cancelled under
Education and Care Services National Law**

Cancellation of provider approval

(1) If:

- (a) an approved provider holds a provider approval within the meaning of the Education and Care Services National Law; and
- (b) the provider approval is cancelled under the Education and Care Services National Law (the ***National Law provider cancellation***);

the approval of the approved provider is taken to be cancelled under this section on the same day as the day on which the National Law provider cancellation takes effect.

Note: A provider approval may be cancelled on a number of grounds under the Education and Care Services National Law, including if it is surrendered.

(2) If the approval of an approved provider is cancelled under subsection (1), the Secretary must give the provider notice of the cancellation.

Variation of provider approval following cancellation of service approval

- (3) If:
- (a) an approved provider holds a service approval within the meaning of the Education and Care Services National Law; and
 - (b) the service approval is cancelled under the Education and Care Services National Law (the ***National Law service cancellation***);

the approval of the approved provider is taken to be varied under this section to remove the service to which the National Law service cancellation relates from the approval on the same day as the day on which that cancellation takes effect.

Note: A service approval may be cancelled on a number of grounds under the Education and Care Services National Law, including if it is surrendered.

- (4) If the approval of an approved provider in respect of one or more services is varied under subsection (3), the Secretary must give the provider notice of the variation.

24 Subsection 199A(1)

Omit “section 197D or 197E”, substitute “section 197B, 197D or 197E”.

25 After paragraph 199B(1)(b)

Insert:

- (ba) the approval of an approved provider, or the approval of an approved provider in respect of one or more services, is suspended by operation of section 197AB;
- (bb) the Secretary suspends, cancels or varies the approval of an approved provider under subsection 197B(1);
- (bc) the approval of an approved provider is cancelled or varied by operation of section 197L;

26 Subsection 199B(2)

Repeal the subsection, substitute:

- (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) the grounds for the occurrence of the event specified in subsection (1);
 - (d) 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;
 - (e) if the information relates to a suspension under subsection 197A(1) or section 197AB:
 - (i) the day when the suspension takes effect; and
 - (ii) the day (if any) when the suspension ceases to have effect;
 - (f) if the information relates to a suspension, cancellation or variation under subsection 197B(1):
 - (i) the day when the suspension, cancellation or variation takes effect; and
 - (ii) the details of the infringement notices which formed the grounds for the suspension, cancellation or variation; and
 - (iii) if the information relates to a suspension—the day (if any) when the suspension ceases to have effect;
 - (g) if the information relates to a cancellation or variation under section 197L—the day when the cancellation or variation takes effect.

27 Application—debts arising from AAT stay orders

The amendment of section 73 of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule applies in relation to an order made by the AAT under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* on or after the commencement of this item.

28 Application—time limit for application for review

The amendments of sections 109DA and 111A of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule apply in relation to a decision made under Division 2 of Part 4 of that Act relating to CCS or ACCS on or after the commencement of this item.

29 Application—decisions for which AAT single review may be sought

The amendments of section 138 of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule do not apply in relation to a decision made under section 197H or 197J of that Act if the provider applies to the AAT for review of the decision under section 138 of that Act before the commencement of this item.

[Minister's second reading speech made in—
House of Representatives on 18 September 2019
Senate on 27 November 2019]

(178/19)
