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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FAMILY ASSISTANCE LEGISLATION AMENDMENT  
(CHILD CARE REBATE) BILL 2011**

EXPLANATORY MEMORANDUM

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

# **FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE REBATE) BILL 2011**

## **OUTLINE**

The Bill amends the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* to give effect to the 2010 pre-election commitment to introduce fortnightly child care rebate (CCR) payments for individuals who are eligible for child care benefit (CCB) by fee reduction.

As a result of these amendments, an individual will be able to elect how CCR will be paid during an income year, that is: calculated for a week and paid following the approved child care service's usage report is submitted (usually weekly or fortnightly) either to the individual's approved child care service or to the individual's bank account, or as a quarterly payment to the individual's bank account (the current way of payment).

If an election is made for CCR calculation for a week, the amount of CCR payable is assessed in respect of each week of care provided to a child by an approved child care service. This assessment is made after the service has provided a child care usage report for the week.

In accordance with the current legislative obligations, child care services are able to report child care usage up to two weeks after the week the care is provided. The current reporting patterns of approved child care services will mean that individuals electing to have their CCR calculated for a week will be paid either weekly or fortnightly.

The arrangements for payments of CCR for a week to approved child care services mirror the existing arrangements relating to payment of CCB fee reductions to such services and will be handled by the same Child Care Management System. If the CCR payment is made to an approved child care service, in accordance with an individual's election, the service will be required to pass on the rebate amount to the individual, ultimately reducing the individual's child care fees.

Under the current legislative arrangements, a determination of entitlement for CCR for an income year is made after the end of the income year. An individual who does not elect to be paid CCR during an income year will be therefore paid the total annual entitlement amount (if any) after the end of the income year.

As it is currently the case with quarterly CCR payments, CCR amounts paid to an individual during an income year for a week will be reconciled after the end of the income year when the individual's entitlement amount for the year is determined following a determination of entitlement for CCB for that year.

In order to protect families from accumulating potential debts as a result of overestimating their income, the amount of CCR payment for a week paid during an income year will be reduced by 15 per cent. This reduction percentage amount will provide a buffer to offset potential debts that may arise through differences between the actual adjusted taxable income with income estimates on which calculation of fee reductions and CCR for a week are based. This reduction percentage delivers a similar policy outcome to the current legislative framework supporting quarterly CCR payments, whereby the fourth quarter CCR payment is calculated after the income year based on the individual's actual adjusted taxable income.

The election of the way in which CCR will be paid during 2011-2012 will occur before July 2011, for the individuals who are conditionally eligible for CCB by fee reduction at that time. If the election is not made, CCR will continue to be paid in the same way as it was paid in 2010-2011. New claimants for CCB by fee reduction in 2011-2012 who will not elect any payment during an income year will be paid an annual entitlement after the end of the income year.

An election of a particular payment method will continue in effect until the individual elects to be paid differently. Generally, any change to the payment of CCR will be effective in respect of payments made in a subsequent income year. Where there are exceptional circumstances individuals will be able to change the method of payment part way through an income year. This may include where existing customers were not aware of their ability to change their method of payment for the first year of operation of this legislation.

The amendments relating to payments for a week will apply from the first week after 1 July 2011.

## **FINANCIAL IMPACT**

Cost of \$42.4 million over 5 years (2010–11, 2011–12, 2012–13, 2013–14 and 2014–15).

## REGULATION IMPACT STATEMENT

### 1. Introduction

On 9 July 2010, the Australian Government announced that families would be able to receive their Child Care Rebate (CCR) payments fortnightly from 1 July 2011, so that assistance may be provided closer to the time child care fees are incurred.

The Government has provided funding of \$42.43 million for the provision of fortnightly CCR payments, which may be paid via child care services as a fee reduction or direct to families.

The proposal will extend CCR payment methods to better assist families to meet the cost of their child care by giving families the option of receiving CCR fortnightly, closer to the time child care costs are incurred. The proposal will enable families to choose from four CCR payment delivery methods:

- electing to receive their CCR payments direct to their bank accounts fortnightly
- electing to have their CCR payment made to their child care service fortnightly on their behalf
- continuing to receive their CCR payment made to their bank account quarterly; or
- continuing to receive their CCR payment paid annually as a lump sum payment.

In some instances, families underestimate their income or their circumstances change and this can sometimes result in families incurring a CCR debt. For families that elect to receive their CCR fortnightly, this proposal will allow for 15 per cent of the CCR amount to be withheld until after reconciliation at the end of a financial year, which will mitigate the risk of families incurring a debt.

Note: CCR payments will be calculated for each week when the child care service has reported on the child care usage for that week. In accordance with current legislative obligations, child care services report on usage either weekly or fortnightly and so CCR may also be paid either weekly or fortnightly. Therefore, where this Regulation Impact Statement refers to fortnightly CCR payments, it should be noted that in practice payments may be made weekly or fortnightly depending upon the circumstances.

### **Background**

The child care sector in Australia is comprised of a diverse range of services for children typically from birth to 12 years of age, which are operated by community, not-for-profit and private providers. As at June 2010 there were around 14,000 approved child care services in Australia, including Long Day Care, Family Day Care, Outside School Hours Care, Occasional Care and In Home Care. The largest component of the industry is the Long Day Care sector, with around 528,000 children attending this service type in the June quarter 2010. Family Day Care (including in-

home care) comprises a comparably small part of the sector, with around 105,000 children attending this service type in the same period.

The Australian Government supports the child care sector by assisting families with the cost of care through the availability of timely Child Care Benefit and Child Care Rebate payments. CCB and CCR are available only to eligible families accessing approved child care services. Approved services must participate satisfactorily in the Government's quality assurance system and must also be available to families for a minimum of eight hours a day, on each normal working day, for at least 48 weeks a year to support families to participate in the workforce.

The Government also operates the Child Care Services Support Program (CCSSP), which supports and promotes access to quality child care for children, families and communities through strategies that complement the significant assistance provided to families through CCB and CCR. Community support delivers improved access to child care through support for establishment of new services and maintenance of services, especially in areas where the market would otherwise fail to provide child care services.

#### Child Care Benefit

CCB is a means-tested payment based on a family's income so that it is targeted to people most in need of financial assistance. Most CCB payments are made to families through their approved child care service following the service's submission of the child's attendance record through the CCMS on a weekly basis. The service then passes on the CCB to the family as a fee reduction. Families may also choose to receive their CCB as a lump sum at the end of financial year if they prefer. Families must register with the Family Assistance Office to determine their eligibility and amount of CCB entitlement.

#### Child Care Rebate

The CCR is a separate payment that provides assistance for working families who use approved child care by covering half of all their out-of-pocket fees (after CCB), up to a maximum limit per child per year. To be eligible for the CCR families must have used approved child care and met the work, training, study test and be eligible for CCB. CCR is not income tested, and eligibility for CCB includes families who are entitled to CCB at the zero rate due to income.

CCR was introduced to assist families meet their out-of-pocket child care expenses and it is paid directly to families bank accounts. From July 2008, the CCR was increased from 30 per cent to 50 per cent of child care out of pocket costs and from a maximum of \$4354 up to \$7500 per child per year. At that time, the Government also gave families the capacity to elect to have their CCR paid quarterly instead of annually to ensure families receive the assistance closer to the time they incur their child care expenses.

#### The Child Care Management System

The CCMS was introduced in July 2007 to enable the movement of information over the internet on CCB fee reductions and child care supply and usage between the child care services, the Department of Education, Employment and Workplace Relations

and Centrelink. All child care services were required to be operating under the CCMS by 29 June 2009.

From a Commonwealth perspective, the CCMS exists as the payment system between a child care service and the Department of Education, Employment and Workplace Relations (DEEWR).

Legislation requires child care service providers to use CCMS registered software to transact with Commonwealth systems for the purpose of receiving child care assistance on behalf of families. CCMS registered software products, used by child care services, transact with the DEEWR system, the CCMS and also with Centrelink systems with regard to the eligibility and entitlement information of families.

There are currently 23 CCMS software providers registered with the Commonwealth, supplying around 14,000 services in the child care sector. These software providers range greatly in market share. The largest has around 60 per cent of the market, while the smallest has less than 10 customers. The majority of software providers have over 300 customers.

## **2. Significance of the problem to be addressed**

### **2.1 Affordability and Flexibility**

Ensuring that child care remains affordable continues to be a core priority for Government. The introduction of fortnightly CCR payments, providing greater flexibility for families, will build upon the changes made in 2008, when CCR was increased from 30 to 50 per cent of out-of-pocket expenses and from a maximum of \$4354 up to \$7500 per child per year. It will deliver CCR to families at the time it is needed, and give families greater flexibility in managing their household budgets. Families will be able to elect to receive CCR either by way of fee reduction via their child care service, similar to the way the majority of families receive their CCB entitlement, or directly into their bank account.

### **2.2 Existing regulation**

The proposed measure builds upon CCB payment mechanisms already in place where CCB payments are made directly to services and passed on to families as fee reductions. The proposal does not involve any changes to policy or eligibility of families or child care services.

CCR was introduced to assist families meet their out-of-pocket child care expenses and, under current payment methods, is paid directly to families' bank accounts. From July 2008, the CCR was increased from 30 per cent to 50 per cent of child care out of pocket costs and from a maximum of \$4,354 up to \$7,500 per child per year. At that time, the Government also gave families the option to elect to have their CCR paid quarterly instead of annually to ensure families receive the assistance closer to the time they incur their child care expenses.

To be able to pass on CCB to families in the form of fee reductions, a child care service must have Commonwealth Government approval. In order to gain this approval and stay approved, under family assistance law, a child care service is required to meet various conditions. Among others, the conditions that a service must

meet include that a service's key personnel and staff must be suitable people to operate a child care service. The operator must be a fit and proper person, including that they have not been subject to administration, receivership, liquidation, bankruptcy or debt recovery proceedings over the last five years; and they have no convictions or criminal charges pending.

A service must provide child care for a certain period of time (eg. hours per week and weeks per year), comply with State or Territory laws (such as being licensed, if required), participate in the relevant Quality Assurance Program, meet insurance and priority of access requirements and provide at least 42 days notice of intention to close a service. A service also has to ensure that it stays financially viable and can meet its debts and other obligations and must report correctly how Commonwealth funds are spent.

Child care services are required to submit attendance data within 14 days of the end of the week in which the child received care. The majority of services submit their data on a weekly basis, and the remainder submit fortnightly, in line with their legal requirements. The frequency of submissions will not be affected by the introduction of the payment of CCR through services.

### **2.3 Need for Government action**

Child care assistance is provided and administered directly by the Government to support families with the cost of child care and to support early childhood education opportunities. The Government has direct legislative authority under family assistance law for this outcome and has committed to increase the frequency of CCR payments for families to assist them to meet their child care costs at the time they are incurred.

## **3. Objectives of government action**

When the Commonwealth Government first became financially involved with child care in 1972, the primary policy rationale was to support workforce participation, particularly by women. Promoting use of child care is now seen to have a wider range of general objectives including, supporting early childhood development through access to high quality programs and enhancing access to early childhood education and care opportunities for social inclusion groups. In these ways, child care is a key policy mechanism to support the Government's wider Participation and Productivity Agenda, which seeks to develop and retain human capital to improve Australia's future success and prosperity.

More specifically the objectives of the proposed measure are to provide support for increased access to early childhood education and care and increased workforce participation by helping with both flexibility and affordability by making CCR payments available at the time costs are incurred.

## **4. Options that may achieve the objectives**

The Government made a pre-election announcement on 9 July 2010 to introduce fortnightly CCR payments for families either through child care services or direct to the families. As a result, this Regulation Impact Statement assesses the potential impact of these options only.

The proposal will give families the option of receiving fortnightly CCR payments directly to their bank accounts, consistent with the current legislative arrangements for quarterly and annual CCR payments, or via child care providers as a fee reduction in line with current CCB arrangements.

Many families that receive CCR also receive CCB entitlements that are paid directly to their child care services as a fee reduction. Some families in receipt of CCR are eligible for nil rate CCB due to income, and do not receive any actual CCB payments. These families may prefer to continue to receive their CCR entitlement directly into their bank account, as per current arrangements.

Where families choose to receive their Child Care Rebate fortnightly, the government would withhold 15 per cent of the CCR to ensure that families do not accumulate a debt or overpayment of CCB or CCR within a financial year. The balance of the funds withheld would be reconciled after the final quarter of the financial year, to help balance out any variations in CCB entitlement that might arise when families underestimate their income or their circumstances change.

## **5. Impact analysis — costs, benefits and risks**

The cost to Government of implementing this proposal is \$42.43 million over five years, in fiscal terms. This includes systems changes, administrative and call centre costs for Centrelink.

### Affected stakeholders

All CCB approved child care services and their software providers will be affected by the introduction of fortnightly payments direct to families. Currently around 690,000 families using approved child care are eligible to receive CCR. These families will be positively affected, with greater flexibility in the choice of payment method. Australian Government agencies, including the Department of Education, Employment and Workplace Relations, Centrelink, and the Ombudsman will also be affected as each will play a role in managing delivery of the payment and resolving any issues that may arise.

### **Assessment of costs and benefits**

#### Impact on Child Care Services

Currently there are around 690,000 families using approved child care that are eligible to receive CCR. It is anticipated that the majority of families (around 70 per cent) will elect to receive their CCR payments made fortnightly to their child care service. A small proportion may elect to have CCR paid fortnightly to their bank account. The remaining 30 per cent of families will continue to receive their CCR payments as per the current arrangements of quarterly or annually made to their bank account. This will assist services to receive their fees closer to the time the child care fees are incurred and reduce the potential for bad debts.

Through the Child Care Management System (CCMS), the Department will provide child care service providers details of the CCR payments made to the service on behalf of each family electing to receive their CCR payment through the service.



Currently, when a new child enters care, the service submits an electronic enrolment, through CCMS using registered software, for a child whose parents have been assessed for CCB. CCMS confirms back to the service the eligibility for CCB, the payment method and the number of absences the child has used during the financial year at other services. From 1 July 2011, this information for CCR will also be returned to the service through CCMS.

Approved child care services use registered software products to connect and exchange information with CCMS. These software products will be upgraded to enable child care services to receive and process the CCR payments. System changes are made annually to CCMS and the child care sector is now used to this process. Generally, child care services pay an annual subscription fee for the provision of software. The range of products and applications vary from one software provider to another, and the cost to the service will depend on the subscription package. For a service, the administration of CCR fee reduction payments will mirror the current CCB fee reduction payment process that is in place, and services are fully familiar with this process. For this reason, it is expected that CCMS registered software providers will simply issue software upgrade advices to their client base to outline and explain the CCR changes included in the upgrade. Therefore, software providers are expected to absorb the costs of upgrade and there will be no upfront or ongoing costs for services directly attributable to the introduction of the payment of CCR to families through services.

Child care providers are proactive in updating bookings and usage information and take their legal obligations under Family Assistance Law seriously. The majority of services submit their data on a weekly basis, and the remainder submit fortnightly, in line with legal requirements. The frequency of submissions will not be affected by the introduction of the payment of CCR through services.

A service is legally obligated to electronically enrol all new children commencing care at the service within 7 days of care commencing and to report attendance information for all children in care within 14 days of the end of the week in which care is provided. This is irrespective of CCB/CCR eligibility. Children whose parents are CCB/CCR eligible are electronically enrolled by the service as a Formal Enrolment, using both the parent's and child's Centrelink Customer Reference Numbers, linking them to the family's Centrelink record and eligibility. Children whose parents either are not eligible for CCB/CCR, or the parents have not yet established eligibility for those payments are electronically enrolled by the service as an Informal Enrolment. An Informal Enrolment can be updated by the service through the CCMS at any time and changed to a Formal Enrolment once a family establishes CCB/CCR eligibility, or provides the service with the details required for a Formal Enrolment. When an Informal Enrolment is formalised in the CCMS, all attendance data previously submitted for the child is automatically sent to Centrelink for calculation of CCB and CCR entitlement. Therefore, there will be no additional effort for a service to administer CCR.

Practically, a service must capture detailed information in their administration system about the children and families they provide care to, if for no other reason than to issue fee invoices to families. The service must also know which children are actually in care during each session or day. They do this by marking a roll. CCMS registered

software products vary in complexity and functionality, but every product has the concept of collecting and processing family information, child booking and attendance rolls. All of these functions automatically link to and inform Enrolment and Attendance information submitted to the CCMS. Where a child's booking, and therefore attendance, at the service changes, there is an impact on the service's fee. On that basis, it is expected that, generally, the service would immediately update the child's booking and therefore the attendance data submission to the CCMS would be accurate.

There is also a provision in the CCMS to backdate an Enrolment for up to 1095 days (3 years) because a customer who has never established eligibility for CCB and/or CCR, or chooses to receive those payments as a Lump Sum payment has up to two years (from the end of the year where care is provided) to claim. There is no limit in the CCMS for backdated changes to an attendance reported that has previously been submitted or processed, or to a first time attendance report being submitted. Service providers are very effective at ensuring changes in usage patterns are updated and that any errors they may make in their data submission to the CCMS are corrected because attendance reports are directly linked to a child's booking and fee invoice with the service.

Under the current arrangements, child care service providers are required to provide families with a statement at least three monthly which includes the details of the hours of care provided and the CCB fee reduction payments made to the service on their behalf. Where families have elected to have their CCR payments made to the service on their behalf, the child care service providers will be required to include those CCR payment details in the families' statement. The upgrades to software used by child care services will automatically incorporate CCR information into the statements for families.

As part of the nationwide introduction of CCMS in 2008, child care services were provided with Government assistance towards the cost of upgrading their existing hardware and software. As part of the transition to CCMS child care service providers were advised that they would be required to purchase and maintain new or upgraded software to support their business model and to meet reporting requirements under the Family Assistance legislation. Funding of around \$18 million was included in the CCMS budget to support services in their transition to CCMS, including subsidising the cost of software and hardware.

In the event of issues arising with the implementation of the fortnightly payment of CCR and CCB, the Department of Education, Employment and Workplace Relations CCMS Help Desk will provide support to child care services, given the interface of this system with the Centrelink IT system that calculates CCB and CCR. This support will include assistance to services with the requirement to provide regular statements to families, including CCR payments.

Other existing Departmental processes in place to support the child care sector and inform families will help offset impacts on the child care sector. These processes include regular, ongoing consultation with the sector undertaken through several mechanisms - presentations provided to the sector on an ongoing basis and a fortnightly newsletter put out by the department, and feedback via email on updates to

the system and rules relating to the administration of child care payments. The Department will also communicate with families and the sector in relation to the introduction of fortnightly payments, advising them of and preparing them for these changes from 1 July 2011.

As the proposal increases the flexibility of child care payments for families, benefits may flow on to child care service providers in the form of reduced bad debts and increased timeliness in the payment of fees by families. It should be noted there is broad sectoral support for the introduction of fortnightly payments of CCR to assist families with the cost of care.

#### Impact on Third Party Software Providers

The change to fortnightly CCR payments will require the upgrading of software products used by child care services to enable both direct payment to families and payment via child care services in the form of fee reductions. These products are provided by a range of commercial or third party software providers.

Currently 23 software providers supply around 14,000 services in the child care sector with CCMS registered software. These software providers range greatly in market share. The largest has around 60 per cent of the market, while the smallest has less than 10 customers. The majority of software providers have over 300 customers.

The Commonwealth gave an undertaking to CCMS registered software providers to provide them with business specifications six months prior to any CCMS changes, to give them the necessary lead time to develop their products. Software providers will need to upgrade and deploy their software to 14,000 providers, including review of their program. The normal annual systems release cycle, including this one, allows software providers a three month transition period for this purpose.

To implement CCMS changes requires re-registration of all 23 software providers. The CCMS enhancements containing the functionality to pay CCR as a further fee reduction payment to services do not in themselves directly require re-registration of software products. The CCR change is included with other functional changes to the CCMS interfaces, including the ability to deliver funding from the Child Care Service Support Program directly to child care services via the CCMS. Those functional changes are the driver for software re-registration to ensure every registered product has the capability to implement the additional changes to functionality.

The Department meets quarterly with software providers through the Technical Reference Group to discuss changes and improvements. Software providers were advised of the requirement to develop products to support fortnightly CCR payments at the September 2010 meeting, and were aware that a change to the interface or major release, such as this, requires the re-registration of the software product with the Commonwealth.

Third party providers have also developed their CCMS software products over time to include other functionality that child care centres utilise to manage their business and administrative practices, for example staff rostering. CCMS software providers also deliver a range of systems support services to child care centres. These include

training, online help services and help desk services. Generally, child care services pay an annual subscription fee for the provision of software, which varies from one provider to another and depends on the type of subscription the child care service is purchasing, eg. maintenance, training, etc.

The diversity in size of CCMS software providers and the types of products and services they offer also brings diversity in the cost of the software available. Like any commercial enterprise, software providers set their own licence fees and charges. The Commonwealth does not regulate the cost of CCMS software products. It is a business decision of the child care service to determine the most appropriate CCMS software product to best meet their needs.

Generally, the Commonwealth system operates on a major and minor systems change release schedule over a 12 month period. This means that a major release will usually occur to correspond with a July program implementation and minor releases for systems fixes and upgrades occur in January. Software providers also undertake their own systems release changes on an ongoing basis throughout the year, according to their needs and the needs of their customer base.

Depending on the business model used by the software provider, and based on previous major releases implemented by the Department, costs to develop and test software upgrades are variable and are estimated to range up to \$30,000. These are part of the normal business cycle for software providers in the child care market.

### Impact on Families

This proposal is designed to provide around 690,000 families with the option of receiving the CCR payment fortnightly, thereby increasing flexibility and affordability of child care payments. This option is in addition to continuing to fund CCR quarterly and on an annual basis.

For most families, the amount of CCR (either received directly or paid to the child care services) fluctuates due to varying usage patterns. This is similar to the current administration by services of CCB via fee reduction, where many families use more than one child care service for their child, or have children in different child care services and services used may submit attendance data on a different day of the week. This factor could potentially result in families receiving multiple CCR payments for the same period of care for their children.

Families are likely to query payments and calculations, more so where attendance cancellations occur and when the CCR annual cap is reached. Increased contact with Centrelink has been factored into their costings for this proposal. When previously processed attendance reports are cancelled by a child care service, CCR previously paid in respect of that record is recovered from the family by offsetting or withholding the amount from the next CCR payment made to the family.

For these reasons, it will be administratively simpler for families to receive CCR via fee reduction by their child care service, similar to CCB. Child care services will make adjustments on behalf of families as they occur and this will flow through to their billing for families. Given these complexities for families in understanding and

calculating the levels of direct fortnightly CCR payments, it is expected that the majority (70 per cent) of families will elect to receive CCR fortnightly payments via child care services, which align with CCB delivery arrangements, and will mean families will be supported by net CCB/CCR fortnightly child care fee reductions.

Increased payment frequency will also require holding 15 per cent of the fortnightly payment back from families receiving more than a nil rate of CCB, therefore reducing the amount of this fortnightly payment. Where families choose to receive their Child Care Rebate fortnightly, the government would withhold 15 per cent of the CCR to ensure that families do not accumulate a debt or overpayment of CCR or CCR within a financial year. The balance of the funds withheld would be reconciled after the final quarter of the financial year, to help balance out any variations in CCB entitlement that might arise.

The need to withhold 15 per cent of the CCR payment will be communicated to families.

The Department will communicate new payment options for the Child Care Rebate from 1 July 2011. Direct communication will also be undertaken with child care services, software providers and families in the lead-up to these changes.

## **6. Consultation**

The Government's commitment to introduce fortnightly payments of CCR was made in recognition of concerns about affordability and the need for greater flexibility in payment methods for child care. The sector and families have been informed of changes to the payment through announcements by the Government in July 2010. Formal consultation with families and the sector was undertaken in late December 2010/early January 2011.

The views of stakeholders regarding the need for more flexibility in the payment of CCR were raised in submissions to the Senate Inquiry into the Provision of Child Care 2009 and in correspondence from peak bodies and individuals.

The Department sought the views of the National Peak Bodies representing the child care sector about the proposed changes and requested their feedback. These organisations were fully informed of the extent of the proposal; the method of the payment options; how the payments would be made through services; how the payments would be managed direct to the families; and were also provided with information about the support the Department will provide before, during and after implementation and information about the required upgrading of their software products.

### Consultation with National Peak Bodies representing the child care sector

Following the government's announcement to introduce fortnightly payments the child care sector endorsed the proposal to allow families to have their CCR entitlement paid directly to their child care service.

Child care services and families are accustomed to current arrangements where CCR is paid directly into the bank accounts of their families.

Through engagement with established forums, such as the National Children's Services Forum, which consists of national child care peak bodies, the Department has received repeated representations about the opportunity to improve payment frequency and simplification. This is consistent with representations made during the Henry Tax Review regarding payment reform and simplification.

Representatives from the Department attended the most recent National Children's Services Forum on 16 November 2010 and provided an overview of this proposal and engaged in a discussion with the forum. Members of the forum expressed broad support for fortnightly CCR payments.

Recently the CEO of Early Childhood Australia (ECA), the body that organises the National Children's Services Forum, reiterated ECA's focus on affordability of child care and support for this proposal.

In December 2010, DEEWR formally approached 10 national peak bodies, representing the full spectrum of the child care sector affected by the introduction of fortnightly payments of CCR, for their views on the proposal.

The proposal includes that 15 per cent of the CCR would be withheld to ensure that families do not accumulate a debt or overpayment of their CCB or CCR within a financial year. This would be paid to the families after the end of the financial year reconciliation.

Feedback was received from four organisations; the Australian Childcare Alliance, Australian Community Children's Services, Family Day Care Australia and Campbelltown City Council. Their comments were broadly positive and supportive of the introduction of the proposed changes. The feedback received from these organisations, and the Department's responses, is set out below.

The Australian Child Care Alliance noted that this initiative would be a positive change for the industry and would be welcomed by families. They had three queries:

1. *whether both CCR and CCB would be two transactions and therefore clearly identifiable by services* - the two payments will be listed separately on the remittance statement sent to services, as CCB is currently;
2. *whether the withheld amount of 15% would be paid to the family or the service* - this will be paid to the family after the end of year reconciliation; and
3. *whether the election made by a family would be ongoing or would need to be made on an annual basis* - generally, the election will stand for the time the family continue to use the child care service. New customers will elect their method of payment at the time of applying for CCB. Existing CCR customers who do not nominate a preferred method of receiving their CCR payment will default to the existing quarterly or annual payment method.

The Australian Community Children's Services (ACCS) was welcoming of the changes and suggested that:

1. *clear and full information be provided to families and services through Q&A fact sheets* - Q&A fact sheets were published on the Mychild website, on 14 December 2010, and these will be updated regularly. Services will receive

ongoing information from the CCMS Help Desk in the form of newsletters and emails and funding has been secured for a communication campaign to inform families about the introduction of the changes.

2. *some families claiming CCR may elect to receive CCR direct to their family without paying child care fees to the service* - it should be noted that the vast majority of families pay their fees on time. Providing families with the option to receive CCR more frequently will assist families to pay their fees in a more timely manner. Also, it is anticipated that up to 70 percent of families will elect to have their fortnightly CCR payments made direct to the service on their behalf.
3. *the Government consider providing additional funding for software system upgrades (as was provided for the introduction of the Child Care Management System)* - child care services were advised to build these costs into their business models during the consultation process with the sector prior to transition to the CCMS. Advice received through the Technical Reference Group is that they do not expect there will be substantial flow on costs for services.

Family Day Care Australia advised that they had circulated the paper to their members and received positive feedback to the introduction of the changes. They commented that they were pleased with the support that services will receive through the implementation phase of the project. They suggested that:

1. *concern was expressed that there will be an inevitable added complexity for coordination units in facilitating payment and receipting systems, particularly with the inclusion of the 15% payment withholding, but noted that if software upgrades facilitate this process smoothly it should not present significant problems* – the Department has been working with software providers to ensure their specifications meet the needs of child care services following implementation of the new payment arrangements for CCR. Software providers have had over six months lead time to prepare for implementation. They raised no issues at the Technical Reference Group held in September 2010.
2. *further information on the administration of the 15 per cent withheld amount would be useful, but welcomed the advice that calculations of this were to be managed by the Family Assistance Office* - communication activities will be undertaken to inform child care services and families of the changes, how they will be administered and the ways in which services and families will be affected. Additionally, a Q&A fact sheet has been published on the Mychild website and will be updated regularly to include queries on the withheld amount of 15 percent. Service providers will receive newsletters and emails on the changes through the CCMS Help Desk and regular presentations will be made to the sector by Departmental staff;
3. *there may be small services that would have difficulty meeting any software upgrade costs* - child care services were advised to build these costs into their business models during the consultation process with the sector prior to transition to the CCMS. Advice received through the Technical Reference Group is that they do not expect there will be substantial flow on costs for services; and

4. *services in rural areas required additional communication and support, given the limited time between the passage of the legislation and its implementation* - there is an existing process in place to support the child care sector in all areas which includes ongoing contact through the CCMS Help Desk. Regular presentations and newsletters are put out by the Department and feedback from the sector is considered in the development of updates and rules relating to the administration of child care payments.

The Campbelltown City Council, a large child care provider, gave full support to the proposed introduction of fortnightly payments of CCR. They noted that they operate with a socio-economically disadvantaged area and a large part of their administration time is taken up in the management of fees, including the recovery of outstanding fees.

Campbelltown City Council operates their child care services in line with the Department's recommended business model, charging two weeks fees in advance as a 'bond'. The 'bond' is refunded to families upon two weeks' notice of their intent to cease care. To assist families with the initial cost, Campbelltown City Council has introduced payment plans over a maximum of six weeks. The Council commented that with the introduction of a fortnightly payment of CCR, families will have access to more instant fee relief, reducing the initial barrier to accessing care.

The Council requested that: *additional education be made available to families in low socio-economic and disadvantaged areas* - the communication process to be undertaken following the passage of the legislation will inform families and child care services (nationwide) about the changes through a variety of media. Service providers will have access to the CCMS Help Desk and regular presentations to the sector. A Q&A fact sheet has been published on the Mychild website and will be regularly updated. Services will receive newsletters and emails through the CCMS Help Desk and will have access to raise queries with the CCMS Help Desk staff.

#### Consultation with Families

Information on the proposed changes was made available to families on the Mychild website on 14 December 2010. In addition to feedback from national peak bodies, feedback about the proposed CCR changes was received from five members of the general public. These responses were general enquiries about CCR: - when it would commence, who they could talk to for more information and where they would have access to more published information on the changes. They did not raise any negative issues with the introduction of fortnightly payments.

Subject to the passage of the legislation, additional communication activities will be undertaken to inform families and child care services about the changes.

The Family Assistance Office will send a letter to all families using approved child care services to advise of the changes, as well as sending notifications to their child care service. Families will be informed how the changes will be administered and the ways in which families and services will be affected. A Q&A fact sheet covering the



concerns raised by the organisations has been published on the Mychild website and will be regularly updated to include any queries that are raised.

Families will continue to have access to the Family Assistance Office for queries about their CCB and CCR payments.

#### Consultation with Third Party Software Providers

Software providers have been advised of the requirement to update their products. The Department meets quarterly with software providers through a Technical Reference Group to discuss future changes that will impact on their product development and testing.

Representatives of the Department attended a meeting on 13-14 September 2010 of the Technical Reference Group and provided a detailed presentation to software providers around delivery of the Government's proposal and the development of a specific timeframe. As previously mentioned, there is a standing agreement between the Department and software providers that they are given six months lead time to upgrade software and the timing for this proposal is consistent with this agreement. No issues were raised at this meeting around the implementation of fortnightly payments. There have also been no issues raised with the Department in relation to the costs associated with the system upgrade to support the CCR fortnightly payments measure.

### **7. Conclusion and recommended options**

This proposal builds on payment mechanisms already in place. It does not involve any changes to policy or eligibility of families or child care services.

The cost to Government of implementing this proposal is \$42.43 million over five years, in fiscal terms. The benefits to Government are in supporting objectives of increasing workforce participation and access to quality early childhood education and child care.

A fortnightly CCR payment will provide an overall benefit to families by providing increased flexibility and affordability, as families will receive CCR at the time they incur the costs of care. For disadvantaged families a more frequent CCR payment may provide an additional incentive to use approved care due to more frequent fee relief.

Child care services will benefit from the more frequent payment of CCR. Fortnightly CCR payments are broadly supported by child care peak bodies representing the sector. The issue of unpaid fees by some families is raised on an ongoing basis by the child care sector and it is anticipated that more frequent payments of CCR to families will largely address this issue.

This proposal assists families by giving them flexible options, enabling them to pay their child care costs at the time the child care fees are incurred.

## **8. Implementation and review**

The proposed measure would be implemented by the Australian Government by amending the Family Assistance Legislation in Autumn 2011. Legislative amendments are expected to come into effect from 1 July 2011. Systems changes required to support fortnightly payments of CCR to both families and to child care services are planned for completion by this time.

The Department will undertake communication activities with child care National Peak Bodies, service providers and families to inform them of the changes.

Support for the development of the systems and implementation of the changes will be provided by the Department through the ongoing dialogue with software providers and other relevant Commonwealth agencies.

The Department has developed a risk management plan related to implementation of this proposal that outlines potential risks and contingencies in the event of any issues arising.

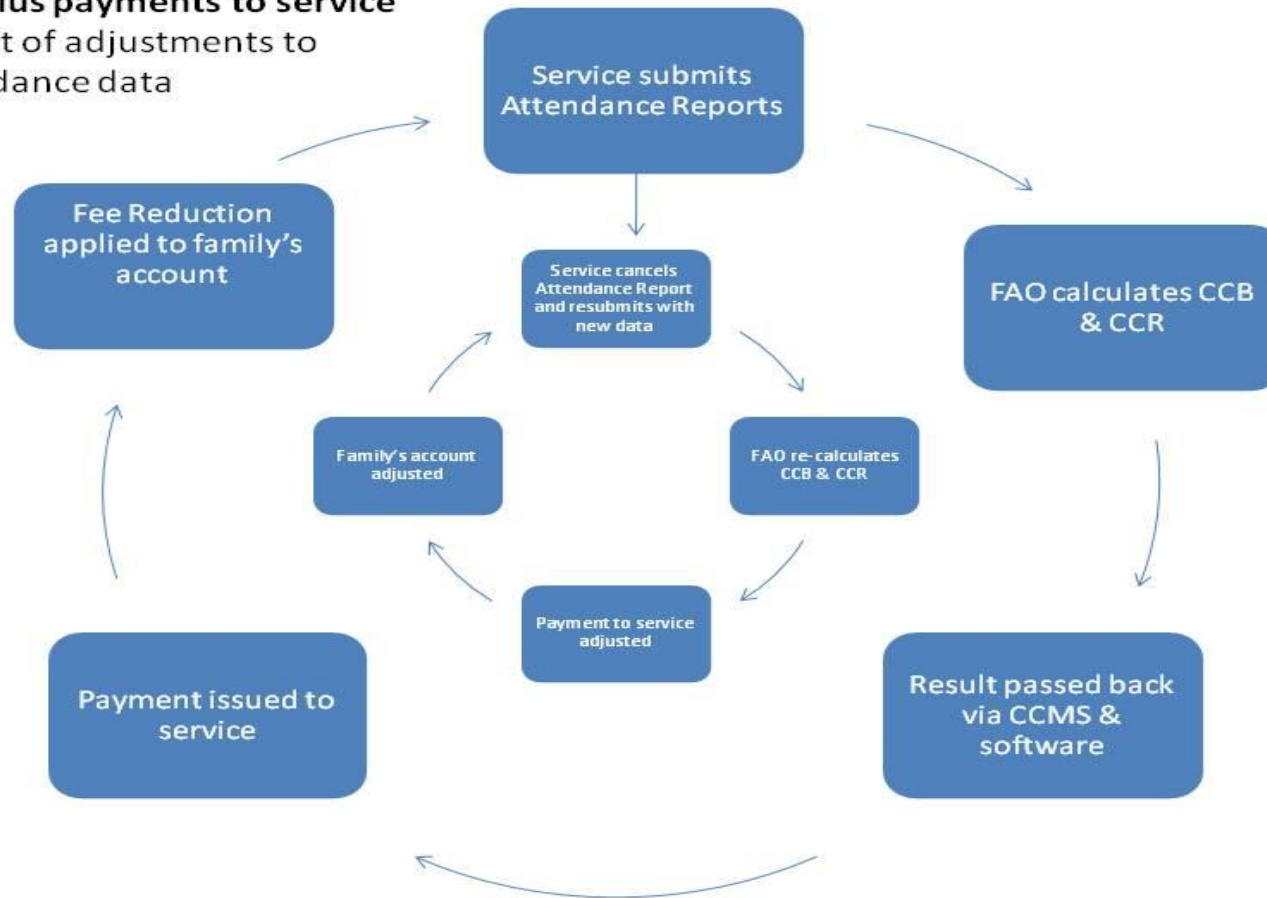
The Family Assistance Office will contact families during 2011 to advise of changes to the delivery of CCR and to allow families to elect their preferred method of receiving the payment.

Further information on the implementation arrangements for CCR fortnightly payments is at [Attachment A](#).

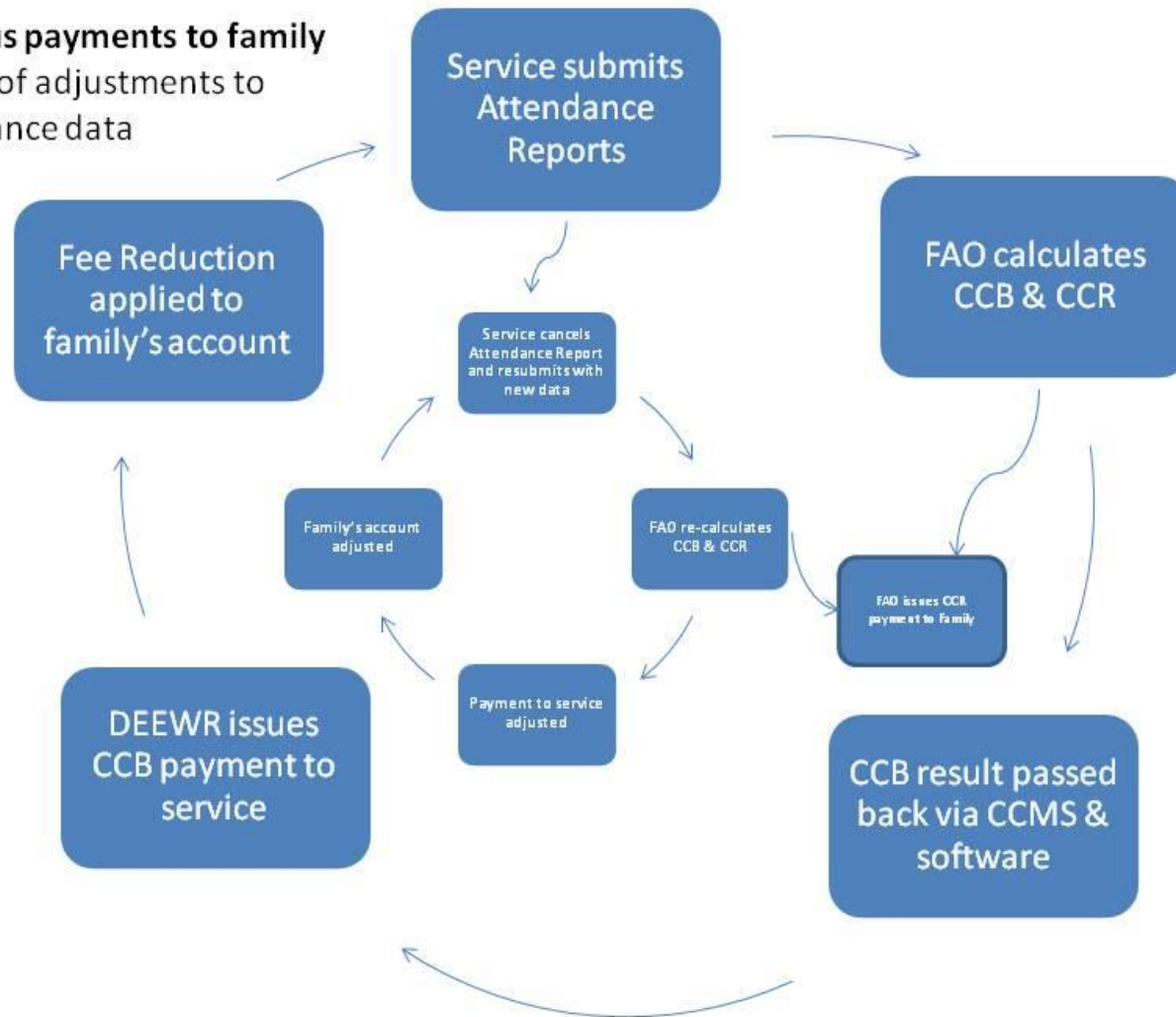
The measure, once implemented, would be subject to the ongoing review processes that are already in place to monitor any issues that may impact upon the program. These include regular presentations to the sector by staff from the Department's Child Care Management System (CCMS) Section, CCMS Help Desk Support and a fortnightly newsletter that goes out to all approved child care services by CCMS that provides operation information to services, as well as ministerials and enquiries through the Government's Mychild website.

**REGULATION IMPACT STATEMENT – ATTACHMENT A**

**Stimulus payments to service**  
Impact of adjustments to attendance data



**Stimulus payments to family**  
Impact of adjustments to attendance data





# **FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE REBATE) BILL 2011**

## **NOTES ON CLAUSES**

### **Clause 1 - Short title**

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

### **Clause 2 - Commencement**

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for sections 1-3 to commence on the day of Royal Assent; Schedule 1, items 1 to 12, 14 to 21, 23, 25 to 34, 36 to 39, 41 and 42, 44 to 54, 56 to 61, 63 to 67, 70, 72, 76 to 81 and Schedule 3, to commence on the day after the Royal Assent; Schedule 1, items 13, 43, 55 and 62 to commence on the day after the Royal Assent; However, if Schedule 5 of the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011* commences on or before that day, the provisions do not commence at all;

Schedule 1, items 22, 24, 35, 40, 68 and 69, 71, 73 to 75 commence on the day after the Royal Assent; However, if Part 1 of Schedule 1 of the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011* commences on or before that day, the provisions do not commence at all;

Schedule 2, Part 1 and Schedule 2, Part 3 to commence immediately after the commencement of Part 1 of Schedule 1 to the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011*;

Schedule 2, Part 2 to commence at the same time as Part 1 of Schedule 1 to the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011* commences.

The note at the end of the table informs that the table relates only to the provisions of this Act as originally enacted and that it will not be amended to deal with any later amendments of this Act.

Subclause 2(2) provides that column 3 of the table contains additional information which may be added to or edited in any published version of the Act, but that information in this column is not part of the Act.

### **Clause 3 - Schedule(s)**

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

For ease of description, this explanatory memorandum uses the following abbreviations:

‘CCB’ means child care benefit;

‘CCR’ means child care rebate;

‘Child Care and Other Measures Act 2011’ means the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011*;

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

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

# **Schedule 1 — Amendments to allow weekly payment of child care rebate**

## **Part 1 — Amendments**

### **Summary**

This Schedule makes amendments to the Family Assistance Act and the Family Assistance Administration Act to introduce a more frequent CCR payment for individuals who are conditionally eligible for CCB by fee reduction.

As a result of these amendments, an individual will be able to elect one of the following methods of receiving CCR during an income year: as a payment calculated for a week of care for which CCB fee reductions were calculated (irrespective of the amount of the fee reductions) made either to the individual's approved child care service or to the individual's bank account, or as a quarterly payment to the individual's bank account (the current way of payment). A week is the period starting on Monday and finishing on Sunday.

If an individual elects to be paid CCR for a week (whether paid to the service or to the individual), and subject to the individual meeting eligibility conditions for CCR for a week, the CCR will be calculated and paid after the individual's approved child care service has reported on the child care usage in the week and the CCB fee reductions have been calculated for the week. As, in accordance with the current legislative obligations, child care services report child care usage either weekly or fortnightly, and therefore fee reductions are calculated weekly or fortnightly, CCR also will be paid weekly or fortnightly. CCB and CCR fee reductions for a week will be calculated when a service gives a report for the week.

If an individual elects the CCR payment to be made to an approved child care service providing care to the child in respect of whom the rebate is paid, the service will be required, as a condition of the service's approval for the purposes of the family assistance law, to pass on the weekly rebate amount to the individual, ultimately reducing the individual's child care fees for the week. This requirement is safeguarded by the same payment recovery, sanctioning and criminal and civil penalties regimes that apply in relation to the current requirement for approved child care services to pass CCB fee reductions on to the eligible individual.

The amount of CCR payment for a week paid during an income year will be reduced by 15 per cent. This is designed to protect families from potential child care debts. This reduction percentage amount will provide a buffer to offset potential debts that may arise through differences between the actual adjusted taxable income with income estimates on which calculation of fee reductions and CCR for a week are based. This reduction percentage delivers a similar policy outcome to the current legislative framework supporting quarterly CCR payments, whereby the fourth quarter CCR payment is calculated after the income year based on the individual's actual adjusted taxable income.



Under the current legislative arrangements, a determination of entitlement for CCR for an income year is made after the end of the income year. An individual who does not elect to be paid CCR during an income year will be paid the total annual entitlement amount (if any) after the end of the income year.

The amendments relating to payments for a week will apply to a week starting on 4 July 2011 and subsequent weeks.

### **Background**

#### *Current CCB by fee reduction arrangement*

A child care service approved for the purposes of the family assistance law is required under section 219N of the Family Assistance Administration Act to give the Secretary a report relating to sessions of care provided by the service to a child in a week (Monday to Sunday). The report for a week has to be provided by the end of the second week following the week. In practice, services often choose to provide reports for 2 consecutive weeks at the same time, rather than each week.

If an individual claimed CCB by fee reduction and was determined to be conditionally eligible for that CCB (section 50F), and a weekly report was provided by the service relating to care of the individual's child, the Secretary is required to calculate CCB fee reductions for that week (section 50Z) and pay the calculated amount (if any) to the service (section 219Q). The fee reductions are paid in lieu of the entitlement to CCB by fee reduction to be determined for the income year during which fee reductions were calculated after the income year. Once the CCB entitlement determination is made for an income year, the entitlement amount (if any) is compared with total amount of CCB fee reductions paid in respect of the year, which may result in a debt to be paid by the individual or a top-up to be paid to the individual.

The service is required to pass the CCB fee reduction amount on to the individual (section 219B) and if it cannot pass the amount, it must remit the amount to the Secretary (section 219QB).

Whether, at a particular time, CCB fee reductions are calculated for one or more weeks, depends on whether a service reported at the same time on more than one week.

#### *Current CCR arrangement (quarterly payments)*

Once a calendar quarter has passed and CCB fee reductions for an individual and a child have been calculated for a week or weeks in that quarter (the weeks reported on by an approved child care service), the Secretary is required to calculate CCR for the individual and the child for the quarter and pay the calculated amount (if any) directly to the individual (section 65EAA). As it is the case with CCB fee reductions, a quarterly CCR payment to an individual is a payment in lieu of the individual's CCR entitlement determined for an income year after the end of the income year. Once the CCR entitlement determination is made for an income year, the entitlement amount (if

any) is compared with total amount of quarterly CCR amounts paid in respect of the year, which may result in a debt to be paid by the individual or a top-up to be paid to the individual.

Amendments made by this Schedule will extend the options for payment of CCR during an income year, based on the election of the options by an individual, to include payment of CCR for a week either to the service that provided care or to the individual.

### **Explanation of the changes**

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

**Items 1 to 8** amend the Family Assistance Administration Act to specify conditions of eligibility for CCR for a week and the method of the calculation of a CCR amount for a week, and to make consequential amendments.

#### **Item 1 - Before section 57EA**

**Item 1** inserts new section 57EAA.

#### ***New section 57EAA – Eligibility for child care rebate – for a week***

New section 57EAA sets out the eligibility criteria to be met for an individual for CCR for a week in respect of a child. The conditions of eligibility for CCR for a week almost entirely mirror the conditions currently applicable to the week that is taken into account while calculating CCR for a quarter (section 57EA).

The criteria specified in new subsection 57EAA(1) are as follows:

- (a) a determination of conditional eligibility for CCB by fee reduction must be in force during the week in respect of the individual and the child under section 50F of the Family Assistance Administration Act; and
- (b) one or more sessions of care must be provided to the child by one or more approved child care services during the week; and
- (c) in respect of the week, the weekly limit of hours applicable to the individual and the child under Subdivision G of Division 4 of the Family Assistance Act is 50 hours (under section 54 of the Family Assistance Act) or more than 50 hours (under section 55) or a 24 hour care limit (under section 56), regardless of whether all of the hours within the limit are used or not; and
- (d) the Secretary has calculated the rate and amount of fee reductions under subsection 50Z(1) of the Family Assistance Administration Act for the individual and child for the week and the amount calculated is either greater than nil or is nil because the CCB % applicable is zero %; and

- (f) the individual has made an election for the income year, under new paragraphs 65EAAAA(1)(a) or (b) (inserted by **Item 13**) to have CCR paid weekly and the election is in effect for the week.

Note 1 informs the reader that if the individual satisfies the conditions for the relevant weekly limit of care referred to in new paragraph (1)(c), the number of hours of care actually used by the child in the week is not relevant.

Note 2 informs the reader that for the purposes of new paragraph 57EAA(1)(d), which refers to the calculation of the fee reduction amount by the Secretary under subsection 50Z(1) of the Family Assistance Administration Act, it does not matter that the amount is later recalculated under section 50ZA of that Act.

New subsection 57EAA(2) provides that if a weekly limit of hours mentioned in new paragraph (1)(c) (i.e. 50 hours, more than 50 hours or 24 hour care) does not apply to the individual in the week (that is, if there was no CCB determination of weekly limit of hours specifying any of those limits for the week) but the circumstances in which such a limit applies were applicable to the individual in the week, then that limit will be taken to be the weekly limit of hours applicable to the individual for that week. This is to overcome the situation where, in a week, a CCB determination of the limit of hours was in force in respect of the individual and the child for the week specifying a 24 hour limit only (because the individual did not apply for a higher weekly limit of hours for CCB purposes) but the individual satisfied the conditions for the higher limit of hours in the week.

The note at the end of new subsection 57EAA(2) makes it clear that where a limit of only 24 hours is applicable to the individual in a week, the limit of hours condition for CCR for that week is not satisfied.

New subsection 57EAA(3) replicates current subsection 57EA(3) relating to eligibility for CCR for a quarter, which results in a less stringent requirement being applied when considering whether the 50 hour limit applies to an individual in a week. It ensures that the 50 hour limit is taken to have been met for a week if the individual would have met the conditions for the limit but for the fact that he/she failed to meet the more stringent requirements for 50 hours limit specified in paragraph 17A(1)(b), imposed from 1 July 2005 by the *Family and Community Services legislation Amendment (Welfare to Work) Act 2005* in relation to the work/training/study test, which is relevant to meeting the conditions for 50 hour limit.

## **Item 2 – At the end of subsection 57EA(1)**

Section 57EA sets out conditions of eligibility for CCR for a quarter. Currently, as the quarterly payment is the only option for having CCR paid during an income year, no election of that method of payment is required for quarterly payment to be made. As a consequence of the introduction, by amendments in this Bill, of a payment for a week as an additional ways of payment of CCR during an income year, **Item 2** amends section 57EA to insert new paragraph (1)(f) to include an additional condition for eligibility for quarterly CCR payment. The new condition is that the individual has made an election for the income year, under new paragraphs 65EAAAA(1)(c)

(inserted by **Item 13**) to have CCR paid quarterly and the election is in effect for the quarter. This condition mirrors the election condition for eligibility for CCR for a week in new paragraph 57EAA(1)(f) inserted by **Item 1**.

### **Item 3 – Before Subdivision A of Division 4A of Part 4**

**Item 3** inserts new Subdivision AA in Division 4A of Part 4. Division 4A deals with the calculation of CCR.

#### *New Subdivision AA – Child care rebate for a week*

#### *New section 84AAA - Amount of the child care rebate – for a week*

New section 84AAA provides for the calculation of the amount of CCR for which an individual is eligible in respect of care provided to a child in a week. It provides that if the Secretary calculates the amount of CCR for a week, under new section 65EAAA of the Family Assistance Administration Act, in respect of an individual and a child for care provided by an approved child care service to a child in a week, the amount of rebate is worked out as provided by the method statement contained in this new section.

If more than one approved child care service provides care to a child in a week, a report for the week on which the calculation of CCB by fee reduction and CCR for the week is based is provided by each service separately; for example, one service may provide its report immediately after the week has ended and another service may provide its report for the week as part of a fortnightly reporting. The method statement in new section 84AAA applies separately, each time any of these services provides its report for a week, to calculate CCR for the week for an individual and a child for care provided by that service. Where, for example, an individual is liable to pay for care provided in a week to a child by two services, the individual will have his or her CCR for the week for care provided by one service calculated after that service has reported on the week of care, and the CCR for that week for care provided by the other service calculated once that service has provided its report for the week.

The method statement sets out the following steps to be followed to calculate the rebate amount:

Under Step 1, the total amount of ‘approved child care fees’ (defined in new section 84AAB of the Family Assistance Act inserted by **Item 3**) that the service charges the individual for the child in the week are to be worked out.

Under Step 2, the total CCB fee reduction amount (if any) calculated by the Secretary under subsection 50Z(1) of the Family Assistance Administration Act or recalculated under subsection 50ZA(1) for the individual and the child for the week is to be worked out.

If the individual is eligible to receive the *Jobs Education and Training (JET) Child Care fee assistance* (defined in section 84E of the Family Assistance Act) for care

provided to the child in a week, Step 3 requires to work out the total amount of JET Child Care fee assistance for the child for the week.

Under Step 4, a formula is provided for the calculation of the amount of the weekly rebate, which, once followed, will lead the total amount of the rebate (Step 5). Under the formula, the amount of CCB fee reductions worked out in Step 2 (and the JET Child Care fee assistance amount worked out in Step 3 (if applicable)), is deducted from the amount of full fees worked out in Step 1. This produces an amount representing the individual's total out-of-pocket child care expenses in the week. This amount is multiplied by 50 per cent. Then the total amount of CCR (if any) for the individual and the child applicable for each earlier week that falls wholly in that income year is subtracted from the CCR limit applicable for the income year in which the week began (the limit under section 84F). The relevant amount resulting from Step 4 is the lesser of the amount resulting from the application of the formula and the annual CCR limit less any weekly and quarterly payments already made in respect of care provided during the income year.

Step 5 produces an amount that is the amount of CCR for the week: it is the Step 4 amount minus the reduction percentage (the reduction percentage is specified in new section 84AAC, currently 15%). If the Secretary makes a determination under new section 84AAD that Step 4 is not to be reduced, the CCR amount for the week is the Step 4 amount.

The reduction of the amount that would otherwise be the amount of CCR for a week in an income year is made to provide a reserve to minimise an individual's debt that may be determined after the end of the income year when the individual's entitlement amount for CCR for the income year is determined. As the calculation of an individual's CCR weekly amount is based on the gap between the full child care fees and the individual's CCB fee reductions fee reduction amount for the week calculated on the basis of the individual's estimated adjusted taxable income, once the CCB entitlement determination for an income year, based on the individual's actual adjusted taxable income, is made after the end of the income year, and the CCR entitlement for the income year is determined, a CCB or CCR debt may arise (to be paid by the individual).

#### ***New section 84AAB - Component of formula – approved child care fees***

New section 84AAB defines 'approved child care fees' required to be worked out in Step 1 of the method statement in new section 84AAA.

#### ***General rule – approved child care fees for care provided for a child in a week***

New subsection 84AAB(1) provides that the amount of approved child care fees for the week are those fees that the individual or the individual's partner is liable to pay for care provided to the child by an approved child care service during the week. These are all the fees for all the hours used regardless of whether the number of those hours was below or exceeded the weekly limit of hours applicable in this week.

#### ***Special rule if the week is also a week for the individual's partner for the child***

New subsection 84AAB(2) provides a special rule where the week for the individual and the child is also the week as for the individual's partner and the child. This may occur in cases where each member of a couple is conditionally eligible for CCB by fee reduction in respect of care provided to the same child in a week.

The special rule is that, if the partner satisfies the conditions of CCR eligibility for a week, specified in new paragraphs 57EAA(b) to (e) as affected by new subsections 57EAA(2) and (3) (new section 57EAA is inserted by **Item 1**), or the week is also a base week for the partner and the child under section 84AC (partner receiving child care rebate quarterly), any fees that the individual's partner is liable to pay for care provided to the child in that week are not included for the purpose of calculation of the individual's CCR for the week.

The relevant eligibility conditions in new paragraphs 57EAA(b) to (e) require that the care for which the individual's partner is liable to pay has occurred, the weekly limit of hours relevant to eligibility for CCR is applicable to the partner and the child and CCB fee reductions are calculated for the individual and the child for the week.

In other words, if CCB fee reductions in respect of a week of care provided to the same child have been calculated separately for each of the member of a couple, and each of the members would satisfy in relation to the week the weekly limit of hours conditions of eligibility, whether for weekly or quarterly CCR or for CCR for that income year, only the amount of each of the individual's liability to pay for care provided to the child counts as the individual's 'approved child care fees' for the calculation of the individual's rebate for the week.

New subsection 84AAB(3) requires that, for the purposes of calculation of the amount of an individual's 'approved child care fees' for a week, any amount of CCB fee reduction passed on by the service for the week or any CCR amount for the week (whether it was passed on by the service or paid directly to the individual's bank account), be disregarded. In other words, this subsection clarifies that relevant for the calculation of amount of 'approved child care fees' for a week is the amount of fees that the service would charge the individual if there were no fee reductions or CCR paid for the week (i.e. the full child care fees that the individual is liable to pay and would have to pay if not for CCB fee reductions and CCR).

#### ***New section 84AAC – Component of formula – reduction percentage***

New section 84AAC gives the meaning to the formula component 'reduction percentage', relevant to the method statement in new section 84AAA. New paragraph 84AAC(1)(a) specifies that the reduction percentage is 15%. New paragraph 84AAC(1)(b) states that if the Secretary specifies a percentage in an instrument under new subsection 84AAC(2), the applicable percentage is the percentage specified in the instrument.

New subsection 84AAC(2) provides the Secretary with a discretionary power to specify a percentage in a legislative instrument.

#### ***New section 84AAD – Component of formula – Secretary determines that Step 4 amount not to be reduced***

New subsection 84AAD(1) provides a discretionary power for the Secretary to determine in writing, for the purposes of the method statement in new section 84AAA, that the Step 4 amount of CCR for a week is not to be reduced by the reduction percentage.

The Secretary may make such a determination in relation to the calculation of CCR for a week for an individual whose CCB fee reduction amount for the week is a nil amount because the individual's CCB% is a zero% (new subsection 84AAD(3)).

The determination has the effect for a specified week or weeks or from the date specified by the Secretary (new subsection 84AAD(2)), that may be a day before or after the determination is made. It is not a legislative instrument.

The Secretary may specify, by a legislative instrument, other circumstances in which a determination may be made that the amount in Step 4 may not be reduced (new subsection 84AAD(3)).

#### **Item 4 – Section 84AA (method statement, step 4, paragraph (b))**

Section 84AA includes the method statement for working out an amount of CCR for a quarter. Paragraph (b) in Step 4 requires that an amount applicable to the individual and the child for an earlier quarter in the income year be subtracted from the CCR limit for the year. **Item 4** amends paragraph (b) to ensure that all CCR amounts paid in the previous quarter, whether paid as CCR for the quarter or for a week in the quarter, are taken into account.

#### **Item 5 – Subsection 84AB(2)**

Subsection 84AB(2) provides a special rule for the purposes of calculation of the individual's approved child care fees for the base week in the quarter, where the base week for the individual and the child is also the base week as for the individual's partner and the child. This may occur in cases where each member of a couple is conditionally eligible for CCB by fee reduction in respect of care provided to the same child in a week.

The special rule is that the individual's approved child care fees for the base week do not include fees that the individual's partner is liable to pay if that week is also a base week for the partner and the child.

This item amends subsection 84AB(2) to specify that this special rule applies if:

- the individual's approved child care fees for the base week do not include fees that the individual's partner is liable to pay if that week is also a base week for the partner and the child (the situation when both partners elected to be paid CCR quarterly), or
- if paragraphs 57EAA(1)(b) to (e) as affected by new subsections 57EAA(2) and (3) (new section 57EAA is inserted by **Item 1**) are satisfied for the partner

and the child for the week (the situation where the partner elected to have CCR paid weekly).

### **Item 6 – Subsections 84AB(3), 84B(3) and 84DB(3)**

Subsections 84AB(3), 84B(3) and 84DB(3) provide respectively that for the purposes of the individual's 'approved child care fees' (full amount of liability for care), relevant to the calculation of CCR for a quarter, or an income year, or in substitution, the amount of fee reduction passed on to the individual by the service under section 219B of the Family Assistance Administration Act in respect of that period is to be disregarded. **Item 6** amends these paragraphs to ensure that, for the 'approved child care fees', the amount of CCR passed on to the individual under new section 219EA is also to be disregarded.

### **Item 7 – Section 84E**

Section 84E contains the definition of the term Jobs Education and Training (JET) Child Care fee assistance used in sections 84AA, 84A and 84DA (method statements for calculation quarterly CCR, CCR for an income year and CCR in substitution, respectively). As this term is also relevant for the purposes of the method statement for calculation of CCR for a week (new section 84AAA), **Item 7** substitutes a new definition, applicable to a week, providing that for the purposes of sections 84AAA, 84AA, 84A and 84DA, this term, in relation to a week, means the payment of that name that is paid by the Commonwealth to the individual in respect of child care provided by one or more approved child care services to the child in a week.

A note at the end of this section informs the reader that the individual may be a deceased individual (see Step 4 of the method statement in section 84DA).

### **Item 8 – Subsection 84F(1)**

Section 84F specifies the CCR limit for an income year. The limit is the component of the formulas in the method statement relevant to the calculation of CCR for a quarter (section 84AA), CCR for an income year (section 84A) and CCR for a period (in substitution) (section 84DA). As it is also relevant to the calculation of CCR for a week under new section 84AAA, **Item 8** amends section 84F to insert a reference to new section 84AAA.



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

### **Items 9 and 10 – Section 3 (after paragraph (h) of the definition of *civil penalty provision*) and Section 3 (after paragraph (r) of the definition of *civil penalty provision*)**

Section 3 provides the definition of *civil penalty provision* by listing the provisions specifying child care services' obligations that are subject to civil penalties. **Item 9** amends the definition by inserting a reference to the following new civil penalty provisions in subsection 219EA(2) and 219EB(1) or 219EB(5) inserted by **Item 62**. **Item 10** amends this definition by inserting a reference to a new civil penalty provision in subsection 219QE(1) inserted by **Item 71**.

### **Item 11 – Subparagraph 49C(1)(a)(ii)**

**Item 11** inserts a reference in subparagraph 49C(1)(a)(ii) to new subsection 49C(6) inserted by **Item 12**.

### **Item 12 – At the end of section 49C**

The payment of CCR is connected to the eligibility for CCB. An individual does not make a claim for CCR but, for CCR to be determined for individual and a child, there must be a claim for CCB for care provided by an approved child care service (that is, a claim for CCB by fee reduction or a claim for CCB for a past period for care provided by an approved child care service or a claim for CCB by single payment/in substitution because of the death of another individual) and the individual must be determined as eligible for CCB.

Section 49C specifies when a claim for CCB made by an individual is an effective claim (if a claim is not effective is taken not to have been made - section 50(2) refers). Among other things, a claim is effective if the information or a document required by the Secretary in relation to a CCB claim is provided (paragraph 49C(1)(a)).

**Item 12** inserts new subsections 49C(5) and 49C(6).

New subsection 49C(5) clarifies that, in the claim for CCB, the Secretary may require information or documents relevant to CCR.

New subsection 49C(6) specifies that a claim for CCB by fee reduction is not ineffective if the information relating to election under 65EAAAA of weekly or quarterly payments is not provided in the claim. If an election of the way in which the claimant wants to have CCR paid during an income year is not made in the claim, the claimant will not have such payments made, because these payments depend on the claimant making an election.

### **Item 13 – Before Subdivision AA of Division 4AA of Part 3**

**Item 13** inserts in Division 4AA of Part 3 new Subdivisions AAA - Election to have child care rebate paid in various ways, and AAB – Weekly payments of child care rebate. Division 4AA deals with payment of CCR.

#### *New Subdivision AAA – Election to have child care rebate paid weekly or quarterly*

#### *New section 65EAAAA – Individual may elect to have child care rebate paid in various ways*

New section 65EAAAA provides for election by an individual of matters relevant to election of the way in which the individual wants to have CCR paid during an income year.

New subsection 65EAAAA(1) provides that an individual may give the Secretary notice electing to have CCR for care provided to a child in an income year paid in one of the following ways:

- (a) weekly into a bank account maintained by the individual alone or jointly in common with someone else;
- (b) weekly to one or more approved child care services;
- (c) quarterly into a bank account maintained by the individual alone or jointly in common with someone else.

If an election is made to have CCR paid weekly, this means that CCR will be calculated for a week of care provided to a child after the service providing care submits a usage report under section 219N for the week and CCB fee reductions are calculated for the week under section 50Z (new section 65EAAA, inserted by **Item 13**, refers). A report for a week has to be given by the end of the second week following the week in which care has been provided. The current reporting patterns of services means that an individual who elects to have CCR paid weekly will be paid weekly or fortnightly (subject to the frequency of reporting by the individual's service or services).

A note at the end of subsection 65EAAAA(1) informs the reader that CCR is calculated on the basis of reports given by approved child care services in relation to each week of care under section 219N. A report for care provided in one week may be given up to 2 weeks later. A service may therefore give a report for two weeks together. For this reason, payments of CCR to an individual for two successive weeks may be made together. The effective result is then a fortnightly payment.

An election notice must be given in accordance with subsection (2).

New paragraph 65EAAAA(2)(a) specifies that a notice must be given in the form, and in the manner or way, approved by the Secretary.

New paragraph 65EAAAA(2)(b) specifies that a notice for an income year must be given before the income year to which it relates begins. The effect of this rule is that,

if a particular method of payment of CCR applies to an individual for a particular income year (as a result of the individual's election or no election) and during that year the individual elects a different way of payment, this election has effect for the subsequent income year (not for the year in which the election was made).

This rule does not apply in relation to an election made in connection with a claim for CCB by fee reduction for care provided by an approved child care service made sometime during an income year (new subparagraph 65EAAAA(2)(b)(i)). In this case, the election is effective for the income year in which the claim is made (new subsection 65EAAAA(3)).

This rule also does not apply if the Secretary makes a determination under new subsection 65EAAAA(4) (new subparagraph 65EAAAA(2)(b)(ii)).

New subsection 65EAAAA(4) provides the Secretary with a discretionary power to make a written determination for an individual allowing the individual to make an election after the income year to which the notice relates has begun. The Secretary may make such a determination if the Secretary is satisfied that there are exceptional circumstances justifying the determination.

A note informs the reader that a determination of an entitlement to CCR will be made or an income year under Subdivision A of this Division. So, if a person is entitled to CCR, does not elect to have it paid weekly or quarterly and has not been receiving CCR weekly or quarterly as a result of a previous election, CCR will be paid after the end of the income year.

#### ***New section 65EAAAB – Period in which election has effect***

New section 65EAAAB specifies when an election takes effect and for how long it is in effect.

A notice of election, given before the beginning of the income year to which it relates, to have CCR paid weekly (under paragraph 65EAAAA(1)(a) or (b)) takes effect on the first Monday in the income year for which it is given and continues in effect for each week all or part of which falls in the income year (new subsection 65EAAAB(1)).

A notice of election, given before the beginning of the income year to which it relates, to have CCR paid quarterly (under paragraph 65EAAAA(1)(c)) takes effect on the first day of the first quarter in the income year for which it is given and continues in effect for each quarter in that income year (new subsection 65EAAAB(2)).

If a notice of election is given after the beginning of the income year to which it relates, the Secretary must determine in writing the day on which the election is to take effect. The election continues in effect, for the election to have CCR paid weekly – for each week all or part of which falls in the income year, and for the election to have CCR paid quarterly – for each quarter which falls in the income year.

***New section 65EAAAC – Where no election made for an income year***

New section 65EAAAC specifies how CCR is paid if there is no election made in accordance with new subsection 65EAAAA(1).

If an individual does not give notice of election for an income year and the individual was paid CCR in relation to the immediately preceding income year, the individual is paid CCR during the income year in the same way it was paid in that preceding year.

If an individual does not give notice of election for an income year and the individual has not been paid CCR in relation to the immediately preceding income year (for example, because the individual was not conditionally eligible for CCB by fee reduction during that year), the individual is paid CCR as an entitlement for the income year (weekly or quarterly payments will not be made during that income year).

***New Subdivision AAB – Weekly payments of child care rebate***

New Subdivision AAB provides for the calculation of weekly CCR payments, payment and notification of the calculated amount.

***New section 65EAAA – Weekly payments of child care rebate***

New section 65EAAA deals with the calculation of weekly amounts of CCR.

New section 65EAAA imposes an obligation on the Secretary to calculate the amount of CCR applicable for care provided to the child by an approved child care service in a week if the individual is eligible for weekly CCR payment under subsection 57EAA(1) of the Family Assistance Act and the Secretary has calculated, under subsection 50Z(1) of the Family Assistance Administration Act, an amount of fee reduction in respect of the individual, the child and the week for sessions of care provided by that service. The amount of fee reductions may be a nil amount.

The requirement for the Secretary to calculate fee reductions for sessions of care provided to a child in a particular week, under subsection 50Z(1), is contingent upon the service providing the Secretary with a weekly report under section 219N. The requirement for the Secretary to calculate a CCR amount for a week will not arise if a service has not provided a report for the week.

Note 1 at the end of this subsection informs the reader that the individual will not be eligible to have CCR paid weekly unless the individual has made an election under paragraph 65EAAAA(1)(a) or (b) to have CCR paid weekly.

Note 2 at the end of this subsection provides a comment for the reader that the calculation of the weekly CCR payment is made in accordance with new section 84AAA of the Family Assistance Act.

Note 3 informs the reader that the amount of fee reduction calculated under subsection 50Z(1) may be nil amount as specified in section 4A.

***New section 65EAAB – Where individual elects to have child care rebate paid weekly to approved child care service***

New section 65EAAB applies in the situation where the Secretary calculates CCR for a week under new section 65EAAA for an individual who elected, under new subparagraph 65EAAAA(1)(b) to have the CCR paid to the approved child care service and this election is in effect for the week.

New subsection 65EAAB(2) provides that the Secretary must notify the service of the amount calculated.

New subsection 65EAAB(3) provides that the notice must be given in the form, and in the manner or way approved by the Secretary.

New subsection 65EAAB(4) provides that the Secretary may approve notification of the amount by making the information available to the service by using an electronic interface. If so, the service is taken to have been given the notice on the day on which the information is made available.

A note at the end of this section informs the reader that the amount notified is paid to the service under section 219QC.

***New section 65EAAC – Where individual elects to have child care rebate paid weekly into own bank account***

New subsection 65EAAC(1) provides that new section 65AAB applies in the situation where the Secretary calculates CCR for a week under new section 65EAAA for an individual who elected, under new paragraph 65EAAAA(1)(a), to have the CCR paid to the individual's account and this election is in effect for the week.

In this situation, new subsection 65EAAC(2) provides that the Secretary must pay the amount of CCR to the credit of the bank account nominated and maintained by the individual at such time as the Secretary considers appropriate.

New subsection 65EAAC(3) provides that the Secretary may direct that the payment be made in a different way than that provided for in subsection (2).

New subsection 65EAAC(4) imposes an obligation on the Secretary to give notice to the individual identifying the period to which the notice relates stating: the name of the child and the week or weeks in respect of which the rebate amount is applicable; the rebate amount for the rebate period; the total of the individual's child care fees for care provided during the rebate period for the child worked out under Step 1 of the method statement in new section 84AAA of the Family Assistance Act when calculating the rebate amount; the total amount of fee reductions (if any) for the rebate period worked out under Step 2 of the method statement in section 84AA of the Family Assistance Act when calculating the rebate amount.

New subsection 65EAAC(5) provides that the calculation and payment of an amount of CCR under this section will still be effective even if any or all of the requirements of subsection (4) are not complied with.

New subsection 65EAAC(6) provides that the section is subject to sections 65EAAF and 65EAB dealing with the setting off of certain amounts against the weekly CCR amount, the provisions in Part 4 dealing with overpayments and debt recovery, and Division 3 of Part 8B dealing with payments to payment nominees.

***New section 65EAAD – Revising a calculation of weekly child care rebate***

New section 65EAAD provides the Secretary with a discretion to recalculate the amount of CCR previously calculated under new section 65EAAA or this new section for a week if the Secretary considers it appropriate, as long as a determination of entitlement to CCR for the individual and the child for the income year in which all or part of the week falls has not been made under Subdivision A.

For example, the Secretary may recalculate the weekly payment of CCR in order to rectify an administrative error that has occurred in the calculation or in the circumstances where the service has corrected its reports on which the Secretary based the initial calculation.

***Section 65EAAE – If weekly payment is to an approved child care service, notice of revised calculation must be given to the service***

New subsection 65EAAE(1) provides that new section 65EAAE applies in the situation where the Secretary recalculates CCR for a week under new section 65EAAD for an individual who elected under new paragraph 65EAAA(1)(b) to have the CCR paid to the approved child care service and the election is in effect for the week.

New subsection 65EAAE(2) provides that the Secretary must notify the service of the amount calculated.

New subsection 65EAAE(3) provides that the Secretary need not notify the service if the recalculation occurred for a reason other than the service's substitution or withdrawal of a report under section 219N for the week.

New subsection 65EAAE(4) provides that the notice must be given in the form, and in the manner or way approved by the Secretary.

New subsection 65EAAE(5) provides that the Secretary may approve notification of the amount by making the information available to the service by using an electronic interface. If so, the service is taken to have been given the notice on the day on which the information is made available.

A note at the end of this section informs the reader that the effect of a recalculation on payments to an approved child care service is dealt with in new subsection 210QC(2) and new section 219QD.

***New section 65EAAF – Effect of revised calculation – payment to the individual***

New subsection 65EAAF(1) provides that new section 65EAAF applies in the situation where the Secretary recalculates CCR for a week under new section 65EAAD for an individual who elected, under new subparagraph 65EAAA(1)(a) to have the CCR paid to the individual's account and the election is in effect for the week.

New subsection 65EAAF(2) provides for the situation where there has been a recalculation of the weekly payment of CCR amount resulting in an increase in the amount for the week. If this occurs, subsections 65EAA(2), (3) and (6) apply to the increase as if the increase had been an amount calculated under new section 65EAAA.

New subsection 65EAAF(3) provides for the situation where there has been a recalculation of the CCR payment for a week resulting in a decrease in the amount for the week. If this occurs, the Secretary may set off the amount of the decrease against an amount of CCR applicable under this Subdivision (weekly CCR) or Subdivision AA (quarterly CCR) in respect of the individual and the child for a later period of care provided to the child by this or any other approved child care service in the same income year.

New subsection 65EAAF(4) imposes an obligation on the Secretary to provide a notice to the individual stating: the name of the child and the rebate period in respect of which the revised rebate amount is applicable; the rebate amount for the rebate period; the total of the individual's child care fees for the rebate period for the child worked out under step 1 of the method statement in new section 84AAA of the Family Assistance Act when recalculating the rebate amount and the total amount of fee reductions (if any) worked out for the rebate period under Step 2 of the method statement in section 84AAA of the Family Assistance Act when recalculating the rebate amount.

New subsection 65EAAF(5) provides that the recalculation and payment of an amount of CCR under this section will still be effective even if any or all of the requirements of subsection (4) are not complied with.

**Item 14 – Subsection 65EAA(4)**

Section 65EAA provides for payment of a quarterly CCR amount to an individual. Subsection 65EAA(4) provides that the quarterly payment under this section is subject to the provisions in Part 4 dealing with overpayments and debt recovery, and Division 3 of Part 8B dealing with payments to payment nominees.

**Item 14** amends subsection 65EAA(4) so it includes a reference to new sections 65EAAF (providing for a set off of the decrease in a CCR amount for a week against

the CCR amount for a later period in the same income year) and 65EAB (providing for a set off of a decrease in a quarterly amount against a subsequent quarterly or a weekly amount in the same income year).

**Item 15 – Subsection 65EAB(3)**

Subsection 65EAB(3) provides for a set off of the amount of the decrease resulting from a recalculation of a CCR amount for a quarter against the CCR amount applicable for the individual and the child in any later quarter in the same income year.

**Item 15** amends subsection 65EAB(3) so that the amount of the decrease for a quarter is also able to be set off against any subsequent payment of a CCR for a week applicable in respect of the individual and the child.

**Item 16 – Subsection 65EF(2A)**

Subsection 65EF(2A) provides that if a determination of entitlement for CCR for an income year is made under section 65EA (resulting from a determination relating to CCB by fee reduction), the amount to be paid must be reduced by the total amount of quarterly CCR payments made in the same income year.

**Item 16** repeals and substitutes subsection 65EF(2A). The substituted subsection provides that if a determination of entitlement for CCR for an income year is made under section 65EA (resulting from a determination relating to CCB by fee reduction), the amount to be paid must be reduced by the total amount of quarterly CCR payments made under Subdivision AA in the same income year and by any amount of CCR already paid under Subdivision AAB for any week included in the income year.

**Item 17 – Before paragraph 65EF(2B)(c)**

Subsection 65EF(2B) provides that if a determination of entitlement for CCR for an income year is made under subsection 65EC (later determinations of entitlement to CCR for an income year resulting from later CCB determinations relating to the same income year) and the entitlement amount includes entitlement for base weeks falling within the period of an individual's conditional eligibility, the amount to be paid must be reduced by the total amount of quarterly CCR payments made in the same income year (paragraph 65EF(2B)(c)) and by any previously paid CCR entitlement amounts for the same income year under an earlier determination of CCR entitlement (paragraph 65(2B)(d)).

**Item 17** inserts new paragraph 65(2B)(ca) adding a reference to the amount already paid under new Subdivision AAB (inserted by **Item 13**) in respect of an individual and the child for a week, all or part of which falls in the income year, to ensure that



any amount paid for a week in the income year reduces the entitlement amount to be paid in respect of the individual and the child.

**Item 18 – Subsection 65EF(2E)**

Subsection 65EF(2E) operates to the effect that if a determination of entitlement for CCR for a past period for a child (because of death of another individual) is made under subsection 65ECA (resulting from a determination relating to CCB for a past period), the resulting amount to be paid under subsection (2D) must be reduced by any CCR amounts already paid in respect of the deceased individual and the child for a quarter wholly or partly included in that past period.

**Item 18** repeals and substitutes subsection 65EF(2E). The substituted subsection provides that the entitlement amount under subsection (2D) must be reduced by any CCR amounts already paid under Subdivision AA in respect of the deceased individual and the child for a quarter wholly or partly included in that past period and by any amount of CCR already paid under new Subdivision AAB (inserted by **Item 13**) for any week included in the income year.

**Items 19, 20, 21, 22, 23 and 24 – After paragraph 66(1)(f), Paragraph 66(2)(aa), After paragraph 66(2)(aa), Paragraph 66(2)(cb), After paragraph 66(2)(cb) and Paragraph 66(2)(cc)**

Subsection 66(1) provides for the inalienability of certain payments, including fee reductions paid to an approved child care service, from any sale, assignment, charge, execution, bankruptcy or otherwise. **Item 19** inserts new paragraph 66(1)(faa) to include payments of weekly CCR to approved child care services under new section 219QC or new subsection 219QD(2).

Subsection 66(2) enumerates the provisions of the Family Assistance Administration Act that affect the amounts of those payments.

**Item 20** amends paragraph 66(2)(aa), which refers to decisions of the Secretary under subsections 65EAA(3) and 65EF(3) to pay weekly CCR for an income year in a different way, to add a reference to new subsection 65EAA(3) about a payment in a different way of a CCR for a week.

**Item 21** inserts new paragraph 66(2)(aaa) referring to new subsection 65EAAF(3) which provides for setting off a decrease in a weekly amount of CCR against a CCR amount for a later period.

**Item 22** amends paragraph 66(2)(cb). Paragraph 66(2)(cb) refers to section 219QA and describes that section as being ‘about setting off a recalculated fee reduction against payments under section 219Q or subsection 219QA(2) in respect of fee reduction or payment of enrolment advances under section 219RA’. As a result of the amendment to section 219QA made by **Item 69**, which allows setting off of recalculated fee reduction also against payment of weekly CCR under new section 219QC or new subsection 219QD(2), this description of section 219QA is no longer

correct. **Item 22** omits therefore the words ‘payments under section 219Q or subsection 219QA(2) in respect of fee reduction or payment of enrolment advances under section 219RA’ and substitutes with the word ‘various payments’.

**Item 23** inserts new paragraph (2)(cba) referring to new section 219QD inserted by **Item 71** providing for set off of a recalculated weekly CCR payment against various payments.

**Item 24** amends paragraph (2)(cc) to correct the description of section 219RC which provides for setting off an enrolment advance against payments under section 219QA and subparagraph (2)(cc). As a result of the amendment to section 219RC made by **Item 73**, which allows setting off of enrolment advances also against payment of weekly CCR under new section 219QC or new section 219QD, this description of section 219RC is no longer correct. **Item 24** therefore replaces the current description with a broad reference to ‘various payments’.

#### **Item 25 – After section 68(1A)**

This item inserts new subsection 68(1B), which gives the meaning to the expression ‘the amount of the CCR paid’ used in debt creation provisions relating to CCR (for example, in section 71CAB). It provides that, in the case of a person who has made an election to have CCR paid weekly to an approved child care service, the amount of CCR paid to the person for a week includes the amount that the service is required to pass on to the person under new section 219EA inserted by **Item 62**.

#### **Item 26 – Section 70**

Section 70 provides that an amount of a payment specified in this section is a debt due to the Commonwealth only to the extent to which a provision of the Family Assistance Administration Act or the *Data-Matching Program (Assistance and Tax) Act 1990* expressly provide that it is. **Item 26** amends section 70 to include a reference to a weekly CCR payment under new section 219QC or subsection 219QD(2) to ensure recovery of the weekly CCR amounts in the circumstances specified in the Family Assistance Administration Act.

#### **Items 27 and 28 - After paragraph 71B(1)(c) and Paragraph 71B(3)(a)**

Paragraph 71B(1)(a) creates a debt out of an amount of fee reductions that an approved child care service was required under section 219B to pass on to an individual for sessions of care provided by the service to a child while the recipient was not entitled to CCB for those sessions. **Item 27** inserts new paragraph 71B(1)(d) creating a debt out of an amount of CCR in respect of care provided to a child in a week by an approved child care service if the service is required under new section 219EA (inserted by **Item 62**) to pass the amount on to an individual but the individual was not entitled to CCR for that week.

Subsection 71B(3) creates a debt out of the amount of the payment specified in paragraph 71B(3)(a) (fee reductions and enrolment advances) when the payment was made for a credit of an incorrect account kept with a financial institution (not for the credit of the account kept by the person for whom the payment was intended).

**Item 28** substitutes paragraph 71B(3)(a) with a new paragraph that includes a reference to a payment of a weekly CCR amount under new section 219QC or subsection 219QD(2).

### **Items 29 and 30 – Paragraph 71CAA(1)(a) and Subparagraph 71CAA(4)(a)(i)**

Section 71CAA specifies the circumstances in which debt arises in respect of CCR amount paid to an individual because the individual was not entitled to CCR.

Subsection 71CAA(1) makes an amount of CCR for a quarter, paid to an individual in respect of a period during which the individual is conditionally eligible for CCB by fee reduction in respect of a child, a debt due to the Commonwealth by the individual, if the individual is not entitled to rebate for the child and the quarter. **Item 29** amends this subsection, by inserting a reference to a weekly CCR payment under new Subdivision AAB to ensure that an amount of a weekly CCR was paid to an individual who is not entitled to a rebate for that week is also a debt.

Subsection 71CAA(4) creates a debt due to the Commonwealth by an individual in respect of a CCR amount paid to the individual for a child for an income year or for a quarter in circumstances not covered by subsections (1) to (3) if the individual is not entitled to the rebate for that child for that year. **Item 30** amends this subsection, by inserting a reference to a weekly CCR payment to ensure that an amount of a weekly CCR was paid to an individual for a child who is not entitled to a rebate for that child for that year is also a debt.

### **Item 31 – Paragraph 71CAB(1)(a)**

Section 71CAB specifies the circumstances in which debt arises in respect of a CCR amount paid to an individual as a result of an overpayment.

Subsection 71CAB(1) specifies that, if an individual was paid an amount by way of CCR for a quarter (paragraph (1)(a)) in respect of a period during which the individual is conditionally eligible for CCB by fee reduction in respect of a child, and the amount paid is greater than the correct amount to which the individual is entitled for that period under subsection 65EA(2) or 65EC(1), the difference between the amount paid and the correct amount is a debt due to the Commonwealth by the individual.

**Item 31** replaced paragraph (1)(a) with paragraphs(1)(a) and (aa). New paragraphs (1)(a) and (aa) operate to the effect that, if an individual was paid an amount by way of CCR for a period as weekly payments, or quarterly payments, or both weekly and quarterly payments, and the amount paid for the period is greater than the correct amount to which the individual is entitled for that period under subsection 65EA(2) or

65EC(1), the difference between the amount paid and the correct amount is a debt due to the Commonwealth by the individual.

The note at the end of **Item 31** informs the reader that the heading to subsection 71CAB(1) is replaced by the heading ‘Overpayment of rebate arising from CCB by fee reduction – for a week or a quarter’.

### **Item 32 – After section 71CA**

**Item 32** inserts new section 71CB - Debts arising in respect of child care rebate payment not remitted – debt owed by the service.

New section 71CB provides that if an approved child care service does not remit to the Secretary an amount that the service is required to remit under new section 219QE inserted by **Item 71**, the amount is a debt due to the Commonwealth by the service. This debt creation provision corresponds to section 71CA which creates a debt in respect of the amount of fee reductions that a service does not remit when it is required to remit.

### **Item 33 – Subparagraph 71G(1)(a)(ii)**

Subsection 71G(1) creates a debt in respect of amounts of fee reductions paid to an approved child care service, or that would be paid but for a set off under the provisions specified in paragraph 71G(1)(a)(ii), when the service’s approval for the purposes of the family assistance law is suspended or cancelled.

**Item 33** amends subparagraph 71G(1)(a)(ii) to include a reference to new subsection 219QD (inserted by **Item 71**) providing for a set off against fee reductions of weekly CCR amounts.

### **Item 34 – After subsection 71G(2)**

Section 71G creates a debt, in the circumstances specified in subsections (1) to (3) in respect of amounts of fee reductions or enrolment advances paid to an approved child care service (or that would be paid but for a set off under provisions specified in these subsections), where the service’s approval for the purposes of the family assistance law is suspended or cancelled.

**Item 34** inserts new subsection 71G(2A) which specifies that, if an amount of weekly CCR is paid to an approved child care service under new section 219QC or new subsection 219QD(2) (inserted by **Item 71**), or such an amount would be paid, but for a set off under subsection 82(2), section 219QA, new section 219QD (inserted by **Item 71**), section 219RC or section 219RE and the service’s approval is suspended or cancelled before a period of care in respect of which the payment was made, so much of the amount as it relates to that period is a debt due to the Commonwealth by the service immediately before its approval was suspended or cancelled.

Under new subsection 219QD(3) inserted by **Item 71**, in the situation where recalculation of a weekly rebate results in a lower amount of the applicable rebate for the week, the higher amount previously paid to the service is set off against the subsequent payments to be made to the service (the lower recalculated amount is paid to the service). **Item 34** inserts new subsection 71G(2B) which specifies that, if an amount is required to be set off under new subsection 219QD(3), and the service's approval is suspended or cancelled, and the amount has not already been set off by the day the service's approval is cancelled, the amount is a debt due to the Commonwealth by the service immediately before its approval was suspended or cancelled.

Note 1 at the end of new subsection 71G(2B) states that the heading to section 71G is replaced by the heading 'Debts arising where child care services approval is suspended or cancelled – debt owed by the service'.

Notes 2 and 3, respectively, inform that the following heading is inserted: to subsection (1) 'Child care benefit – fee reduction' and to subsection (3) 'Enrolment advances'.

**Items 35, 36 and 37 – After paragraph 82(2)(a), Subsection 82(3) (definition of debt), Subsection 82(3) (definition of debt)**

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

**Item 35** amends subsection 82(2) to broaden the range of payments against which a debt of a service may be set off. It inserts new subparagraph 82(2)(aa), referring to setting off the amount of the debt against one or more payments under new section 219QC or subsection 219QD(2) in respect of CCR.

**Items 36 and 37** amend the definition of *debt* in subsection 82(3) to include a reference to new section 71CB (a debt when a weekly rebate amount not remitted) inserted by **Item 32** and to reposition the references in the correct order.

**Item 38 – Subsection 93A(6) (paragraphs (b) to (bb) of the definition of family assistance payment)**

**Item 38** amends the definition of *family assistance payment* in subsection 93A(6) by inserting new paragraphs (ba) and (bd) to include weekly CCR payments made to an approved child care service under new subsection 219QC or subsection 219QD(2) (inserted by **Item 71**) and a payment of CCR made to an individual under new section 65EAAB (inserted by **Item 13**). It also rearranges the existing paragraphs (b) to (bb) in the correct order. Section 93A sets out the rules relevant to recovery of debts from financial institutions.

### **Item 39 – Paragraphs 104(d) to (da)**

Section 104 specifies the decisions that may not be reviewed by the Secretary on own initiative.

**Item 39** repeals paragraphs 104(d) to (da) to rearrange the order of those paragraphs and to include in the list of non-reviewable decisions the following CCR decisions: a decision about a payment to an approved child care service under new section 219QC or new subsection 219QD(2) for a week (inserted by **Item 71**) (new paragraph 104(da)); a calculation of an amount of CCR under new section 65EAAA or recalculation under new section 65EAAD (new paragraph 104(dc)); and a decision under new subsections 65EAAA(4) and 65EAAAB(3) (new provisions inserted by **Item 13**) allowing election after beginning of an income year to be paid CCR weekly or quarterly during the year and specifying the day of effect of the election (new paragraph 104(dd)).

This is consistent with the treatment of the decisions made by the Secretary in relation to calculation of CCB fee reductions under sections 50Z or 50ZB or a recalculation under sections 50ZA or 50ZC and to payment of fee reductions to an approved child care service under section 219Q or subsection 219QA(2) (calculation of fee reduction and payment to a service are not reviewable).

CCB fee reductions and weekly CCR payments are frequent payments made during an income year in lieu of the individual's entitlement to CCB by fee reduction and to CCR, which is to be determined after the end of the income year in which the fee reductions, or quarterly or weekly CCR payments are made. Any difference between the amounts paid during an income year and the amount of the individual's entitlement are reconciled at that time. Determinations of entitlement (or no entitlement, as the case may be) for CCB and for CCR for an income year are reviewable under Part 5 of the Family Assistance Administration Act.

### **Item 40 – Paragraphs 108(2)(da) to (db)**

Subsection 108(2) provides for the decisions that may not be reviewed by the Secretary on application.

**Item 40** repeals paragraphs 108(2)(da) to (db) to rearrange the order of those paragraphs and to include in the list of non-reviewable decisions: a decision about a payment to an approved child care service under new section 219QC or new subsection 219QD(2) for a week (inserted by **Item 71**) (new paragraph 108(2)(db)); a calculation of an amount of CCR under new section 65EAAA or recalculation under new section 65 EAAD (new paragraph 108(2)(dd)); and a decision under new subsections 65EAAA(4) and 65EAAAB(3) (new provisions inserted by **Item 13**) allowing election after the beginning of an income year to be paid CCR weekly or quarterly during the year and specifying the day of effect of the election (new paragraph 108(2)(de)).

Preventing review on application of the weekly CCR calculation and payment to services decision is consistent with the treatment of the decisions made by the Secretary in relation to calculation of CCB fee reductions for the week.

A decision under new subsections 65EAAA(4) and 65EAAAB(3) relating to elections would have the effect of changing, during an income year, the way in which CCR is paid (as a rule, an election of the way of payment has effect for a subsequent income year). This is a discretionary decision to be made in exceptional circumstances, prospectively or retrospectively, depending on the elected way of payment.

It is not considered appropriate for these discretionary decisions to be reviewable given the level of administrative difficulty involved in rescheduling payments and in some cases the potential for the creation of a debt to the recipient (resulting from double payments which may occur if a new way of payment was to operate retrospectively) determined after the end of the income year. A decision not to allow the change the frequency of payments with the effect for the current income year will not affect a recipient's CCR entitlement for the income year calculated after the end of the income year.

#### **Item 41 – Subparagraph 108(2)(fa)(i)**

Subparagraph 108(2)(fa)(i) specifies, as not reviewable by the Secretary on application, a decision under section 201B to publicise information about the doing of one or more of the things mentioned in paragraphs 200(1)(a) to (h). These paragraphs specify sanctions for a breach by an approved child care service of its conditions of continued approval. **Item 56** amends subsection 200(1) to include a new sanction in new paragraph (1)(i) (suspension of payment of weekly CCR). As a consequence, and consistently with the current treatment of the existing publication sanction, **Item 41** amends subparagraph 108(2)(fa)(i) to include a reference to new paragraph 200(1)(i) to ensure that a decision about publicising information about this new sanction is also not reviewable.

#### **Items 42, 43 and 44 – Subparagraph 111(2)(a)(viii), After subparagraph 111(2)(a)(ix) and After subparagraph 111(2)(a)(xiv)**

Subsection 111(2) provides that a person cannot apply to the Social Security Appeals Tribunal under subsections 111(1) or 111(1A) for review of a decision made under any of the provisions set out in paragraph 111(2)(a) relating to the form and manner of claims and notices etc. **Item 42** replaces the reference to subsection 57G(2) with the correct reference to 57G(3) and inserts a reference to subsection 57G(5).

**Item 43** insert new subparagraph 111(2)(a)(ixa) and (ixb) and **Item 44** inserts new subparagraphs 111(2)(a)(xiva) and (xivb) into paragraph 111(2)(a). New subparagraphs operate to the effect that a person cannot apply for review under subsections 111(1) or 111(1A) of a decision made under the following new provisions: paragraph 65EAAA(2)(a), subsection 65EAAAB(3), 65EAAE(4), subsection 219QE(3) or paragraph 219QE(5)(a).

The decisions referred to in the new provisions are the Secretary's decisions approving the form, manner or way of certain notices.

#### **Items 45 and 46 – Paragraph 154(4A)(c) and Subparagraph 154(4A)(d)(i)**

Paragraph 154(4A)(c) provides the Secretary with a general power to obtain from any person information or a document relating to the eligibility of a person for CCR for a quarter or an income year. **Item 45** amends paragraph 154(4A)(c) with the effect that the power extends to information regarding the eligibility for weekly CCR payments under new subsection 57EAA(1) (inserted by **Item 1**).

Subparagraph 154(4A)(d)(i) provides the Secretary with a general power requiring a person to give information or produce a document relating to the amount of CCR applicable to a person for a quarter or an income year. **Item 46** amends this subparagraph to extend the Secretary's information gathering power to information regarding the amount of weekly CCR payment applicable to the individual under new Subdivision AAB of Division 4AA of Part 3 (inserted by **Item 13**).

The amendments made by **Items 45 and 46** are consistent with the existing provisions. The privilege against self-incrimination is not abrogated by these provisions.

#### **Item 47 – After subparagraph 173(1)(d)(v)**

Section 173 is an offence provision in Subdivision B of Division 3 of Part 6. It deals with a false statement to deceive and sets out the elements of the offence. A person who contravenes a provision of Subdivision B is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

**Item 47** amends section 173(1)(d) by inserting new subparagraph (via), which extends the offence to statements that affect the eligibility of the person for payment of CCR for a week under new subsection 57EAA(1) (inserted by **Item 1**) or the amount of CCR payment for a week applicable under new Subdivision AAB of Division 4AA of Part 3 (inserted by **Item 13**). This is consistent with the treatment of statements relating to eligibility or amount of CCR payments for a quarter or for an income year.

#### **Item 48 – Paragraph 175(a)**

Section 175 is an offence provision in Subdivision B of Division 3 of Part 6 dealing with obtaining a payment of family assistance where there is no entitlement to that payment, whether whole or part. Paragraph 175(a) excludes quarterly payments of CCR from the operation of this section. This is because section 175AA is the relevant provision for CCR.



**Item 48** amends paragraph 175(a) to ensure that weekly CCR payments under new Subdivision AAB of Division 4AA of Part 3 (inserted by **Item 13**) are also excluded from the operation of section 175.

**Item 49 – Paragraph 175AA(a)**

Section 175AA provides that a person contravenes this section if the person obtains CCR for a quarter (paragraph (a) knowing that he or she is ineligible for the whole or part of that payment (paragraph (b)). A person who contravenes a provision of Subdivision B, in which this section is included, is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

**Item 49** amends paragraph 175AA(a) to ensure that obtaining CCR for a week (payments under new Subdivision AAB of Division 4AA of Part (inserted by **Item 13**)) in the circumstances specified by paragraph (b) is also included in the ambit of section 175AA.

**Items 50 and 51 – Subparagraph 176(1)(a)(iii) and After paragraph 176(2)(a)**

Subsection 176(1) provides that a person contravenes this subsection if, among other things, an approved child care service obtains payment of fee reductions or enrolment advances (subparagraph (1)(a)(iii)) by means of impersonation or by fraudulent means. A person who contravenes a provision of Subdivision B, in which this section is included, is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

**Item 50** repeals and substitutes subparagraph 176(1)(a)(iii) to include in the ambit of this provision the reference to payment to a service of CCR for a week under new section 219QC or new subsection 219QD(2) (inserted by **Item 71**).

**Item 51** makes a consequential amendment to subsection 176(2), which specifies the elements of the offence relating to contravention under subsection 176(1) to which strict liability applies. This item inserts new paragraph (aa) providing that strict liability applies to the element of the offence that a payment in respect of CCR is paid to the service under new section 219QC or new subsection 219QD(2).

**Items 52 and 53 – Subparagraph 176(3)(d)(iii) and After paragraph 176(4)(a)**

Subsection 176(3) provides that a person contravenes this subsection if, among other things, an approved child care service obtains payment of fee reductions or enrolment advances (subparagraph (3)(d)(iii)) as a result of a statement, made by the person, that is false or misleading and the person is reckless as to whether the statement is false or misleading. A person who contravenes a provision of Subdivision B, in which this section is included, is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

**Item 52** repeals and substitutes subparagraph (3)(d)(iii) to include in the ambit of this provision the reference to payment to a service of CCR for a week under new section 219QC or new subsection 219QD(2) (inserted by **Item 71**).

**Item 53** makes a consequential amendment to subsection 176(4), which specifies the elements of the offence relating to contravention under subsection 176(3) to which strict liability applies. This item inserts new paragraph (aa) providing that strict liability applies to the element of the offence that a payment in respect of CCR is paid to the service under new section 219QC or new subsection 219QD(2).

#### **Item 54 – Paragraph 178(1)(b)**

Subsection 178(1) provides that if a person is convicted of an offence under section 177 (which include contraventions relating to CCR), the courts may impose a penalty and order the person to pay the Commonwealth an amount equal to any amount paid by way of family assistance, fee reductions, payment in respect of fee reduction, enrolment advances or payments under section 219RD because of the act, failure or omission that constituted the offence.

**Item 54** amends subsection 176(1) to include a reference to payments in respect of CCR.

#### **Item 55 – Subparagraph 195(2)(b)(i)**

Subparagraph 195(2)(b)(i) lists the provisions that provide for sanctions for breach of conditions of continued approval of an approved child care service. **Item 55** amends cross-references in this subparagraph to include a new sanction under new paragraph 200(1)(i) inserted by **Item 56**.

#### **Item 56 – At the end of subsection 200(1)**

Subsection 200(1) specifies sanctions for a breach by an approved child care service of its conditions of continued approval. **Item 56** amends subsection 200(1) to include a new sanction in new paragraph 200(1)(i) – suspension, for a maximum of 3 weeks, of weekly CCR payment to a service under section 219QC or subsection 219QD(2). This new sanction mirrors the suspension sanction in paragraph (1)(h) relating to payment of fee reductions to a service.

#### **Item 57 – After subsection 200(3B)**

This amendment is consequential to the amendment made by **Item 56**. **Item 57** inserts new subsection 200(3C). It provides that, if the Secretary suspends payments of weekly CCR to a service (as a sanction under new paragraph 200(1)(h)), the Secretary may revoke this sanction at any time, by notice to the service. Once the suspension is revoked, all payments that would have been paid but for the suspension must be paid.

### **Item 58 – Subsection 201(1)**

Subsection 201(1) requires that a particular process be followed before sanctions under the provisions referred to in this subsection are imposed. **Item 58** amends cross-references in this subsection to include a new sanction under new paragraph 200(1)(i) inserted by **Item 56**.

### **Item 59 – Paragraphs 201B(1)(a) and (2)(c)**

Section 201B authorises publication of information relating to a sanction imposed on an approved child care service under the provisions referred to in this section. **Item 59** amends cross-references in this subsection to include a new sanction under new paragraph 200(1)(i) inserted by **Item 56**.

### **Item 60 – Before section 219A**

**Item 60** inserts words “**Subdivision A – Obligations relating to enrolment**” to house sections 219A to 219AG in this new Subdivision.

### **Item 61 – Before section 219B**

**Item 61** inserts words “**Subdivision B – Obligations relating to child care benefit by fee reduction**” to house sections 219B to 219E in this new Subdivision.

### **Item 62 – After section 219E**

**Item 62** inserts new **Subdivision C – Obligations relating to weekly child care rebate** containing new sections 219EA and 219EB.

#### **Subdivision C – Obligations relating to weekly child care rebate**

##### ***New section 219EA – Obligation to pass on weekly child care rebate***

New section 219EA imposes an obligation on an approved child care service to pass on the amount of weekly CCR calculated and notified by the Secretary. The Secretary will do so if an individual has elected under new section 65EAAA (inserted by **Item 13**) to have weekly CCR paid to the service. This obligation corresponds to the similar obligation in section 219B relating to fee reductions paid to an approved child care service.

New subsection 219EA(1) operates to the effect that the service is required to pass on weekly CCR amounts for an individual and a child where the Secretary has either calculated or recalculated the amount of the rebate under new section 65EAAA or 65EAAD that are applicable for the care provided in the week, and the Secretary has notified the service of either of those amounts in accordance with new subsections 65EAAB(2) or 65EAAE(2).

New subsection 219EA(2) requires the service to pass on to the individual the calculated or recalculated amount of fee reductions (as notified) within 14 days after being notified by the Secretary of this amount, except to the extent that the service is required to remit the amount under new section 219QE inserted by **Item 71**.

Note 1 at the end of subsection 219EA(2) informs the reader that this amount must be passed on, even if the payment of CCR has been suspended under new paragraph 200(1)(i) inserted by **Item 56**.

Note 2 informs the reader that this is a civil penalty provision and that Part 8 provides for pecuniary penalties for breaches of civil penalty provision. **Item 9** amends the definition of *civil penalty provision* in section 3 to include this new provision.

New subsection 219EA(3) provides that an approved child care service commits an offence if the service contravenes subsection 219EA(2). The penalty for failing to pass on the CCR amount is 60 penalty units.

New subsection 219EA(4) states that it is an offence of strict liability (as is the case with the current section 219B obligation to pass on fee reductions). Offences under this section are strict liability offences, as are most of the offences relating to services' obligations in Part 8A of the Family Assistance Administration Act. Strict liability is an appropriate basis for the offence because of the difficulty the prosecution would have in proving fault (especially knowledge or intention) in this case and the fact that the offence does not involve dishonesty or serious imputation affecting a person's reputation. The penalty does not apply if the service remits the amount that the service is required to remit to the Secretary under new section 219QB.

A note at the end of new subsection 219EA(4) directs the reader to section 6.1 of the *Criminal Code* for strict liability.

New subsection 219EA(5) provides that, if the Secretary reduces the amount of CCR applicable for a particular week on the recalculation under new section 65EAAD, and the amount is reduced for a reason other than the substitution or withdrawal by the service of a report for the week under section 219N, then the service is required to pass on the previously calculated higher amount. This is consistent with the requirement of subsection 219B(3) applying to passing on fee reductions.

New subsection 219EA(6) provides that a service is taken to have passed on to the claimant an amount equal to the anticipated CCR amount for a particular week if the service reduces the amount of fees it charges the claimant for that week in anticipation of the Secretary's calculation of the rebate for that week.

New subsection 219EA(7) provides that the amount passed on to the claimant is taken to have been passed on to the claimant the day the Secretary notified the service of the amount in accordance with new subsection 65EAAB(2) or 65EAAE(2).

***New section 219EB – Obligation to provide additional material in section 219E statements***

Section 219E imposes on an approved child care service an obligation to provide a statement to conditionally eligible individuals, for a statement period of up to 3 months each, providing information referred to in subsection 219E(5) that relates to the fee reduction amounts. This obligation is subject to civil and criminal penalties (strict liability offences apply).

New section 219EB imposes an obligation on an approved child care service to include in the section 219E statement for an individual additional information relating to CCR that the service is required to pass on to the individual. The structure and penalties relating to this obligation mirror those in section 219E.

New subsection 219EB(1) applies in the situation where an approved child care service is required, under new section 219EA, to pass on a CCR amount for a week to an individual in respect of care provided to a child in a week and the care is provided in a statement period for the service (described in subsection 219E(4) or set out in the rules made under paragraph 219E(6)(c)). If this occurs, the service is required to set out in the statement the additional matters in relation to care. The additional matters are specified in new subsection 219EB(4) – they are matters relevant to weekly CCR.

A note at the end of this subsection informs the reader that this is a civil penalty provision and that Part 8 provides for pecuniary penalties for breaches of civil penalty provision. **Item 9** amends the definition of *civil penalty provision* in section 3 to include this new provision.

New subsection 219EB(2) provides that an approved child care service commits an offence if the service is required to set out those additional matters in a statement and the service does not do so. The penalty is 60 penalty units.

New subsection 219EB(3) states that it is an offence of strict liability. A note at the end of new subsection 219EA(4) directs the reader to section 6.1 of the *Criminal Code* for strict liability.

New subsection 219EB(4) specifies that the additional matters required to be set out in a statement for the statement period are: the amount of the fees for which the individual would have been liable if fee reductions for the statement period have been passed on but the CCR amount has not been passed (that is, the amount representing the gap between the full fees for the care and the fee reduction amount for the care); and the amount of weekly CCR amount required to be passed on under new section 219EA (inserted by **Item 62**).

If a service provided a statement for the statement period as required and set out the additional matters and the Secretary notifies a service of a recalculated CCR amount for the statement period under new subsection 65EAAE(2), new subsection 219EB(5) requires the service to either provide the individual with an amended statement or a statement setting out the additional matters taking into account the recalculated

amount. The new or amended statement must be provided before the end of the first statement period after the notification day.

A note at the end of this subsection informs the reader that this is a civil penalty provision and that Part 8 provides for pecuniary penalties for breaches of civil penalty provision. **Item 9** amends the definition of *civil penalty provision* in section 3 to include this new provision.

New subsection 219EB(6) provides that an approved child care service commits an offence if the service included the additional CCR matter in an earlier statement for a statement period and is notified of a recalculated amount relevant to the statement period and the service does not give the individual, before the end of the first statement period starting after the notification day, the statement or amended statement, setting out the additional matters and taking account the recalculation. The penalty is 60 penalty units.

New subsection 219EB(7) states that it is an offence of strict liability. A note at the end of new subsection 219EA(4) directs the reader to section 6.1 of the *Criminal Code* for strict liability.

The rationale for strict liability is the same as for the offence under new section 219EA.

Following new section 219EB, **Item 62** inserts the heading “**Subdivision D- Obligations relating to records**” to house section 219H and 219G.

#### **Item 63 – Before section 219H**

**Item 63** inserts before section 219H the heading “**Subdivision E – Reporting and other obligations**” to house sections 219H to 219P.

#### **Item 64 – After paragraph 219N(4)(a)**

Section 219N imposes an obligation on an approved child care service to give the Secretary a report about matters relevant to the CCB eligibility and entitlement for each week of care provided to a child enrolled by the service. The report must be provided in accordance with the requirements set out in this section. Once a report relating to a week of care for a child is given, the Secretary calculates the amount of fee reduction for the week for the child (based on the information provided in that report) and pays the amount to the service to pass on to the individual who is conditionally eligible for CCB by fee reduction for the child (sections 50Z and 219Q refer). It is a criminal offence if a service which is required to give a report under subsection 219N(1) or (2) does not give the report in accordance with this section.

Subsection 219N(4) specifies that the report must include any information relevant to determining whether a fee reduction is applicable, the rate and the amount, or to making a determination of entitlement for CCB (paragraph (a), and any other information required by the Secretary (paragraph (b)). **Item 64** inserts new paragraph

(aa) to provide that the report must include any information required by the Secretary relevant to determining an individual's eligibility for CCR, the amount of CCR for a week, quarter or an income year, the entitlement for an income year and to determining any other matter in relation to payment of CCR to an individual.

#### **Items 65 and 66 – After subsection 219P(1) and Subsection 219P(2)**

Subsection 219P(1) specifies obligations of operators of former approved child care services. This subsection is a civil penalty provision. Contravention of this subsection is an offence.

**Item 65** inserts new subsection 219P(1A) to include the following obligations a former operator must fulfil resulting from receiving CCR weekly payments: the requirement under new section 219EA (inserted by **Item 62**) to pass on the amount of weekly CCR; and the requirement under new section 219QE to provide additional matters relating to weekly CCR payments in the section 219E statements. **Item 66** makes a consequential technical amendment to subsection 219P(2) resulting from the insertion of new subsection 219(1A).

#### **Items 67 – After Paragraph 219Q(3)(b)**

Subsection 219Q(3) provides for a set off of fee reduction amounts paid to a service against later payments of fee reductions to the service (paragraph (a) and later payments of enrolment advances to the service (paragraph (b)). **Item 67** inserts new paragraph (ba) to enable the set off to occur also against later weekly CCR payments made to the service.

#### **Items 68 and 69 – Paragraph 219QA(3)(a) and After paragraph 219QA(3)(a)**

Subsection 219QA(3) requires the Secretary to set off a higher fee reduction amount paid to an approved child care service in respect of a week and a child if the amount of fee reduction for that week was reduced as a result of recalculation of the amount under sections 50ZA or 50ZC. The higher amount paid is required to be set off against any fee reduction paid to the service under section 219Q or subsection 219QA(2) or enrolment advance amount to be paid to the service under section 219RA.

**Item 68** makes a technical drafting amendment to paragraph 219QA(3)(a) replacing the reference to 'subsection 219QA(2)' with the expression 'subsection (2) of this section'.

**Item 69** amends subsection 219QA(3) to insert new paragraph (aa) specifying payments of weekly CCR to a service under new section 219QC or new subsection 219QD(2) (inserted by **Item 71**) as being available for a set off of the fee reduction amounts that subsection 219QA requires to set off.

### **Item 70 – Subparagraph 219QB(1)(a)(ii)**

Section 219QB requires a service to remit fee reduction amounts if it is not reasonably practicable for the service to pass on the amounts within the required time. The amounts to be remitted are the amounts paid to the service or that would be paid but for a set off under subsection 82(2), section 219QA, 219RC or 219RE (that is, a set off to recover the service's debt or amounts of fee reduction or enrolment amounts or business continuity payment that are required by these sections to be set off). As new section 219QD (inserted by **Item 70**) requires certain weekly CCR amounts paid to a service to be set off against various later payments to be made to the service, including fee reductions, **Item 70** substitutes a new subparagraph 219QB(1)(a)(ii) so that it includes a reference to the set off against fee reductions required under new section 219QD.

### **Item 71 – After Division 2 of Part 8A**

**Item 71** inserts new Division 2A, containing new sections 219QC, 219QD and 219QE.

#### **Division 2A—Weekly payments in respect of child care rebate to approved child care services**

##### *New section 219QC – Weekly payments of child care rebate*

New subsections 219QC(1) and (2) deal with the payment of weekly CCR to a service. It corresponds to section 219QA dealing with payment to a service of fee reduction amounts.

If the Secretary calculates under new section 65EAAA (inserted by **Item 13**) a weekly CCR amount applicable in respect of an individual and a child and the individual elected payment to the service under new paragraph 65EAAA(1)(b) (inserted by **Item 13**), and the election is in effect for that week, the Secretary must pay the amount calculated to the credit of a bank account nominated and maintained by the service.

New subsection 219QC(2) provides that, if the Secretary recalculates, under new section 65EAAD (inserted by **Item 13**) the CCR for the week with the effect that the amount is increased, and the individual's election for payment of CCR to a service is in effect for the week, the Secretary must pay the amount of the increase to the credit of a bank account nominated and maintained by the service.

New subsection 219QC(3) is about the relationship of this new payment section with other provisions. It states that this section is subject to the provisions specified in this subsection. The CCR payments under this new section are affected by set offs under Part 4, section 219QA, 219QD, 219RC, 219RE, and by suspension of payments (as a sanction) under paragraph 200(1)(i).



***New section 219QD – Payments and set offs where recalculation results in reduced weekly child care rebate***

New subsection 219QD(1) provides that new section 219QD applies if the Secretary recalculates, under new section 65EAAD (inserted by **Item 13**), the CCR for the week with the effect that the amount is reduced because of the substitution or withdrawal by the service of a report given by the service under section 219N, and the individual's election to have CCR paid to an approved child care service is in effect for the week.

If this occurs, new subsection 219QD(2) requires the Secretary to pay the recalculated lower amount to the credit of a bank account nominated and maintained by the service.

New subsection 219QD(3) then requires that the amount calculated, or last recalculated (as the case may be), be set off against later payment to the service of one or more fee reduction payments under section 219Q or subsection 219QA(2) or one or more weekly CCR payments under new section 219QC or new subsection 219QD(2) or one or more enrolment advances under section 219RA.

***New section 219QE – remitting amounts that cannot be passed on***

This section corresponds to section 219QB requiring the remittal of fee reductions that cannot be passed on.

New subsection 219QE(1) requires a service to immediately remit the amounts of CCR if it is not reasonably practicable for the service to pass on the amounts within the time required under new subsection 219EA(2) inserted by **Item 62**, that is, within 14 days after being notified of the amount.

The amount to be remitted is the amounts paid to the service for a week under new section 219QC or new subsection 219QD(2) (inserted by **Item 71**) or that would be paid but for a set off under subsection 82(2), section 219QA, new section 219QD, section 219RC or 219RE (that is, a set off to recover the service's debt or amounts of fee reduction, weekly CCR payment, enrolment amounts or business continuity payment that are required by these sections to be set off).

A note at the end of this subsection informs the reader that this is a civil penalty provision and that Part 8 provides for pecuniary penalties for breaches of civil penalty provision. **Item 9** amends the definition of *civil penalty provision* in section 3 to include this new provision.

New subsection 219QE(2) provides that an approved child care service commits an offence if the service contravenes subsection (1). The penalty is 60 penalty units.

New subsection 219QE(3) provides that the amount must be remitted in the manner or way approved by the Secretary.

New subsection 219QE(4) requires the service to notify the Secretary of the remittal of the amount and new subsection (5) provides that the notice must be given in the

form, and in the manner or way approved by the Secretary and include any information required by the Secretary.

**Item 72 – After paragraph 219RA(2)(b)**

Subsection 219RA(2) specifies provisions that affect the amount of enrolment advances to be paid to an approved child care service under subsection 219RA(1).

**Item 72** inserts new paragraph(ba) in subsection 219RA(2) to include in this subsection a reference to new section 219QD (inserted by **Item 71**) providing for a set off of a weekly CCR amount (after recalculation) against enrolment advances paid to the service.

**Items 73 and 74 -- Paragraph 219RC(b) and At the end of section 219RC**

An enrolment advance amount paid to an approved child care service is recoverable when the enrolment ceases. If the enrolment ceases, section 219RC requires the Secretary to set off the amount of the advance referred to in paragraphs 219RC(a) and (b) against any other enrolment amount to be paid to the service or any fee reduction amount to be paid to the service, whether the fee reductions relate to a particular enrolment or not.

Paragraph 219RC(b) requires a set off of the amount of enrolment advance that would be paid but for a set off under subsection 82(2), section 219QA (fee reduction), 219RC (enrolment advances) or 219RE (business continuity payment). **Item 73** amends paragraph 219RC(b) to include a reference to a set off against the enrolment amount paid to a service of the weekly CCR required under new section 219QD inserted by **Item 71**.

**Item 74** inserts new paragraph 219RC(e) to include weekly CCR payments made to a service as available for a set off of enrolment advance amount required to be set off under this section.

**Item 75 – After paragraph 219RE(a)**

Section 219RE provides that, if a business continuity payment is made to an approved child care service under section 219RD, the Secretary must set off an amount equal to that payment against various later payments to the service specified in paragraphs 219RE(a) to (c).

**Item 75** inserts new subparagraph 219RE(a)(aa) to include weekly CCR payments made to a service as available for a set off of a business continuity payment required to be set off under this section.

**Item 76 – After paragraph 224(1)(c)**

Section 224 deems notices described in this section to have been given when they were given in the way described in this section. **Item 76** amends section 224 to ensure it applies to a notice about the CCR weekly amounts under Subdivision AAB of Division 4AA of Part 3.

## Part 2 — Application and transitional provisions

### Item 77 – Application

**Item 77** is an application provision. It states that the amendments made by this Schedule apply in relation to income years beginning on or after 1 July 2011.

### Item 78 – Transitional—elections made before 1 July 2011.

**Item 78** is a transitional provision relating to elections made before 1 July 2011.

New section 65EAAAA inserted in the Family Assistance Administration Act by **Item 13** of Schedule 1 provides for an election by an individual of the way in which CCR is to be paid to the individual during an income year. It is intended that, for the purposes of the CCR payment in 2011–2012, the individuals who are conditionally eligible for CCB by fee reductions in 2010–2011 will be able to make such an election before 1 July 2011, with the effect from 1 July 2011. **Item 78** operates for this purpose, as follows.

Subitem 54(1) provides that this item applies if an individual gives the Secretary notice electing to have CCR in respect of the individual and a child for care provided to the child in the 2011-2012 income year paid weekly to the individual's bank account or weekly to an approved service or services or quarterly to the individual's bank account. For this item to apply, the notice must be given by the time, and in the form, and manner or way approved by the Secretary.

If an election described in subitem 54(1) is made, subitem 54(2) deems:

- the notice to be paid CCR weekly to the individual's bank account - to be a notice under new paragraph 65EAAAA(1)(a);
- the notice to be paid CCR weekly to an approved child care service or services - to be a notice under new paragraph 65EAAAA(1)(b); and
- the notice to be paid CCR quarterly to the individual's bank account - to be a notice under new paragraph 65EAAAA(1)(c).

Accordingly, an election before 1 July 2011 by the time approved by the Secretary will have the effect as if it was an election made under new paragraph 65EAAAA(1)(a) or 65EAAAA(1)(b) or 65EAAAA(1)(c) (as the case may be).

If an election described in subitem 54(1) is not made by the individual, subitem 54(3) provides that, if CCR for 2010–2011 was paid to the individual quarterly – CCR for the year 2011–2012 will be paid quarterly; otherwise, it will be paid for the income year.

Subitem 54(4) clarifies that this item applies even if the Secretary approves the time, form, manner or way of the election notice before the day on which this item commences (the day this Act receives the Royal Assent).

**Item 79 – Continued application of section 71B of the Family Assistance Administration Act**

This item preserves the application of section 71B (debts where no entitlement), amended by **Item 28**, as it applies in relation to payments made by the commencement of the **Item 28** amendments (the day after this Act receives Royal Assent).

**Item 80 – Continued application of section 93A of the Family Assistance Administration Act**

This item preserves the application of section 93A (recovery of amounts from financial institutions), amended by **Item 38**, as it applies in relation to payments made by the commencement of the **Item 38** amendments (the day after this Act receives Royal Assent).

**Item 81 – Continued application of section 176 of the Family Assistance Administration Act**

This item preserves the application of section 176 (payment of fee reductions obtained by fraud), amended by **Item 50 and 52**, as it applies in relation to payments obtained by the commencement of the **Item 50 and 52** amendments (the day after this Act receives Royal Assent).

## **Schedule 2 — Amendments to be made if the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011* is passed after Schedule 1 commences**

### **Summary**

This Schedule makes amendments to the Family Assistance Administration Act, the Child Care and Other Measures Act and the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007* to ensure that after commencement of the Child Care and Other Measures Act both the amendments made by Schedule 1 and by the Child Care and Other Measures Act operate as intended.

### **Background**

The Child Care and Other Measures Act inserts (or substitutes) new provisions in the Family Assistance Administration Act that require amendments to ensure that they operate also for the purposes of CCR payments for a week (**Items 1, 12 and 15** refer).

Some CCR payment provisions are based on CCB payment provisions. As these CCB payment provisions are amended by the Child Care and Other Measures Act, amendments are required to the corresponding CCR provisions (**Items 2, 3, 6, 7, 9, 10 and 11** refer).

As a result of amendments made by Schedule 1, some of the amendments made by the Child Care and Other Measures Act require further amendments to ensure their continued operation as intended (**Items 4 and 5** refer).

Some CCR provisions need amendments to reflect the amendments made by the Child Care and Other Measures Act (**Item 8** refers).

### **Explanation of the changes**

#### **Part 1 - Amendment of the *A New Tax System (Family Assistance) (Administration) Act 1999***

These amendments commence immediately after the commencement of Part 1 of Schedule 1 to the Child Care and Other Measures Act (the day after this Part receives Royal Assent).

**Item 1 – Subsection 3(1) (after paragraph (a) of the definition of child care service payment)**

Item 1 of Schedule 1 to the Child Care and Other Measures Act inserts a definition of *child care service payment* in subsection 3(1) of the Family Assistance Administration Act. Paragraphs (a) to (e) of the definition specify the payments included in the definition. **Item 1** amends the definition by inserting new paragraph (aa) to include a payment of CCR for a week under new section 219QC or subsection 219QD(2) inserted by **Item 71**.

**Items 2 and 3 – Subsection 65EAAE(2) and Subsection 65EAAE(3)**

New subsection 65EAAE(2) (inserted by **Item 13** of Schedule 1) relating to notices of revised calculation of a CCR amount for a week is based on section 50ZA of the Family Assistance Administration Act relating to notices of revised calculation of CCB fee reductions. Subsections 50ZA(2) and 50ZA(3) are amended by Items 1 and 2 of Schedule 5 to the Child Care and Other Measures Act.

**Items 2 and 3** therefore amend in the same way the corresponding subsections 65EAAE(2) and 65EAAE(3).

**Items 4 and 5 – Paragraph 108(2)(daaa) and After paragraph 108(2)(db)**

Subsection 108(2) (as amended by **Item 40** of Schedule 1) rearranges, among other things, the order of paragraphs in this subsection, which specifies the decisions that may and may not be reviewed (internal review on application). Item 19 of Schedule 1 to the Child Care and Other Measures Act inserts paragraph (daaa) into this subsection, inconsistent with the new order of the paragraphs in this subsection. **Items 4 and 5** repeal paragraph (daaa) and reinsert the content of that paragraph as new paragraph (dba).

**Items 6 and 7 – Subsection 219EA(2) and Subsection 219EA(5)**

New section 219EA (inserted by **Item 62** of Schedule 1) relating to an approved child care service's obligation to pass on weekly child care rebate is based on section 219B of the Family Assistance Administration Act relating to an approved child care service's obligation to pass on CCB fee reductions. Subsections 219B(2) and 219B(3) are amended by Items 12 and 13 of Schedule 5 to the Child Care and Other Measures Act.

**Items 6 and 7** therefore amend in the same way the corresponding subsections 219AE(2) and 219EA(5).

### **Item 8 – Paragraph 219QC(3)(d)**

New subsection 219QC(3) (inserted by **Item 71** of Schedule 1) specifies provisions of the Family Assistance Administration Act affecting the amount of CCR payment for a week to be made to an approved child care service under new section 219QC, including section 219RC, which provides for a set off, against a weekly CCR amount, in the situation which is described as ‘where enrolment ceases’.

Section 219RC is amended by Item 30 of Schedule 1 to the Child Care and Other Measures Act with the effect that the set off under this section occurs also when the operator of an approved child care service notifies cessation of operation. **Item 8** therefore amends the description of section 219RC in paragraph 219QC(3)(d) to reflect the extended scope of this section.

### **Items 9, 10 and 11 – Subsection 219QD(1), Subsections 219QD(2) and Subsection 219QD(3)**

New section 219QD (inserted by **Item 71** of Schedule 1) relating to payments and set offs where recalculation results in reduced weekly child care rebate is based on section 219QA of the Family Assistance Administration Act relating to payments and set offs where recalculation results in reduced CCB fee reduction.

Subsections 219QA(1) and 219QA(2) are amended by Items 18 and 19, respectively, of Schedule 5 to the Child Care and Other Measures Act. **Items 9 and 10** therefore amend in the same way the corresponding subsections 219QD(1) and 219QD(2).

Subsection 219QA(3) is amended by Item 23 of Schedule 1 to the Child Care and Other Measures Act. **Item 11** therefore amends in the same way the corresponding subsections 219QD(1) and 219QD(2).

### **Item 12 – Subparagraph 219RC(3)(b)(ii)**

Item 30 of Schedule 1 to the Child Care and Other Measures Act amends section 219RC by inserting, among others, subsection 219RC(3) providing for a set off of enrolment advances when the operator of an approved child care service notifies cessation of operation. The advances to be set off are the ones that were either paid to the service under section 219RA or would have been paid but for a set off under the provisions specified in paragraph 219RC(3)(b)(ii).

**Item 12** amends paragraph 219RC(3)(b)(ii) to include a reference to new section 219QD (inserted by **Item 71**) which provides for a set off of a CCR amount for a week (paid to an approved child care service) against enrolment advance to be paid to the service.



### **Item 13 – Application**

**Subitem 13(1)** provides that amendments made by **Items 2, 3, 6, 7, 9 and 10** of this Schedule apply in relation to recalculation done under new section 65EAAD of the Family Assistance Administration Act (inserted by **Item 13** of Schedule 1) on or after the commencement of those items in respect of weeks beginning before, on or after that commencement.

**Subitem 13(2)** provides that the amendment made by **Item 11** of this Schedule applies in relation to payments that are to be made on or after the commencement of that item.

## **Part 2 - Amendment of the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011***

These amendments commence at the same time as Part 1 of Schedule 1 to the Child Care and Other Measures Act commences (the day after this Part receives the Royal Assent).

### ***Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011***

#### **Item 14 – Items 5 and 6 of Schedule 1**

**Items 22 and 24** of Schedule 1 make the same amendments to paragraph 66(2)(cb) and 66(2)(cc), respectively, as Items 5 and 6 of Schedule 1 to the Child Care and Other Measures Act, making the latter amendments obsolete.

**Item 14** therefore repeals Items 5 and 6 of Schedule 1 to the Child Care and Other Measures Act.

### **Part 3 – Other consequential amendments**

These amendments commence at the same time as the amendments in Part 1 of Schedule 1.

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

#### **Item 15 – After paragraph 97C(1)(b) of Schedule 1**

Item 33 of Schedule 1 to the Child Care and Other Measures Act amends subitem 97C(1) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care*

*Management System and Other Measures) Act 2007. Paragraphs 97C(1)(a) to (d) specify the provisions of the Family Assistance Administration Act, which affect the payment of the amounts to be paid to an approved child care service under subitems 97(5) and 97A(5) of the Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007.*

**Item 15** amends subitem 97C(1) further to insert new paragraph (ba) referring to new subsection 219QD(3) of the Family Assistance Administration Act (inserted by **Item 71** of Schedule 1 and amended by **Item 11** of Schedule 2). New subsection 219QD(3) provides for a set off of a CCR amount for a week (paid to an approved child care service) against one or more child care service payments, which include the payments made to approved child care services under subitems 97(5) and 97A(5) of the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.

## **Schedule 3 — Amendments to be made if the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011* already passed**

### **Summary**

This Schedule makes amendments to the Family Assistance Administration Act and the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007* to ensure that the amendments made for the purposes of CCR payments for a week, commencing after the commencement of the Child Care and Other Measures Act, operate as intended and in alignment with the legislation as amended by the Child Care and Other Measures Act.

### **Background**

The Child Care and Other Measures Act inserts (or substitutes) new provisions in the Family Assistance Administration Act that require amendments to ensure that they operate also for the purposes of CCR payments for a week (**Items 1, 8 and 9** refer).

Some CCR payment provisions are based on CCB payment provisions. As these CCB payment provisions are amended by the Child Care and Other Measures Act, some of the corresponding CCR provisions need to be made in a form that reflects the changes to the CCB provisions (**Items 2, 4, 5, 6 and 7** refer).

Some CCR provisions need to be made in a form reflecting amendments made to these provisions by the Child Care and Other Measures Act (**Item 3** refers).

### **Explanation of the changes**

These amendments commence on the day after Schedule 1 receives Royal Assent.

#### **Item 1 - Subsection 3(1) (after paragraph (a) of the definition of child care service payment)**

Item 1 of Schedule 1 to the Child Care and Other Measures Act inserts a definition of *child care service payment* in subsection 3(1) of the Family Assistance Administration Act. Paragraphs 3(1)(a) to (e) specify the payments included in the definition.

**Item 1** amends the definition by inserting new paragraph (aa) to include a payment of CCR for a week made under new section 219QC or subsection 219QD(2) (inserted by **Item 71**).

### **Item 2 – Before Subdivision AA of Division 4AA of Part 3**

**Item 13** of Schedule 1 inserts, in Division 4AA of Part 3 of the Family Assistance Administration Act, new Subdivision AAA (sections 65EAAAA, 65EAAAB and 65EAAAC) providing for election to have CCR paid in various ways and new Subdivision AAB (sections 65EAAA, 65EAAB, 65EAAC, 65EAAD, 65EAAE and 65EAAF) relating to weekly payments of child care rebate. Section 65EAAE is based on section 50ZA of the Family Assistance Administration Act. Section 50ZA is amended by Items 1 and 2 of Schedule 5 to the Child Care and Other Measures Act. To prevent the CCR amendments made by **Item 13** of Schedule 1 commencing without taking into account the amendments to section 50ZA, the amendments made by **Item 13** of Schedule 1 do not commence if Schedule 5 to the Child Care and Other Measures Act commences first (item 3 of the commencement table in section 3 of this Bill refers). Instead, **Item 2** of Schedule 3 inserts new Subdivision AAA (the same in terms as the one in Schedule 1) and new Subdivision AAB, which includes an amended section 65EAAE mirroring the amendments to section 50ZA.

### **Item 3 – Paragraphs 108(2)(da) to (db)**

Item 19 of Schedule 1 to the Child Care and Other Measures Act inserts paragraph (daaa) into subsection 108(2), which specifies the decisions that may and may not be reviewed (internal review on application) – to refer to a decision under subsection 219RA(1A).

**Item 40** of Schedule 1 amends subsection 108(2) as in force before commencement of the amendment made by the Child Care and Other Measures Act, to rearrange, among other things, the order of paragraphs in this subsection. To prevent the CCR amendments made by **Item 40** of Schedule 1 commencing without taking into account the amendments to subsection 108(2) made by the Child Care and Other Measures Act, the amendments made by **Item 40** do not commence if Part 1 of Schedule 1 to the Child Care and Other Measures Act commences first (item 11 of the commencement table in section 3 of this Bill refers). Instead, **Item 3** amends subsection 108(2) so as to preserve the intention of the amendments in **Item 40** of Schedule 1 and in Item 19 of Schedule 1 to the Child Care and Other Measures Act.

### **Item 4 – After subparagraph 111(2)(a)(ix)**

**Item 43** of Schedule 1 inserts new paragraphs (xiva) and (xivb) into paragraph 111(2)(a) that specifies the provisions under which decisions are made relating to form and manner of claims, notices, etc. (exempt from review under section 111). A reference is made in new subparagraph 111(2)(a)(xivb) to new subsection 65EAAE(4) (inserted by **Item 13** of Schedule 1) dealing with the form and manner of notices. Section 65EAAE inserted by **Item 13** of Schedule 1 does not commence; instead, section 65EAAE inserted by **Item 2** of Schedule 3 commences, in which the form and manner notices are dealt with in subsection 65EAAE(3). To ensure correct cross-referencing in the new paragraph 11(2)(a)(xivb), **Item 43** also does not commence (the commencement table, item 3, in section 3 of this Bill refers); instead, **Item 4** of

Schedule 3 inserts new subparagraphs 111(2)(a)(ixa) and (ixb) as originally intended but with the correct reference to subsection 65EAAE(3).

#### **Item 5 – After section 219E**

**Item 62** of Schedule 1 inserts new sections 219EA and 219EB. New section 219EA, which deals with obligation to pass on weekly CCR, is based on section 219B which deals with obligation to pass on CCB fee reductions.

Items 12 and 13 of Schedule 5 to the Child Care and Other Measures Act amend section 219B. To ensure consistency between the corresponding CCB and CCR provisions, amendments made by **Item 62** do not commence if Schedule 5 to the Child Care and Other Measures Act commences first (the commencement table, item 17, in section 3 of this Bill refers). Instead, **Item 5** inserts section 219EA amended for consistency with the amendments made to section 219B, and section 219EB (the same as in **Item 62**).

#### **Item 6 – After Division 2 of Part 8A**

**Item 71** of Schedule 1 inserts new sections 219QC, 219QD and 219QE relating to weekly payments of CCR to approved child care services. These sections are based on sections 219Q, 219QA and 219QB of the Family Assistance Administration Act relating to payments of CCB fee reductions to approved child care services.

Section 219Q is amended by item 22 of Schedule 1 to the Child Care and Other Measures Act, section 219QA is amended by items 18 and 19 of Schedule 5 to that Act and section 219QA is amended by item 23 of Schedule 1 to that Act.

To ensure consistency between the corresponding CCB and CCR provisions, amendments made by **Item 71** of Schedule 1 do not commence if Schedule 5 to the Child Care and Other Measures Act commences first (the commencement table, item 21, in section 3 of this Bill refers). Instead, **Item 6** inserts sections 219QC, 219QD and 219QE amended for consistency with the amendments made to sections 219Q and 219QA, and section 219QE (the same as in **Item 71**).

#### **Item 7 – Paragraph 219RC(1)(b)**

**Item 74** of Schedule 1 amends paragraph 219RC(b). However, item 27 of Schedule 1 to the Child Care and Other Measures Act amends section 219RC to insert a reference to (1), therefore creating subsection 219RC(1). This makes the amendment in **Item 74** not legally effective. To ensure that this amendment operates effectively after the commencement of the Child Care and Other Measures Act, **Item 74** of Schedule 1 does not commence if Schedule 1 to the Child Care and Other Measures Act commences (the commencement table, item 23, in section 3 of this Bill refers); instead, Item 7 makes a properly described amendment for the same purpose.

### **Item 8 – Subparagraph 219RC(3)(b)(ii)**

Item 30 of Schedule 1 to the Child Care and Other Measures Act amends section 219RC by inserting, among others, subsection 219RC(3) providing for a set off of enrolment advances when the operator of an approved child care service notifies cessation of operation. The advances to be set off are the ones that were either paid to the service under section 219RA or would have been paid but for a set off under the provisions specified in paragraph 219RC(3)(b)(ii).

**Item 8** amends paragraph 219RC(3)(b)(ii) to include a reference to new section 219QD (inserted by **Item 71**) which provides for a set off of CCR amount for a week paid to an approved child care service against enrolment advance to be paid to the service.

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

### **Item 9 – After paragraph 97C(1)(b) of Schedule 1**

Item 33 of Schedule 1 to the Child Care and Other Measures Act amends subitem 97C(1) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*. Paragraphs 97C(1)(a) to (d) specify the provisions of the Family Assistance Administration Act, which affect the payment of the amounts to be paid to an approved child care service under subitems 97(5) and 97A(5) of the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.

**Item 9** amends subitem 97C(1) further to insert new paragraph (ba) referring to new subsection 219QD(3) of the Family Assistance Administration Act (inserted by **Item 71** of Schedule 1 and amended by **Item 11** of Schedule 2). New subsection 219QD(3) provides for a set off of a CCR amount for a week (paid to an approved child care service) against one or more child care service payments, which include the payments made to approved child care services under subitems 97(5) and 97A(5) of the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.

### **Item 10 – Application**

**Item 10** provides for application of amendments made by Schedule 3 to income years beginning on or after 1 July 2011.