Family Assistance Legislation Amendment (Child Care Subsidy) Act 2021

No. 86, 2021

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 (Child Care Subsidy) Act 2021

No. 86, 2021

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

[*Assented to 27 August 2021*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Family Assistance Legislation Amendment (Child Care Subsidy) Act 2021*.

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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 after this Act receives the Royal Assent.	28 August 2021
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence before 1 July 2022, they commence on that day.	
3. Schedule 2, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence before 11 July 2022, they commence on that day.	
4. Schedule 2, Part 2	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the day that the provisions covered by table item 3 commence. If the provisions covered by this item do not commence before 1 July 2023, they commence on that day.	

Note: This table relates only to the provisions of this Act as originally enacted.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.

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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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Removal of child care subsidy annual cap

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1) (definition of *annual cap*)

Repeal the definition.

2 Subclause 1(1) of Schedule 2

Omit "(1)".

3 Subclause 1(1) of Schedule 2 (method statement, step 1)

Omit "step 2", substitute "step 3".

4 Subclause 1(1) of Schedule 2 (method statement, step 2)

Repeal the step.

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

Repeal the step, substitute:

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

6 Subclause 1(1) of Schedule 2 (method statement, step 7)

Repeal the step, substitute:

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 the adjusted activity-tested amount.

7 Subclauses 1(2) and (3) of Schedule 2

Repeal the subclauses.

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8 Paragraph 5(b) of Schedule 2

Repeal the paragraph.

9 Paragraph 5(c) of Schedule 2

Omit “CCS;”, substitute “CCS.”.

10 Paragraphs 5(d) and (e) of Schedule 2

Repeal the paragraphs.

11 Paragraph 7(b) of Schedule 2

Repeal the paragraph.

12 Paragraph 7(c) of Schedule 2

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

13 Paragraphs 7(d) and (e) of Schedule 2

Repeal the paragraphs.

14 Clause 2 of Schedule 4 (table item 20)

Repeal the item.

15 Subclause 3(1) of Schedule 4 (table item 20)

Repeal the item.

16 Application provision

The amendments of the *A New Tax System (Family Assistance) Act 1999* made by this Schedule apply in relation to:

(a) the income year in which this item commences and later income years; and

(b) sessions of care provided to a child in a CCS fortnight that starts in the income year in which this item commences or in a later income year.

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

17 Subparagraph 67CE(1)(b)(ii)

Omit “test result;”, substitute “test result.”.

18 Subparagraph 67CE(1)(b)(iii)

Repeal the subparagraph.

19 Subsection 105E(6)

Omit all the words after “the Secretary must apply Part 1 of Schedule 2 to the Family Assistance Act in relation to the fortnight”, substitute “as if the individual’s adjusted taxable income for the year included the adjusted taxable income for the year for the other member of the couple”.

20 Saving provision—income years ending before commencement

Despite the repeal of subparagraph 67CE(1)(b)(iii), and the amendment of subsection 105E(6), of the *A New Tax System (Family Assistance) (Administration) Act 1999* by this Schedule, those provisions, as in force immediately before the commencement of this item, continue to apply, on and after that commencement, in relation to income years ending before that commencement.

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Schedule 2—Increased amounts of child care subsidy

Part 1—Phase 1 amendments

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1) (definition of *applicable percentage)*

Omit "clause 3", substitute "clauses 3 and 3A".

2 Subsection 3(1)

Insert:

> ***higher rate child*** has the meaning given by subclause 3B(1) of Schedule 2.

3 Subclause 2(1) of Schedule 2

Omit "see clause 3", substitute "see clauses 3 and 3A".

4 Subclause 2(1) of Schedule 2 (note)

Omit "(see table item 6 of subclause 3(1))".

5 Clause 3 of Schedule 2 (heading)

Repeal the heading, substitute:

3 Applicable percentage—basic case

6 Subclause 3(1) of Schedule 2

After "the following table", insert "(unless that percentage is determined in accordance with clause 3A)".

7 After clause 3 of Schedule 2

Insert:

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3A Applicable percentage—other cases

When applicable percentage determined in accordance with this clause

(1) An individual's applicable percentage for a session of care provided to a child in a CCS fortnight is determined in accordance with this clause if:
  (a) the child is a higher rate child in relation to the individual for the session of care; and
  (b) the session of care is not provided by an in home care service.

What is the applicable percentage?

(2) Subject to subclauses (4) and (5) of this clause, the individual's ***applicable percentage*** for the session of care is determined by the table in subclause 3(1), and by subclause 3(3), as modified by subclause (3) of this clause.

(3) For the purposes of subclause (2), the following modifications apply:
  (a) in item 1 of the table in subclause 3(1), omit "85%" and substitute "95%";
  (b) in item 3 of the table in subclause 3(1), omit "50%" and substitute "80%";
  (c) in item 5 of the table in subclause 3(1), omit "20%" and substitute "50%";
  (e) in the formula in subclause 3(3), omit "50" and substitute "80".

(4) Subclause (5) applies, and subclause (2) does not apply, if the individual's adjusted taxable income for the income year in which the CCS fortnight starts is above the lower income threshold and below the second income threshold.

(5) The individual's ***applicable percentage*** for the session of care is the lesser of 95% and the percentage worked out by:
  (a) starting with the applicable percentage (the ***default percentage***) that would apply to the individual for the session

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of care under item 2 of the table in subclause 3(1) and under subclause 3(2); and

(b) adding 30 percentage points to the default percentage.

Example: If the default percentage is 60%, the individual's applicable percentage for the session of care is 90%. If the default percentage is 75%, the individual's applicable percentage for the session of care is 95%.

3B Higher rate child

Higher rate child

(1) A child (the ***relevant child***) is a ***higher rate child*** in relation to an individual for a session of care provided to the relevant child in a CCS fortnight if:

(a) the relevant child satisfies the conditions in subclause (2) in relation to the individual and the CCS fortnight; and

(b) another child (the ***other child***) satisfies the conditions in subclause (2) or (3) in relation to the individual and the CCS fortnight; and

(c) one of the following conditions is satisfied:

(i) if the relevant child and the other child were born on different days—the other child is older than the relevant child;

(ii) if the relevant child and the other child were born on the same day—the other child is ranked above the relevant child for the CCS fortnight by a determination under subclause (5).

Note: There may be several children each of whom is a higher rate child in relation to the same individual for sessions of care provided in a CCS fortnight.

(2) A child satisfies the conditions in this subclause in relation to an individual and a CCS fortnight if:

(a) the child is under 6 years of age on the first Monday of the CCS fortnight; and

(b) a determination under paragraph 67CC(1)(a) of the Family Assistance Administration Act determines that the individual is eligible for CCS by fee reduction for the child; and

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(c) that determination is in effect in relation to the first Monday of the CCS fortnight.

(3) A child satisfies the conditions in this subclause in relation to an individual and a CCS fortnight if:

(a) the child is under 6 years of age on the first Monday of the CCS fortnight; and

(b) a determination under paragraph 67CC(1)(a) of the Family Assistance Administration Act determines that a person who is a partner of the individual on the first Monday of the CCS fortnight is eligible for CCS by fee reduction for the child; and

(c) that determination is in effect in relation to the first Monday of the CCS fortnight.

Determinations ranking children born on same day

(4) Subclause (5) applies if:

(a) there is a group of 2 or more children who were all born on the same day; and

(b) at least one child in the group satisfies the conditions in subclause (2) in relation to an individual and a CCS fortnight; and

(c) every child in the group satisfies the conditions in subclause (2) or (3) in relation to that individual and that CCS fortnight.

(5) The Secretary must determine, in writing, that one of the children in the group is ranked above the other child or children in the group for the CCS fortnight.

(6) When making a determination under subclause (5), the Secretary must apply the Minister's rules (if any) prescribed for the purposes of this subclause.

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

8 Paragraph 7(c) of Schedule 2

Omit "clause 3", substitute "clause 3 or 3A (whichever applies)".

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9 Application provision

The amendments of the *A New Tax System (Family Assistance) Act 1999* made by this Part apply in relation to sessions of care provided to a child in a CCS fortnight that starts on or after the commencement of this item.

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

10 Paragraph 67CC(2)(b)

Repeal the paragraph, substitute:

(b) the Secretary has made determinations under subsection 67CD(8) in relation to the individual (otherwise than because of subsection 105E(2)) for:

(i) unless subparagraph (ii) applies—at least 52 consecutive weeks; or

(ii) if the Minister's rules prescribe a different number of consecutive weeks for the purposes of this subparagraph—at least that number of consecutive weeks;

11 At the end of subsection 67CC(2)

Add:

; (d) a report under section 204B for a week, indicating that a session of care has been provided to the child in the week, has not been given to the Secretary in relation to:

(i) unless subparagraph (ii) applies—at least 26 consecutive weeks; or

(ii) if the Minister's rules prescribe a different number of consecutive weeks for the purposes of this subparagraph—at least that number of consecutive weeks;

(e) the Secretary is satisfied that the individual:

(i) does not intend that the child be enrolled for care by a child care service; or

(ii) does not intend that the child attend any sessions of care provided by a child care service.

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12 Application provisions

(1) The repeal and substitution of paragraph 67CC(2)(b) of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Part applies in relation to determinations under subsection 67CC(2) of that Act made on or after the commencement of this item that relate to:

(a) determinations under paragraph 67CC(1)(a) of that Act made before, on or after the commencement of this item; and

(b) determinations under subsection 67CD(8) of that Act made before, on or after the commencement of this item.

(2) Paragraph 67CC(2)(d) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as added by this Part, applies in relation to determinations under subsection 67CC(2) of that Act made on or after the commencement of this item that relate to:

(a) determinations under paragraph 67CC(1)(a) of that Act made before, on or after the commencement of this item; and

(b) a period under subparagraph 67CC(2)(d)(i) or (ii) of that Act (as added by this Part) that starts before, on or after the commencement of this item.

(3) Paragraph 67CC(2)(e) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as added by this Part, applies in relation to determinations under subsection 67CC(2) of that Act made on or after the commencement of this item that relate to determinations under paragraph 67CC(1)(a) of that Act made before, on or after the commencement of this item.

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Part 2—Phase 2 amendments

A New Tax System (Family Assistance) Act 1999

13 After paragraph 3B(1)(c) of Schedule 2

Insert:

; and (d) a report under section 204B of the Family Assistance Administration Act for a week, indicating that a session of care has been provided to the other child in the week, has been given to the Secretary in relation to:

(i) unless subparagraph (ii) applies—at least one week in the period of 14 weeks ending at the end of the CCS fortnight; or

(ii) if the Minister's rules prescribe a different number of weeks for the purposes of this subparagraph—at least one week in the period of that number of weeks ending at the end of the CCS fortnight.

14 Application provision

Paragraph 3B(1)(d) of Schedule 2 to the *A New Tax System (Family Assistance) Act 1999*, as added by this Part, applies in relation to:

(a) determining whether a child is a higher rate child in relation to an individual for a session of care provided to the child in a CCS fortnight that starts on or after the commencement of this item; and

(b) a period under subparagraph 3B(1)(d)(i) or (ii) of that Schedule (as added by this Part) that starts before, on or after the commencement of this item.

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[*Minister's second reading speech made in—*
House of Representatives on 24 June 2021
Senate on 9 August 2021]

(83/21)

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