THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

A NEW TAX SYSTEM (FAMILY ASSISTANCE AND RELATED MEASURES) BILL 2000

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Family and Community Services, Senator the Hon Jocelyn Newman)
OUTLINE AND FINANCIAL IMPACT STATEMENT

Assistance for families

As part of the Government’s plan for a new tax system, the structure and administration of family assistance is being recast and simplified with effect from 1 July 2000.

Twelve forms of assistance, currently available through the tax and social security systems are reduced to three new family assistance payments: family tax benefit Part A, family tax benefit (Part B) and child care benefit. The A New Tax System (Family Assistance) Act 1999 outlines the eligibility conditions for, and rates of payment of, the new family assistance payments. The A New Tax System (Family Assistance) (Administration) Act 1999 sets out the administrative, procedural and technical rules that will apply in relation to the administration of these new payments.

In broad terms, this Bill amends this legislation establishing the new family assistance regime to:

- provide the administrative infrastructure to support the payment of child care benefit;
- clarify the operation of various aspects of the family assistance law;
- replace regulation making powers with substantive provisions;
- insert relevant savings and transitional provisions; and
- make miscellaneous technical amendments.


The financial implications of these amendments are part of the overall financial implications for the Government’s family assistance package.

Additional matters relating to family assistance

This Bill also addresses anomalies in the existing family payment system in the social security law that would otherwise be carried over into the family assistance law.
Amendments are made to enable special benefit recipients who would otherwise not be eligible for family tax benefit or child care benefit because of the residence rules to access those payments.

The estimated program costs of this measure are $0.18m in each year for family tax benefit and negligible for child care benefit.

The debt provisions as they relate to FTB advances are amended to:

- ensure that any unrepaid FTB advance is a debt under the family assistance law where the advance recipient ceases to be entitled to FTB Part A before the advance is repaid or the recipient’s Part A rate drops to a level which is insufficient to recover the advance in the advance period; and

- prevent entitlement to an FTB advance arising where a person has an existing debt;

The estimated program savings from these changes are $0.14m in each year.

Amendments are made to ensure that a person who only has shared care of a child(ren) is assessed for rent assistance at both the "with child" and "without child" rates and paid at the higher rate.

The estimated program costs of this measure are $0.16m in 2000-2001, $0.17 in 2001-2002 and $0.17m in 2002-2003.

Changes are made to child care benefit to taper out the 10% part-time loading in long day care centres so that families using less than 34 hours of care continue to get the 10% loading but families using 34 to 37 hours get a lesser loading so that they do not get less CCB in total than those using 33 hours.

There are no additional program costs from this measure as the costs are absorbed within the base funding for CCB.

Changes are also made to child care benefit so that:

- the minimum rate for informal care for school children will be reduced to below the corresponding rate for younger children;

- a limit may be imposed on approved child care services’ discretion to approved special circumstances CCB on the grounds of the individual being in hardship if a pattern has been demonstrated of inappropriate use of the discretion;

- approval of child care services may be made by the Secretary from a specified day in the past;

- the application of penalties for approved child care services already set up in the legislation will be expanded, consequential on the extension in the legislation of obligation provisions; and
• penalties will be applied to approved child care services, as well as to individuals, for failure to comply with notification obligations, in line with the rest of family assistance.

The estimated program savings from these measures are negligible.

Other amendments relating to the Government’s new tax system

Amendments are made in this Bill to increase the rates of CDEP Participant Supplement, pensioner education supplement and carer allowance by 4%. This increase will compensate recipients for the effects of the goods and services tax.

The financial implications of these amendments are part of the overall financial implications for the compensation package provided for in the A New Tax System (Compensation Measures Legislation Amendment) Act 1999.

The Bill also make minor technical changes to the A New Tax System (Bonuses for Older Australians) Act 1999 to take account of the subsequent enactment of the Social Security (Administration) Act 1999.

These technical changes have no financial implications.
A NEW TAX SYSTEM (FAMILY ASSISTANCE AND RELATED MEASURES) BILL 2000

Clause 1 sets out how the Act is to be cited, that is, as the A New Tax System (Family Assistance and Related Measures) Act 2000.

Clause 2 provides for the commencement of the various schedules in the Act.

As a general rule, amendments to the A New Tax System (Family Assistance) Act 1999 are expressed to commence immediately after the substantive provisions in that Act. Similarly, amendments to the A New Tax System (Family Assistance) (Administration) Act 1999 are expressed to commence immediately after the substantive provisions in that Act.

However, where an amendment builds on, amends or further refines a provision that is amended by another Act that is part of the Government’s tax package, then the amendment is expressed to commence after the commencement of the relevant provision or provisions in that other Act. For example, subsection 2(6) provides for the commencement of those items in Schedule 3 to this Bill that increase certain social security payments by 4% to compensate for the effects of the goods and services tax. While these items amend the Social Security Act 1991, they rely on the commencement of the related amendments to the Social Security Act made by the A New Tax System (Compensation Measures Legislation Amendment) Act 1999 in order to be effective.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

In this explanatory memorandum, the following abbreviations are used:

- A New Tax System (Family Assistance) Act 1999 is referred to as the Family Assistance Act;
- A New Tax System (Family Assistance) (Administration) Act 1999 is referred to as the FA Admin Act;
- Social Security Act 1991 is referred to as the Social Security Act;
- family tax benefit is referred to as FTB; and
- child care benefit is referred to as CCB.
Part 1—Amendments relating to family tax benefit and maternity immunisation allowance

Overview of Part 1 of Schedule 1

Part 1 amends the eligibility and rate rules in the Family Assistance Act that apply to FTB. These amendments relate to the following issues:

- residence rules;
- pattern of care eligibility;
- arrears of rent assistance;
- rent assistance for parents paying low rent and sharing the care of a child;
- maintenance income test; and
- other amendments.

Part 1 also amends the eligibility conditions and a rate provision relating to maternity immunisation allowance, in keeping with the changes made to the pattern of care eligibility rules for FTB.

Explanation of amendments

Residence rules

Subsection 21(1) of the Family Assistance Act provides that an individual is eligible for FTB where, among other things, the individual is an “Australian resident” (as defined in section 3).

The qualification conditions for special benefit are outlined in Part 2.15 of the Social Security Act. To qualify for special benefit, a person must, among other things, be an Australian resident or the holder of a specified visa (see paragraph 729(2)(f)).

The residence requirements for special benefit are more generous than those applicable under the new family assistance regime. It is therefore possible for a person who is receiving special benefit to be precluded from FTB because of a failure to satisfy the FTB residence requirements.
**Item 1** aligns the special benefit and FTB residence rules. Subsection 21(1) of the Family Assistance Act is amended so that an individual is eligible for FTB if the individual is an Australian resident or the individual meets the requirements set out in subparagraphs 729(2)(f)(ii) to (v) of the Social Security Act and is in Australia.

**Pattern of care eligibility**

Where two or more individuals have a “pattern of care” in relation to an FTB child (eg, separated parents living apart), they can be eligible for FTB for only those days on which they have the care of the child. This rule is reflected in the eligibility conditions for FTB.

This contrasts with the treatment under existing family allowance rules where a parent is also eligible on those days that the child is with the other parent, but a percentage of family allowance is paid based on the time the child is in the parent’s care.

A different approach was adopted for FTB to provide greater clarity in the law as to the relative entitlements of separated parents sharing the care of a child. This also took into account that one parent may claim FTB as fortnightly payments, but the other parent may claim an end-of-year lump sum.

However, the approach adopted for FTB impacts on the rate of rent assistance available to an FTB customer. The maximum rate of rent assistance for an individual with an FTB child is significantly higher than the maximum rate of rent assistance available to social security recipients. This is because of the higher costs of rent associated with accommodating a child or children. In pattern of care situations, an individual’s rate of FTB includes a rent assistance component (if relevant) for those days on which the individual is eligible for FTB. If the individual is also a social security recipient, rent assistance for the remaining days is calculated under the relevant calculator in the Social Security Act. This is an unintended result. The intention is that the higher FTB maximum rate of rent assistance is available for each day in the period of the pattern of care. This is consistent with existing rules applicable to family allowance recipients.

In view of this impact on rent assistance, amendments are made to modify existing pattern of care arrangements in the family assistance law so that pattern of care eligibility is treated in a similar manner to “shared care” arrangements under family allowance. This allows individuals with a pattern of care in relation to a child to be eligible for FTB for each day in the period of the pattern of care. This resolves the rent assistance issue described above. The Secretary would then have a power to determine a percentage of FTB for an individual based on the living arrangements for the child. This percentage determination would not affect payment of rent assistance.

The changes to pattern of care eligibility described above are made by **items 2, 3, 4, 5, 6, 7, 8, 11, 16, 17, 18 and 20**.

**Item 2** omits from subsection 22(3) of the Family Assistance Act all words after paragraph (e). This repeal opens the possibility of an individual being an FTB child of an adult under subsection 22(3) and, at the same time, an FTB child of another adult.
**Item 3** repeals subsections 22(7) and (8) of the Family Assistance Act. These provisions become new section 22A as inserted by **item 4** and with a minor modification discussed below.

**Item 3** also insert new subsection 22(7). The new provision operates where:

- there is a pattern of care in relation to a child over a period such that for the whole or parts of that period the child is an FTB child of more than one adult;

- an adult claims FTB in respect of the child for some or all of the days in the period of the pattern of care; and

- the child is in the care of the adult for 10% or more of that period.

Where these conditions are met, the child is taken to be an FTB child of the adult for each day in the period of the pattern of care irrespective of whether or not the child was in the adult’s care on each of those days.

**Item 5** makes consequential amendments to subsections 23(1) and (2) as a result of the insertion of new subsection 22(7).

**Item 6** repeals subsection 23(3). This provision is no longer required because, under the revised pattern of care arrangements, a child can be an FTB child of two individuals at the same time. **Item 7** makes a consequential amendment to subsection 23(4) to omit a cross-reference to the repealed subsection 23(3).

**Item 8** replaces existing section 25 of the Family Assistance Act with a new section 25. The change is made because of the new pattern of care arrangements.

New section 25 operates where:

- there is a pattern of care in relation to a child over a period such that for the whole or parts of that period the child is an FTB child of more than one adult;

- an adult claims FTB in respect of the child for some or all of the days in the period of the pattern of care; and

- the child was, or will be, in the care of the adult for less than 10% of that period.

If these conditions are met, the child is taken not to be an FTB child of the adult for the period.

For the purposes of determining whether the 10% care rule applies, a child cannot be in the care of more than one adult on any given day. Where, as a matter of fact, the child is in the care of more than one adult on a day, the Secretary is given a discretion to determine which adult has the care of the child on the day, having regard to the living arrangements of the child.
Item 11 repeals section 30 of the Family Assistance Act. Section 30 deals with the situation where 2 or more individuals who are not member of the same couple and who are not living together are eligible for FTB in respect of a child at the same time and ensures that that only one individual can be eligible for FTB in respect of the child at any given time. The new pattern of care rules allows for more than one individual to be eligible for FTB in respect of the same child. Section 30 is therefore obsolete and is repealed by item 11.

Section 59 of the Family Assistance Act provides the mechanism for sharing FTB where a child is an FTB child of more than one individual and those individuals are not members of the same couple but are living in the same residence.

Under the new pattern of care rules, a child can also be an FTB child of more than one individual where the individuals are not members of the same couple and are living apart. Item 18 modifies section 59 to take this into account.

The changes to pattern of care eligibility described above also flow through to CCB, which draws on the concept of an FTB child. However, it should also be noted that the new subsections 42(2), 44(3) and 45(3) of the Family Assistance Act provide special powers for the Secretary to determine a child, who is not an FTB child, to be such a child for the purposes of CCB.

Items 16, 17 and 20 make consequential amendments to the eligibility and rate provisions relating to MIA.

Items 16 and 17 amend the eligibility rules for maternity immunisation allowance to reflect the changed pattern of care rules. Subparagraph 39(2)(b)(v) and paragraph 39(4)(c) are no longer required because, under the revised pattern of care rules, a child can be an FTB child of more than one individual at the same time.

Item 20 repeals existing section 68 and substitutes a new section 68. The new provision allows the payment of maternity immunisation allowance in respect of a child to be shared by eligible individuals at the same percentage as payments of FTB for that child.

Arrears of rent assistance

Paragraph 13(1)(b) and subclauses 13(2), (3) and (4) of Schedule 1 of the Family Assistance Act allow the Minister to make guidelines relating to the payment of rent assistance to individuals who are entitled to be paid FTB for a past period.

Items 25 and 27 repeal these provisions. They are replaced with substantive rules that complete the picture in relation to eligibility for rent assistance.

Item 25 inserts a new paragraph 13(1)(b). Under this provision, if an individual claims FTB and new subclause 13(2) does not apply to the claim, then an amount of rent assistance may be added in working out the individual’s rate of FTB.
New subclause 13(2), inserted by item 27, identifies claims that cannot attract payment of rent assistance. These are effective claims for FTB for a past period that occurs in the previous income year when not accompanied by a claim for FTB by instalment.

The types of claims that can attract payment of rent assistance because they are not excluded under new subclause 13(2) are:

- a claim for FTB by instalment; or

- a claim for FTB for a past period that occurs in current income year (if the individual is also eligible for FTB by instalment, such a past period claim is effective only if accompanied by an instalment claim by operation of subsection 10(3) of the FA Admin Act); or

- a claim for FTB for a past period that occurs in the previous income year where accompanied by a claim for FTB by instalment.

**Rent assistance for parents paying low rent and sharing the care of a child**

There is a current anomaly in the Social Security Act for a small number of parents paying low rent when they agree to take on the shared care of a child.

Income support customers without the care of a child and paying low rent may receive less total assistance when they agree to share the care of a child. This problem arises because persons with the care of a child face a higher rent threshold for payment of rent assistance than those without children. Although the maximum rate of rent assistance is higher for people with children, those paying low rent do not benefit from this. The higher rent threshold for families means that a person paying low rent may receive less rent assistance at the "with child" rate as part of family allowance than at the "without child" rate as part of income support. A person sharing the care of a child receives only a proportion of the standard family allowance, and in some cases the extra family allowance does not compensate for the reduction in rent assistance.

To avoid this anomaly under FTB, Division 3 of Part 2 of Schedule 1 of the Family Assistance Act is amended so that an individual who only has shared care of a child (ren) is assessed for rent assistance at both the "with child" and "without child" rates. Payment of rent assistance would then be made at the higher rate.

The comparison of the two calculations would only occur where the Secretary has made a determination under subsection 59(1) of the Family Assistance Act for each FTB child of the individual. It would not apply to an individual who has at least one FTB child who is not the subject of a determination under subsection 59(1). This rule is embodied in the new definition of "relevant shared carer", inserted into subsection 3(1) of the Family Assistance Act by item 73 of Part 3 of Schedule 1 to this Bill.
Clause 13 of Schedule 1 of the Family Assistance Act sets out the eligibility conditions for rent assistance. To be eligible for rent assistance, the rent payable by an individual must be more than the rent threshold. The relevant threshold amounts are provided for in paragraph 13(1)(f).

Item 26 omits existing paragraph 13(1)(f) and substitutes new paragraphs 13(1)(f) and (fa). The threshold amounts in new paragraph 13(1)(f) are the same as in the existing provisions except that they are amended to apply where the individual concerned is not a relevant shared carer. New paragraph 13(1)(fa) provides new lower rent threshold amounts for individuals who are relevant shared carers. These amounts will be consistent with rent threshold amounts that will apply under the Social Security Act from 1 July 2000.

An individual’s rate of rent assistance is worked out under clause 14 of Schedule 1 of the Family Assistance Act. Item 28 amends clause 14 so that it applies to work out the rate of rent assistance of an individual whom is not a relevant shared carer. Item 29 makes some minor technical amendments to the table in clause 14, including changing the heading of the table so that it refers to rent assistance payable to an individual who is not a relevant shared carer.

Item 30 inserts a new clause 14A which includes a table to be used in working out the rate of rent assistance payable to an individual who is a relevant shared carer. The rent assistance rates and rent threshold amounts used in the new table will be equivalent to the “without child” rates and thresholds used in working out the rate of rent assistance payable under the Social Security Act.

New clause 14A provides that the rate of rent assistance payable to an individual who is a relevant shared carer is the higher of:

- the rate of rent assistance that would be payable to an individual if the individual were not a relevant shared carer (the “with child” rate); and

- the rate of rent assistance worked out under the table in clause 14A that applies where an individual is a relevant shared carer (the “without child” rate).

The table then provides for the calculation of an individual’s rate of rent assistance based on the individual’s family situation and using the formula in Column 2 of the table up to the maximum rate specified in Column 3.

Clauses 78 to 82 of Part 3 of Schedule 1 to this Bill then provide for the indexation of the new threshold amounts and rates in the table in clause 14A and new paragraph 13(1)(fa). These amounts are to be indexed in the same manner as the amounts and rates in the table in clause 14 and paragraph 13(1)(f). These changes to the indexation provisions are discussed further in the context of amendments made by Part 3 of Schedule 1.
Maintenance income test

**Items 33 to 38 inclusive** amend Division 5 of Part 2 of Schedule 1 of the Family Assistance Act to:

- exempt certain pensioners from the maintenance income test; and
- clarify the annual rate of maintenance income.

Exempt certain pensioners from the maintenance income test

Division 5 of Part 2 of Schedule 1 does not, at present, provides for any exemptions from the maintenance income test.

**Item 33** inserts a new clause 19B into Division 5, which provides such an exemption. Under the new provision, if an individual, or the individual's partner, is:

- permanently blind; and
- receiving an age or disability support pension under the Social Security Act, a service pension (as defined in section 3 of the Family Assistance Act), or an income support supplement (provided for under Part IIA of the *Veterans’ Entitlements Act 1986*);

then the individual is exempt from the maintenance income test.

Clause 20 of Division 5 outlines the steps to be taken in working out an individual’s reduction for maintenance income. **Item 34** makes a consequential amendment to clause 20 so that it does not apply to an individual to whom new clause 19B applies.

Clarify the annual rate of maintenance income

Division 5 of Part 2 of Schedule 1 of the Family Assistance Act provides for the application of the maintenance income test (MIT). The first step in the MIT is to work out the annual rate of the individual's maintenance income (see clause 20). If the individual is a member of a couple, the amount is taken to be the sum of each member’s annual rate of maintenance income (see clause 21). An individual's annual rate of maintenance income is also affected by the apportionment of capitalised maintenance income under clause 24.

As currently drafted the MIT results in different outcomes depending on whether an individual claims FTB by instalment or for a past period.
Where a claim is made for FTB by instalment, the “annual rate of the individual’s maintenance income” will be the aggregate of maintenance income received by the individual during the ensuing year on the assumption that the person’s maintenance income continues at the same level for that year. If there is a change in circumstances such that the level of maintenance income changes, then the annual rate will need to be reassessed in light of the change. In effect, a new annual rate of maintenance is struck when the individual’s level of maintenance income changes.

By contrast, where a claim is made for a past period, the individual’s annual rate of maintenance income for the past period is known and the MIT is applied accordingly.

To ensure the same outcome for both instalment and past period claims, amendments are needed to replace the concept of annual rate of maintenance income with an “annualised amount” of maintenance income. This is done in new clause 20A, inserted by item 36.

The object of new clause 20A is to annualise the maintenance income (other than capitalised maintenance income) of an individual during an income year. Capitalised maintenance income would continue to be apportioned in accordance with clause 24, as amended by item 38.

For an individual who receives maintenance income during a period or periods in an income year, the annualised amount of maintenance income would be worked out using the formula in new subsection 20A(2). Under the formula, the amount of maintenance income received by the individual during a period or period in the year would be multiplied by

\[
\frac{\text{number of days in the income year}}{\text{number of days in the relevant period or periods}}
\]

New subsections 20A(3) to (9) outline what is meant by “relevant period”.

Where an individual receives maintenance income in an income year under a maintenance liability, the relevant period commences:

- where the maintenance liability arises after 1 July of that income year—on the day the maintenance liability arises; or
- where the maintenance liability arises before 1 July of that income year—on 1 July.

In this situation, the relevant period ends:

- on 30 June in that income year; or
- if the maintenance liability ceases before the end of that income year, on the day on which the liability ceases.

These rules are contained in new subclauses 20A(3) and (6).
However, an individual may start to receive maintenance income before a maintenance liability exists (for example, maintenance is being paid voluntarily under an informal agreement). In these cases, new subclause 20A(5) provides that the relevant period commences from the day the individual first received the maintenance income, or from an earlier date determined by the Secretary (this is to allow the individual to specify that the first payment represents arrears owing from a particular date). Under new subclause 20A(7), the relevant period ends:

- on 30 June in that income year; or
- if the individual ceases to receive the maintenance income before the end of that income year, when the individual ceases to receive the maintenance income.

There will be cases where an individual receives maintenance income in an income year under an informal arrangement, stops receiving maintenance income under this arrangement for a period (the “gap period”) and then later in the same year starts receiving maintenance income under a maintenance liability. Provided the individual and the payer are not members of the same couple during the gap period and the individual was entitled to claim, or apply for, maintenance income in the gap period, then the relevant period commences:

- on the first day the individual received maintenance income under the informal arrangement; or
- an earlier day related to the receipt of maintenance income under the informal arrangement as the Secretary determines (again, this is to allow the individual to specify that the first payment represents arrears owing from a particular date).

In this situation, the relevant period ends either when the maintenance liability ceases (if is ceases before the end of the income year) or 30 June of that income year.

These rules are contained in new subclauses 20A(4) and (8). They simplify the calculation of maintenance income of an individual who meets the above requirements by including the gap period in the individual’s relevant period for the income year.

New subclause 20A(9) deals with the situation where an individual receives maintenance income from a payer under an assessment under Part 5 of the *Child Support (Assessment) Act 1989*, the individual and payer become a member of the same couple and the individual elects to end the assessment from a specified day before the individual and the payer became a member of the same couple. For the purposes of determining the commencement or end of the relevant period, the assessment is taken to end from the day the individual and payer become a member of the same couple or an earlier day (not being a day before the specified day) determined by the Secretary.

This new rule ensures that maintenance income received after the specified day that the assessment is ended from and before the individual and the payer became a member of the same couple is included under the MIT.
New subclause 20A(10) defines “maintenance liability” as used in new clause 20A. Maintenance liability means:

- child support; or

- maintenance (other than child support) arising under a court order; or

- maintenance (other than child support) arising under a maintenance agreement registered in, or approved by, a court under the *Family Law Act 1975* or the law of a State or Territory.

New subclause 20A(11) specifies the day a maintenance liability arises. A liability to provide child support arises on the day the liability arises under the *Child Support (Assessment) Act 1989*. A liability to provide maintenance other than child support arises the day that the court order or maintenance agreement has effect from.

**Item 35** makes a consequential amendment to step 1 in the method statement in clause 20 of Schedule 1 of the Family Assistance Act. The existing reference to “annual rate” is replaced by a reference to “annualised amount”.

*Example of the operation of the new annualisation rules in new clause 20A*


B starts paying voluntary maintenance on 15/9/2000, and A advises that this represents payment from separation.


This continues until A applies for the child support to be collected by the Child Support Agency (CSA), and the CSA collection commences in relation to the liability from 1/1/2001.


The amount paid in the period 1/9/2000 to 30/6/2001 was $800 voluntary maintenance, $1,000 privately collected child support, and $3,600 CSA collected child support (a total of $5,400).

Therefore, the annualised amount during this period would be $5,400 \times 365 / 303 = $6,504.95.

**Item 37** makes a consequential amendment to clause 21 of Schedule 1 of the Family Assistance Act so that the clause refers, where appropriate, to the new concept of “annualised amount” rather than “annual rate”.

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Item 38 inserts a new subclause 24(2A) that provides for the annualisation of an individual’s capitalised maintenance income.

The annualised amount of an individual’s capitalised maintenance income for the capitalisation period in an income year is worked out, under new subclause 24(2A), by multiplying the amount worked out under subclause 24(2) by:

\[
\frac{\text{Number of days in the income year}}{\text{Number of days in the capitalisation period in the income year}}
\]

Finally, item 33 inserts a new clause 19A into Schedule 1 to make it clear that any maintenance income received by an FTB child of an individual from another individual is taken to be maintenance income received by the individual.

Other amendments

Definition of FTB child

Subsection 22(7) of the Family Assistance Act provides that an individual cannot be an FTB child of an adult if, among other things, the individual or someone on behalf of the individual is receiving payments under a prescribed educational scheme. This restriction applies to an individual of any age. According to subsection 3(1) of the Family Assistance Act, “prescribed educational scheme” has the same meaning as in subsection 5(1) of the Social Security Act.

There are children who are under 16 who receive prescribed educational payments such as payments under the Veterans' Children Education Scheme. The intention, which reflects the current position under the family allowance rules, is that receipt of such payments by, or for, children who are under 16 should not preclude payment of FTB.

Item 4 relocates subsections 22(7) and (8) as new section 22A. The table in subsection 22A(1) is also changed so that an individual cannot be an FTB child of an adult if the individual is aged 16 or more and the individual, or someone on behalf of the individual, is receiving payments under a prescribed educational scheme. This preclusion currently operates in relation to individuals of any age.

Item 15 makes similar amendments to the table in subsection 35(1) of the Family Assistance Act. Section 35 specifies the situations in which an approved care organisation is not eligible for FTB in respect of an individual.

Determination of an individual’s percentage of FTB

Where two or more individuals are eligible for FTB in respect of one or more FTB children (that is, in certain blended families and where there is a pattern of care in respect of a child), the Secretary has a discretion to determine each eligible individual’s percentage of FTB. The percentage determined by the Secretary is required to be a multiple of 5%. The relevant provisions in the Family Assistance Act are paragraphs 28(1)(e) and 29(e) and subsection 59(1).
**Items 9, 10 and 19** omit the 5% rule from these provisions.

The repeal of the 5% rule allows the Secretary more flexibility in determining an eligible individual’s percentage of FTB on the basis of the living arrangements for the child and allows a more equitable sharing of FTB in situations where 3 individuals are eligible for FTB in respect of the same FTB child or children.

**Eligibility for FTB if an eligible individual dies**

Section 33 of the Family Assistance Act deals with situations where, due to the death of an eligible individual, there is an unpaid amount of FTB.

An individual’s eligibility for an amount of FTB can be unpaid where the individual is eligible for FTB (other than in relation to the death of an FTB child) but dies before being paid the amount. This situation may arise, for example, where an individual who is a lone parent with an FTB child intends to claim FTB in a lump sum for the past period of eligibility but dies before doing so. In this scenario, the child may not be an FTB child of any other person during that period. Therefore, there would be an amount of FTB that is unpaid in relation to that period.

Subsection 33(1) allows another individual to claim so much of the unpaid amount that the deceased individual would have been able to claim under subsection 10(2) of the FA Admin Act, that is, so much of the unpaid amount that does not relate to any period before the beginning of the income year preceding the income year in which the individual died.

An individual’s eligibility for an amount of FTB can also be unpaid where the individual is eligible for FTB in relation to a deceased child but dies before being paid the amount or the individual dies at the same time as the child and would have been eligible for FTB for the deceased child had the individual not died. Subsection 33(2) addresses this situation by allowing another individual to claim any unpaid FTB in respect of the deceased child.

However, there is no limit in subsection 33(2) on how much of the unpaid amount of FTB can be claimed by another individual in substitution of the deceased individual. This is inconsistent with the treatment of unpaid amounts under subsection 33(1).

**Items 12, 13 and 14** therefore amend subsection 33(2) so that it contains the same restriction on claiming that subsection 33(1) does. The effect is to allow another individual to claim so much of the unpaid amount that does not relate to any period before the beginning of the income year preceding the income year in which the individual died.
FTB advances

Division 2 of Part 3 of the FA Admin Act provides for the payment of FTB advances. In broad terms, an individual can choose to receive an advance of their instalments of FTB provided certain conditions, set out in section 33 of the FA Admin Act, are satisfied.

The advance is then “repaid” by reducing the individual’s instalments of FTB for the period covered by the advance. Where an individual’s Part A rate of FTB is calculated using Part 2 of Schedule 1 of the Family Assistance Act, clauses 5 and 6 of Schedule 1 provide for the reduction of instalments of FTB to recover an advance.

There will be situations where an individual receives an FTB advance and then the individual’s rate of FTB decreases or payments cease due to a change in circumstances. Where this happens, the individual’s advance will not be repaid by the end of the advance period.

**Item 23** amends clause 5 of Schedule 1 of the Family Assistance Act so that if an individual’s rate of FTB drops to such an extent that continuing deductions until the end of the advance period would not see the advance repaid by the end of that period, then deductions cease. Any FTB advance that has not be repaid by deductions would then become a debt due to the Commonwealth and repayable in the usual ways.

**Items 21 and 22** make consequential changes to clause 3 and 5 of Schedule 1.

**Item 24** repeals clause 6 of Schedule 1. The repeal ensures that the individual who receives the FTB advance is liable for its repayment.

An individual whose Part A rate is calculated using Part 3 of Schedule 1 of the Family Assistance Act cannot access an FTB advance under the eligibility rules in Division 2 of Part 3 of the FA Admin Act – see subparagraph 33(1)(a)(ii).

Subparagraph 33(1)(a)(ii) is repealed in **Part 2 of Schedule 2** to this Bill. This repeal ensures that all FTB Part A customers are given the same access to FTB advances.

It also means that a mechanism for recovering advances needs to be inserted into Part 3 of Schedule 1 of the Family Assistance Act. This is done by **items 39 and 41**.

**Item 41** inserts a new clause 25A into Schedule 1 of the Family Assistance Act.

New subclause 25A(1) provides for the reduction of an individual’s Part A rate for the advance period where the individual has been paid an advance.

New subclauses 25A(2) and (3) ensure that reductions cease where an individual’s Part A rate drops to such an extent that continuing deductions until the end of the advance period would not see the advance repaid by the end of that period.

**Item 39** makes a consequential amendment to clause 25. The operation of clause 25 is made subject to new clause 25A.
Eligibility for rent assistance where individual or partner receiving incentive allowance

**Item 25** inserts a new paragraph (ba) into subclause 13(1) of Schedule 1. The new provision ensures that an amount of rent assistance is not to be added to an individual’s rate of FTB where the individual or the individual’s partner is receiving payments of incentive allowance under clause 36 of Schedule 1A of the Social Security Act.

This amendment brings the rent assistance eligibility rules for FTB into line with existing rules applicable to family allowance.

Rent paid by member of an illness separated, respite care or temporarily separated couple

Under the rent assistance provisions in the Social Security Act, if a person is a member of an illness separated or respite care couple, any rent paid or payable by the person’s partner is treated as paid or payable by the person (see, for example, point 1064-D8 of the Social Security Act).

Clause 16 of Schedule 1 of the Family Assistance Act only applies a similar deeming rule in the situation where an individual is a member of a couple and the couple is living together.

**Item 31** inserts a new clause 16A into Schedule 1 of the Family Assistance Act that operates in a similar manner to the equivalent social security rule. The new provision ensures that if an individual is a member of an illness separated, respite care or temporarily separated couple, any rent that the individual's partner pays or is liable to pay in respect of the premises occupied by the individual is to be treated as paid or payable by the individual.

Maximum Part A rate for recipients of DVA income support supplement

Clause 17 of Schedule 1 of the Family Assistance Act ensures that the income test does not apply to an individual if the individual or the individual’s partner is receiving a social security pension, a social security benefit or a service pension.

As an income support supplement (available under Part IIIA of the *Veterans’ Entitlements Act 1986*) is subject to the same income test as social security pensions, **item 32** includes this payment in clause 17.
Method 2 for large families with high income where method 1 would produce a higher rate

There are two methods that can be used in calculating an individual’s FTB Part A rate. The method used depends on whether the individual’s income exceeds the “higher income free area” or whether the individual or partner is receiving certain income support payments (see clauses 1 and 2 of Schedule 1 of the Family Assistance Act). If an individual’s adjusted taxable income does not exceed the higher income free area or the individual or partner is receiving certain income support payments then method 1 applies. If the converse is true, then method 2 applies. The “higher income free area” is defined to mean $73,000 plus $3,000 for each FTB child of the individual after the first.

The method 1 Part A rate of FTB is calculated using the method statement in clause 3 of Schedule 1. Under method 1, an individual is assured of the “base rate” of FTB Part A (see step 4 of the method statement). The base rate is defined in clause 4 as being equivalent to the individual’s maximum rate under clause 25 of Schedule 1 if the individual’s rate were being worked out under method 2. The assumption is that the rate of FTB Part A at the higher income free area will never be more than the base rate.

The starting point for the method 2 calculation is the maximum rate worked out under clause 25. The application of the method 2 income test ensures that any income in excess of the higher income free area reduces this rate by 30 cents for each dollar over that threshold.

The assumption referred to above is not correct. It is possible for an individual with a large family to be receiving more than the base rate of FTB Part A when the individual’s adjusted taxable income equals the higher income free area (ie, Method 1 applies). If the individual’s income exceeds the higher income free area and method 2 applies, the individual’s rate of FTB Part A will be less than what would have been the individual’s income and maintenance tested method 1 rate (see step 3 of the method statement in clause 3 of Schedule 1) if method 1 had applied.

This is an unintended result.

**Item 40** amends clause 25 of Schedule 1 of the Family Assistance Act to ensure that the Part A rate calculated under clause 25 is subject to a comparison with what would be the individual's "income and maintenance tested rate" under Step 3 of clause 3 of Schedule 1 if the individual's Part A rate were worked out using Part 2 of Schedule 1. The higher of the two rates would apply. The resultant rate would remain a "Method 2" rate.
Part 2—Amendments relating to child care benefit

Overview of Part 2 of Schedule 1

Part 2 amends the eligibility and rate rules in the A New Tax System (Family Assistance) Act 1999 (the Family Assistance Act) that apply to child care benefit (CCB). These amendments can be grouped into the following categories:

- amendments to interpretation provisions;
- revised eligibility provisions, including limitations on eligibility other than the weekly limit of hours;
- revised provisions relating to limitations on eligibility: the weekly limit of hours;
- revised rate provisions, including the special rate applicable for individuals in hardship or children at risk;
- amendments to the CCB Rate Calculator.

Explanation of amendments

Amendments to interpretation provisions

24 hour care definitions

New definitions are inserted relating to 24 hour care. 24 hour care provided to a child, by any approved child care service other than an approved occasional care service, may attract CCB, but only to a limited extent. The extent to which CCB is available for 24 hour care is largely reflected in the provisions relating to the weekly limit of hours. See the discussion below on new Subdivision G of Division 4 of Part 3, especially new subsection 53(4) and new section 56.

The new 24 hour care definitions are inserted into section 3 of the Family Assistance Act by items 42, 43, 44 and 48. The definitions are discussed below along with new section 56.

Definition of absence

The meaning of “absence” from a session of care provided to a child by an approved child care service is being clarified by items 45, 52 and 53 (item 52 substituting new sections 10 and 10A). The definition is essentially to allow CCB to be paid even though a child may be absent from care in certain circumstances, eg, illness or attendance at pre-school.
For this purpose, the current definition in the Family Assistance Act does not allow CCB to be paid for absences before the service starts providing care for the child or after it stops providing care. The clarified definition will allow CCB to be paid in these circumstances in some cases, eg, if the child is booked in to start care on a Monday but is ill on that day. This gives a beneficial outcome for families. The definition will now be split between occasional care and all other types of care. Because of the inherent irregularity in occasional care services, the absences must be handled differently, although the outcomes will be comparable in terms of how beneficial they are for the service and the customers.

The new definition also clarifies that 30 days is the maximum allowable number of permitted absence days, which is one of the grounds for allowing CCB to be paid despite absence.

**Disabled person definition**

“Disabled person” is a term used in the weekly limit of hours provisions (in particular, see new subsections 54(6) and (7) and section 57E). In the current subsection 53(1) of the Family Assistance Act, the term was to have been defined in a disallowable instrument. These amendments now insert the definition into section 3 of the Family Assistance Act.

A disabled person is a person who is either receiving disability support pension under the Social Security Act or invalidity pension under the **Veterans’ Entitlements Act 1986**, who is participating in an independent living program, who has been diagnosed to the appropriate level by a medical practitioner or psychologist, or who is one of a class of persons determined by the Minister in a disallowable instrument.

These amendments are made by **items 46 and 48** (the latter inserting new subsections 3(3) and (4)).

**Australian resident definition**

The purpose of **items 49, 50 and 51** is to clarify the current Family Assistance Act provision that allows a person to be determined to be an Australian resident for CCB purposes. The clarification is that such a determination may be made for a period or indefinitely, and that the Minister’s guidelines on the subject may deal with time limits for such periods.

**Other minor amendments**

**Items 47 and 48** (the latter inserting new subsection 3(6)) move existing stipulation’s that, for CCB, a week commences on a Monday, into the primary interpretation area.
Revised eligibility provisions, including limitations on eligibility other than the weekly limit of hours

NEW DIVISION 4—ELIGIBILITY FOR CHILD CARE BENEFIT

Item 54 repeals the Division of the Family Assistance Act currently relating to CCB eligibility and substitutes a new Division 4 of Part 3.

The new provisions incorporate the same basic elements of eligibility. However, their structure and content have been refined to better reflect the complex operation of the existing (ie, pre-family assistance) child care payments as translated to the new family assistance regime.

The new eligibility provisions themselves will be discussed under this heading, together with the limitations on eligibility that do not relate to the weekly limit of hours (see the next heading for that limit).

New section 41—Overview of Division

The new Division starts with an overview provision spelling out that the importance of the eligibility provisions is that they must be satisfied before a person may be determined to be entitled to be paid CCB. Such a determination is made under specified provisions of the FA Admin Act.

There are various types of CCB for which a person may be eligible. Either an individual or an approved child care service may be eligible for CCB by fee reduction. This is the type of CCB through which the fees charged by a service for care provided to a child during the year are reduced so that the family pays only the reduced amount. The service is funded to do this by way of regular advances from the Commonwealth. The service itself may be eligible for this type of CCB in the case of a child at risk of serious abuse or neglect if there is not already an individual eligible in respect of the child.

The other types of CCB for which an individual may be eligible are CCB for a past period, either for care provided by an approved child care service or by a registered carer, or CCB by single payment/in substitution because of the death of another individual who was eligible for, or entitled to, CCB.
New Subdivision A—Eligibility of an individual for CCB by fee reduction for care provided by an approved child care service

New section 42—When an individual is conditionally eligible for child care benefit by fee reduction for care provided by an approved child care service

This section sets out when an individual is conditionally eligible for CCB by fee reduction in respect of a particular child. Being determined, under the FA Admin Act, to be conditionally eligible entitles an individual to have his or her child care fees (for care provided, during the year, to the child by an approved child care service) reduced. The individual might also be conditionally eligible in respect of one or more other children in the family. The amount by which the fees are reduced for each child may differ.

There are three criteria for conditional eligibility. The first is that the child must be the individual’s, or his or her partner’s, FTB child (as defined, although subsection (2) provides a special additional power for the Secretary to determine a child to be an FTB child of the individual, or partner, for the purpose of this section).

The second criterion is that the individual, or his or her partner, is an Australian resident. There are two alternatives to this. One is that the individual, or the partner, meets the residence rules for special benefit under the Social Security Act (the same concession is made for FTB). These are more generous than for family assistance generally and allow the holding of certain visas as Australian residence. The other alternative is that the individual, or the partner, is studying in Australia and receiving Commonwealth financial assistance for that study. (There is also a discretion in section 8, as amended by items 49, 50 and 51, to determine an individual to be an Australian resident in cases of hardship.)

The third criterion relates to immunisation, but applies only to an FTB child who is under 7 and born on or after 1 January 1996 (in line with existing childcare assistance and childcare rebate arrangements). On claim for CCB by fee reduction, the immunisation criterion will always be satisfied. This may be so because the child is fully immunised for his or her age, or meets the requirements in some other way such as conscientious objection, as set out in section 6. Otherwise (if the section 6 immunisation requirements are not met), the immunisation criterion described in this section will still be satisfied, either because the Secretary gives a notice under the FA Admin Act requiring that the child meet the section 6 immunisation requirements within 63 days, or because the individual and the child are within the period before such a notice is given.

If, after the 63 day notice period, the child still does not meet the section 6 immunisation requirements, the individual will no longer be conditionally eligible under this section. This would be grounds for a variation under the FA Admin Act of the conditional eligibility determination with the effect that the individual is no longer conditionally eligible, and therefore no longer entitled to have his or her child care fees reduced.
There is no immunisation requirement explicitly mentioned in the current section 41 relating to conditional eligibility, although this requirement is mentioned explicitly for the other two forms of CCB covered by that legislation. It was always intended that this requirement would be applied through the Secretary’s power to impose an immunisation requirement (which itself was to have been provided by regulation, but is now incorporated into the FA Admin Act). The requirement is now given proper reflection in the conditional eligibility criteria.

New section 42 is subject to the limitations on eligibility provided by new Subdivision F (ie, those that do not relate to hours).

**New section 43—When an individual is eligible for child care benefit by fee reduction for care provided by an approved child care service**

This section works alongside new section 42 to provide the rules for eligibility (as opposed to conditional eligibility) for CCB by fee reduction.

First, a determination of conditional eligibility must be in force so that an individual is conditionally eligible for this type of CCB for a particular child. If so, a session of care (a term whose meaning is derived from a disallowable instrument under section 9, but essentially the minimum period of care for which a fee is charged) must be provided to the child, in Australia, by an approved child care service. The session must be one for which the individual, or partner, is liable to pay. If these criteria are all met, then the individual is eligible for the session.

This finding of eligibility will be made by the Secretary only after the end of the income year in which the session was provided, as part of the formal overall determination of the individual’s entitlement to be paid CCB by fee reduction for all sessions of care, for which the individual is eligible, provided in the year. The entitlement will be a gross amount for all of those sessions. If this should be more than the total amount by which the individual’s child care fees were reduced by the service for those sessions during the year, then a top-up amount of the difference will be paid to the individual. If the amount of the entitlement should be less than that fee reduction total, then the individual will owe the Commonwealth a debt of the difference.

The annual basis to the formal entitlement has no effect on the individual’s right to receive the benefit of fee reductions during the year. The new section 43 omits the provisions currently housed in that section relating to quarterly statements by services and quarterly instalment periods. These are to be properly reflected in the FA Admin Act as reporting periods, in the provisions relating to the obligations of services.

This section is subject to the various limitations on eligibility, including those relating to hours, contained in new Subdivisions F and G.
New Subdivision B—Eligibility of an individual for CCB for a past period for care provided by an approved child care service

New section 44—When an individual is eligible for child care benefit for a past period for care provided by an approved child care service

This new section is the equivalent of current section 43. It relates to eligibility for the lump sum type of CCB available after the end of an income year in respect of sessions of care provided within that year by an approved child care service. This type of CCB offers customers a choice, which is not available under the existing childcare assistance arrangements.

Little has changed between the two versions of the provision. However:

- The residence criterion has been relaxed (as it has been for FTB) so that it is satisfied if the individual, or his or her partner, meet the residence rules for special benefit under the Social Security Act. These are more generous than for family assistance generally and allow the holding of certain visas as Australian residence.

- The immunisation requirement now reflects the policy currently in place for childcare assistance and childcare rebate (ie, it only applies to children aged under 7 and born on or after 1 July 1996).

This section is subject to the various limitations on eligibility, including those relating to hours, contained in new Subdivisions F and G.

New Subdivision C—Eligibility of an individual for CCB for a past period for care provided by a registered carer

New section 45—When an individual is eligible for child care benefit for a past period for care provided by a registered carer

This new section is the equivalent of current section 49. It relates to eligibility for the type of CCB available for a past period for care provided by a registered carer. This type of CCB is similar to the existing childcare rebate arrangements.

Little has changed between the two versions of the provision. However:

- The residence criterion has been relaxed (in line with FTB) so that it is satisfied if the individual, or his or her partner, meet the residence rules for special benefit under the Social Security Act. These are more generous than for family assistance generally and allow the holding of certain visas as Australian residence.

- The immunisation requirement now reflects the policy currently in place for childcare assistance and childcare rebate (ie, it only applies to children aged under 7 and born on or after 1 July 1996).
• It has been spelled out that the care that would attract this type of CCB must not be provided as part of the compulsory education system in the relevant State or Territory. This is to avoid, consistent with existing arrangements, CCB being available in respect of school children on the basis of their teacher becoming a registered carer.

This section is subject to the limitations on eligibility set out in new sections 48 and 49.

New Subdivision D—Eligibility of an individual for CCB by single payment/in substitution because of the death of another individual

New section 46—Eligibility for CCB if a conditionally eligible or eligible individual dies

This new section is the equivalent of current section 57. It relates to eligibility for the type of CCB available to an individual if another individual has died. The provision has been expanded to recognise that amounts might be payable, not only in respect of the deceased person’s eligibility (as currently provided), but also in respect of the deceased person’s conditional eligibility, for certain types of CCB. The provision should be available to resolve generally the outstanding entitlement of the deceased person. Any future CCB in relation to the child will be the subject of a new claim by, typically, the person in the family who will now be liable for the child’s child care fees.

The first situation covered by the section relates to the deceased person having been eligible for an amount of CCB under new section 43, 44 or 45 (whether or not a claim had been made) and the amount not having been paid. In this case, if an individual makes a claim for so much of the amount as relates to any period falling after the beginning of the income year before the one in which the other individual died, and if the Secretary considers that the individual should be eligible for that much of the amount, then the individual is eligible for it.

The second situation relates to the deceased person having been conditionally eligible under new section 42 for CCB by fee reduction, but not having had his or her entitlement to be paid such CCB determined. In this case, an individual may claim such amount as the deceased person would have been entitled to be paid that relates to any period falling after the beginning of the income year before the one in which the other individual died, and the Secretary may, similarly to the first case, find the individual to be eligible for the amount.
New Subdivision E—Eligibility of an approved child care service for CCB by fee reduction for care provided by the service to a child at risk

New section 47—When an approved child care service is eligible for CCB by fee reduction for care provided to a child at risk

Current sections 45, 46 and 47 provide a regime by which approved child care services may be eligible (at their own discretion) or conditionally eligible or eligible (at the Secretary’s discretion) in respect of a session of care provided by the service to a child at risk of serious abuse or neglect or whose family is in hardship.

This regime is refined in new section 47 to better reflect the way service eligibility will work in practice, and consistent with existing arrangements for childcare assistance.

It will now be the case that the service may be eligible only in child at risk cases. This will always be on the strength of its own belief as to the child being at risk, with the Secretary’s role and the technical construction of conditional eligibility removed.

The discretion is available to enable the service to respond immediately to cases in which it is desirable that any cost impediments to a child at risk being placed into child care be removed, even though there may be no individual conditionally eligible to enable the fee reduction process to take place. It should be noted, of course, that the availability of fee reductions is an important element in persuading the child’s carer to place the child into care and therefore away from the at risk situation.

Although the service will have autonomy in this regard, and although it will generally be responsible for setting its own rate (see the discussion below on the revised rate provisions) for the first 13 weeks in relation to the child in a financial year, it should be noted that the Secretary will retain the discretion to set the rate for the service after that initial period, and within that period in certain other circumstances. Thus, the Secretary will retain effective control in the longer term on the amount of CCB expended in cases of the service being eligible.

Furthermore, there are offence and debt provisions in the FA Admin Act that will apply should the service exercise its discretions in this area on a false basis.

Generally, however, the service decides on its own eligibility and this is not an issue that the Secretary is able to address in the end of year determination of the service’s entitlement to be paid CCB by fee reduction.
It should be noted that the process of the service becoming eligible for the child is merely a mechanism for the fee reduction system to operate. There remains a family, or someone else, who is liable for the fees and, if the rate of fee reductions set by the service or the Secretary is anything less than 100% of the fees charged, then there will be a balance for the family to pay to the service. The service, in the meantime, reimburses itself for the fee reductions by drawing on its regular advance from the Commonwealth, and must account for the expenditure on its next reporting statement (see the discussion under the relevant areas of the FA Admin Act). To this extent, the mechanism is just the same as for conditionally eligible individuals. Again, the service being eligible is merely a mechanism for the fee reduction process to operate, and for it to begin to operate quickly.

It follows that, even when a child becomes at risk, there is no need for the service eligibility mechanism if an individual is already conditionally eligible in respect of the child (in any event, a claim by a service in such a situation would be ineffective – see new section 49M in the FA Admin Act). In that case, fee reductions are already available and the issue becomes one of whether the availability of a higher rate, or more “eligible” hours in a week than would otherwise apply, would relieve the at risk situation in any way. If so, then the service has discretions in those areas even when an individual is conditionally eligible (see the discussion below on the revised rate provisions and the limitations on eligibility relating to the weekly limit of hours).

**New Subdivision F—Limitations on conditional eligibility or eligibility for CCB for care provided by an approved child care service or a registered carer that do not relate to hours**

This new Subdivision describes the four limitations on conditional eligibility or eligibility for CCB that do not relate to the weekly limit of hours, which is discussed under the next heading. Only one of these limitations does not currently appear in the Family Assistance Act.

**New section 48—No multiple eligibility for same care**

This new section makes it clear that the Secretary may decide between two individuals who would otherwise be eligible or conditionally eligible for the same session and the same child, so that only one is eligible or conditionally eligible. The Secretary is bound in such a decision by rules by the Minister (if any) in the form of a disallowable instrument.

This differs from the current section 50 only in the addition of conditional eligibility as a subject for the provision.

**New section 49—Person not conditionally eligible or eligible for CCB if child in care under a welfare law or child in exempt class of children**

This new section prevents a person (ie, an individual or a service) from being eligible or conditionally eligible in respect of a child if the child is in care under a welfare law or falls within a class of children specified by the Minister in a disallowable instrument in respect of whom no-one is eligible or conditionally eligible.
This is exactly the same as current section 51.

**New section 50—Person not eligible for CCB while an approved child care service’s approval is suspended**

This new section provides a new limitation on eligibility that applies should the approval of a service providing care to a child be suspended under the FA Admin Act. While it is already clear from the eligibility provisions for CCB for care provided by an approved child care service that a service’s approval must be current for a person to be eligible, this new section serves the specific function of clarifying the period in relation to which the person’s eligibility will be limited.

In fact, the limitation on eligibility will apply during the period of the suspension, ie, beginning when the suspension takes effect and ending when the effect of the suspension is ended by the revocation of the suspension. In this regard, it should be noted that a suspension may be revoked with retrospective effect – thus, a person’s eligibility would be restored also retroactively.

**New section 51—Approved child care service not eligible for care provided to a child at risk if Minister so determines**

This new section allows the Minister to determine, in a disallowable instrument, specified circumstances in which services’ eligibility under new section 47 will be limited to a specified period.

This is the equivalent of current subsections 48(2) and (3).

**Revised provisions relating to limitations on eligibility: the weekly limit of hours**

**New Subdivision G—Limitations on eligibility for CCB for care provided by an approved child care service relating to hours**

This new Subdivision addresses the matters currently dealt with by sections 52 to 56 of the Family Assistance Act. The provisions have been rationalised to better reflect the way the limitations on hours arrangements work for childcare assistance, but with a view to how they sit in the new family assistance structure. In particular, the way that the limit works for individuals who are conditionally eligible for CCB by fee reduction has been made clearer.

Furthermore, several elements of the existing arrangements that are not present in the current CCB provisions have been incorporated, ie, 24 hour care, the work/disability test for the limit of more than 50 hours in a week, and how, in the case of the limit of more than 50 hours in a week, the actual number of hours more than 50 in the limit is established.
The basic principle is that, regardless of a person being eligible for CCB (either by fee reduction or for a past period for care provided by an approved child care service), the person can be paid only for up to a certain number of hours in sessions of care provided to a child in a week. The minimum number of hours per week is 20. The most common reason for paying for more hours in a week than this (up to 50) is that the family has work/training/study commitments. However, there is an extensive range of bases for varying the limit that applies to a person, and four distinct levels of limit. Although the full range of bases and levels are available in respect of CCB by fee reduction, not all are available in respect of CCB for a past period.

The limit is imposed not on payment of CCB but on eligibility for CCB. Any person eligible for CCB will be subject to a weekly limit of hours of some type and level.

**New section 52—Limit on eligibility for CCB relating to hours**

This new section is the most important in the Subdivision. It sets down the basic principle that, despite an individual or a service (a fee reduction claimant) being eligible for CCB by fee reduction, or an individual (a past period claimant) being eligible for CCB for a past period for care provided by an approved child care service, there is a limit on the number of hours in sessions of care in a week for which the claimant is eligible.

The Subdivision itself is the basis for working out the limit in any given case. Once it is worked out using these substantive provisions, the limit is determined, or taken to have been determined, under the FA Admin Act (in which case, the limit may be varied, or taken to have been varied, under that Act from time to time, particularly to reflect the new application of the Subdivision to any changes in the person’s circumstances), or is applied in a determination of entitlement under that Act.

Particular mention is made of the way the limit applies to a fee reduction claimant who is an individual. In this case, the limit is initially determined on claim, once the individual has been determined to be conditionally eligible. The limit is worked out under the Subdivision as if references to an individual being eligible under new section 43 were references to the individual being conditionally eligible under new section 42. The limit applicable to the individual is notified to the individual and to the approved child care service providing the care. The service will apply the limit in working out the amount of fee reductions for the individual throughout the year. The limit, as varied if applicable during the year for various circumstances, will then be applied again after the end of the income year as part of the Secretary’s formal determination of the individual’s entitlement to be paid CCB.

Exactly which hours, of those in the higher cost sessions of care charged for by a service in a week, count towards the limit of hours applicable to a claimant is a matter addressed by a determination by the Minister under new section 57A.

**New section 53—Weekly limit of hours**

The first two subsections of this section set down which limits of hours may be available under the Subdivision to the two different types of claimant covered by the provisions.
A fee reduction claimant may have any one of all four limits applied to him or her, as provided by the Subdivision. In other words, a limit of 20 hours, 50 hours or more than 50 hours may apply, or a 24 hour care limit (see new section 56). In the case of the latter, it is noted that the section does not provide for a 24 hour care limit to apply in respect of care provided by an approved occasional care service.

A past period claimant may have one of only two limits applied—a limit of either 20 or 50 hours.

There is an explicit rule that says that, if a limit of 50 or more than 50 hours or a 24 hour care limit does not apply to a claimant (as applicable) in a week, then a limit of 20 hours applies in that week. Thus, 20 hours in sessions of care per week is the minimum for which a claimant will be eligible. That is, the claimant will generally be paid CCB for the hours charged for by the service in the week up to 20; however, if the claimant was charged only for 10 hours, then only 10 hours will attract CCB.

New subsection 53(4) provides a rule that has the effect that a claimant is not eligible for 24 hour care that is not approved under the Subdivision. Therefore, regardless of which limited number of hours applies at any point in time, the claimant will not be paid CCB for the particular hours falling in a period of unapproved 24 hour care. 24 hour care is discussed in detail under new section 56.

**New section 54—Circumstances when a limit of 50 hours applies**

This section operates for the purposes of new sections 52 and 53 to set out the circumstances in which a limit of 50 hours in sessions of care applies in a week to a claimant.

New subsections 54(2) and (3) provide for a limit of 50 hours if the work/training/study test is satisfied (the test is provided by current sections 14 to 17 and disallowable instruments under those sections). In the case of a past period claimant or a fee reduction claimant who is an individual, the test must be satisfied by the claimant and his or her partner (if any). If the fee reduction claimant is an approved child care service (ie, if the service is eligible under new section 47), the test must be satisfied by the individual (and his or her partner, if any) in whose care the child last was before the first session of care in the week.

New subsections 54(4) and (5) provide for a limit of 50 hours if carer allowance for a disabled child is payable. In the case of a past period claimant or a fee reduction claimant who is an individual, the carer allowance must have been determined before, and be payable during, the week to the claimant or his or her partner (if any) in respect of an FTB child of the claimant or partner. If the fee reduction claimant is an approved child care service, the carer allowance must have been determined, and be payable, on the same basis, but to the individual (or his or her partner, if any) in whose care the child last was before the first session of care in the week.
New subsections 54(6) and (7) provide for a limit of 50 hours in respect of disabled persons (a term defined in section 3 – see the discussion under the first heading above). For a past period claimant or a fee reduction claimant who is an individual, both the claimant and his or her partner (if any) must be disabled persons during the week, and the child must be an FTB child of the claimant. If the fee reduction claimant is an approved child care service, the same requirements apply, but they attach to the individual in whose care the child last was before the first session of care in the week and his or her partner (if any).

The 50 hour limit, in the case of the work/training/study test, carer allowance and disabled persons circumstances, always operates on an ongoing basis for a fee reduction claimant who is an individual. However, because a service can be eligible only for a period (because of the fact that its rate, under new sections 76 and 81, can be set only for a specified period), the 50 hour limit under these subsections for a fee reduction claimant that is a service can also only ever be for that specified period.

For a past period claimant, the 50 hour limit, on whatever grounds are available, applies for whichever weeks (in the past period) in respect of which the criteria apply as set out in the various provisions.

New subsections 54(8) and (9) provide for a limit of 50 hours if the Secretary is satisfied that a child needs or needed more than 20 hours’ care in a week because of exceptional circumstances. This basis for the 50 hour limit is available only to fee reduction claimants. For a claimant who is an individual, the exceptional circumstances must exist in relation to the claimant. For a claimant that is an approved child care service, the exceptional circumstances must exist in relation to the individual in whose care the child last was before the first session of care in the week.

New subsection 54(10) is the basis for the 50 hour limit that flows from the service (that is providing care to the child) exercising its own discretion, to certify that the child needs or needed more than 20 hours’ care in a week, because the child is or has been at risk of serious abuse or neglect. The service may do this whether it is eligible itself under new section 47 or an individual is conditionally eligible under new section 42. The limit is available only to fee reduction claimants.

The service may exercise this discretion in relation to a particular child for a total of up to 13 weeks in a financial year (new subsection 54(11)). After that, the Secretary has a discretion to decide the matter (new subsection 54(12)).

It should be noted that, even though a child may be at risk (whether the service is eligible or an individual is conditionally eligible), there will not necessarily be a certificate given or a decision made under these subsections because the at risk situation will not necessarily be helped by the availability of more than 20 hours’ eligibility in a week. For example, a child may be at risk only on Mondays because of the particular drinking habits of one member of the family. If the child already attends care on Mondays, there is no purpose served in approving additional hours of care for the child.
Both the exceptional circumstances and child at risk bases for the 50 hour limit are always for a specified period of a complete number of weeks, starting on a Monday (see items 47 and 48).

New subsection 54(13) provides that a 50 hour limit applies in a week to either a fee reduction claimant (individual or service) or a past period claimant if a determination by the Minister is in force during the week under new section 57 in relation to the service providing the care to the child. Such a determination may be in force if the service is the sole provider in an area of the kind of care it provides and would be likely to close if not for the determination. Once such a determination is in place, the effect flows through to all customers of the service (including itself) who are eligible, or conditionally eligible, for CCB so that they have a limit of 50 hours on these grounds.

Because the Minister’s determination has to be made for a specified period, the 50 hour limit that flows from it to claimants will also be applicable only on the basis of that specified period.

New subsection 54(14) provides for a 50 hour limit to apply in a week to a past period claimant or to a fee reduction claimant who is either an individual or an approved outside school hours care service if the child to whom the care is provided needs or needed before or after school care during the week and this care is provided by an approved outside school hours care service. Such care would usually be covered adequately by the usual 20 hour limit and it would certainly not be possible to exhaust 50 hours of eligibility on this kind of care. This 50 hour limit therefore effectively means that such care is unlimited. It is intended to apply this provision to every child using before or after school care provided by an approved outside school hours care service.

This particular 50 hour limit operates on an ongoing basis for a fee reduction claimant who is an individual. However, (as mentioned above) because a service can be eligible only for a period, the 50 hour limit under this subsection for a fee reduction claimant that is a service can also only ever be for that period.

New section 55—Circumstances when a limit of more than 50 hours applies

This section operates for the purposes of new sections 52 and 53 to set out the circumstances in which a limit of more than 50 hours in sessions of care applies in a week to a claimant. Only fee reduction claimants have access to the limit of more than 50 hours.

Unlike the previous section, in which the usual 20 hour limit is lifted so that a person may be eligible for anything up to 50 hours in a week, this limit of more than 50 hours is not at large – the specific criteria in each of the subsections in new section 55 dictate exactly for how many hours the claimant is eligible. This number of hours is recorded when the Secretary notifies (under the FA Admin Act) the claimant, and the service providing the care, of the weekly limit of hours determined for the claimant.
New subsections 55(2) and (3) provide that, if care is or was needed for a child for a particular number of hours in a week more than 50, and if that was the case because the work/disability test is satisfied for the particular number of hours, then a weekly limit of hours applies of the particular number of hours more than 50. If the fee reduction claimant is an individual, the test must be satisfied by the claimant and his or her partner (if any). If the fee reduction claimant is the service, the test must be satisfied by the individual (and his or her partner, if any) in whose care the child last was before the first session of care in the week.

The meaning of the work/disability test is provided by new section 57E. The essence of the test is that neither the individual concerned nor his or her partner (if any) is available to care for the child because of work related commitments (at the same time as each other, in the case of a couple). A modification is made if one member of a couple is a disabled person – in this case, only the other member of the couple needs to be unavailable to care for the child because of work related commitments. The number of hours more than 50 in a week for which this is established in each case is the particular number of hours that constitutes the claimant’s weekly limit of hours.

This particular more than 50 hour limit may operate, for a fee reduction claimant who is an individual, either on an ongoing basis or for a specified period. However (as mentioned above under new section 55), because a service can be eligible only for a period, the more than 50 hour limit under these subsections for a fee reduction claimant that is a service can also only ever be for that period.

New subsections 55(4) and (5) provide that, if the Secretary is satisfied that a child needs or needed care in a week for a particular number of hours more than 50 because of exceptional circumstances, then a weekly limit of hours applies of the particular number of hours more than 50. For a fee reduction claimant who is an individual, the exceptional circumstances must exist in relation to the claimant. For a fee reduction claimant that is an approved child care service, the exceptional circumstances must exist in relation to the individual in whose care the child last was before the first session of care in the week.

New subsection 55(6) is the basis for the more than 50 hour limit that flows from the service (that is providing care to the child) exercising its own discretion, to certify that the child needs or needed care in a week for a particular number of hours more than 50, because the child is or has been at risk of serious abuse or neglect. The service may do this whether it is eligible itself under new section 47 or an individual is conditionally eligible under new section 42. If the service exercises the discretion, then a weekly limit of hours applies of the particular number of hours more than 50.

The service may exercise this discretion in relation to a particular child for a total of up to 13 weeks in a financial year (new subsection 55(7)). After that, the Secretary has a discretion to decide the matter (new subsection 55(8)).

As noted above in relation to the 50 hour limit, there will not necessarily be a certificate given or a decision made under these subsections even if a child is at risk. The exercise of the discretion will depend on the whether the aim of removing the child from the at risk situation would be assisted by the exercise of this discretion.
Both the exceptional circumstances and child at risk bases for the more than 50 hour limit are always for a specified period of a complete number of weeks, starting on a Monday (see items 47 and 48).

**New section 56—Circumstances when 24 hour care limit applies**

A 24 hour care limit is the weekly limit of hours that applies when a fee reduction claimant (24 hour care is not available to a past period claimant) has one or more approved periods of 24 hour care in a week. The limit is effectively the mechanism to approve 24 hour care, and also to suspend the normal weekly limit of hours that would otherwise apply in the week.

New subsections 56(1) and (2) make it clear, however, that a 24 hour care limit (and therefore 24 hour care) is not available, whether to an individual or a service, in respect of occasional care.

The 24 hour care definitions are inserted by items 42, 43, 44 and 48 (see the first heading above). A “24 hour care period” is simply a period of time that is at least 24, but less than 48, consecutive hours (eg, 36 hours would count as one 24 hour care period; 50 hours would count as two 24 hour care periods, as would 65 hours; 75 hours would count as three 24 hour care periods).

The meaning of “24 hour care” is set out in new subsection 3(5). Generally, it is care provided to a child by an approved child care service throughout a 24 hour care period. However, if there is a break, for anything less than half of the period, during which the child is absent from the service’s care (eg, to attend school, medical treatment or a sporting activity), it is still 24 hour care as long as the services remains responsible for the child during the break, eg, the service would be the person to be contacted by the school, etc, in the event of an emergency affecting the child). Should the child go back into the care of his or her parent at some stage during the 24 hour care period (eg, should the parent, who may be attending a live-in conference some miles away, take the child out to lunch), the continuity of the 24 hour care period would be broken.

When a claimant has a “24 hour care limit” in a week, the claimant will basically be eligible for approved 24 hour care, and the usual weekly limit of hours will be suspended for other sessions of care in the week. The 24 hour care limit differs from the other weekly limits of hours in that it is not a limit based on a number of hours. It is a limit that relates to particular hours in the week. A 24 hour care limit applicable in a week consists of:

- the **particular** hours (as opposed to the **number** of hours) in any 24 hour care approved, by the service or the Secretary, under new section 56; plus

- the particular hours in all sessions of care (noting that 24 hour care, like other care, is provided in sessions of care) provided to the child in the week, **but not counting** the particular hours in those sessions that fall within a 24 hour care period.
The effect of this is that, in a week in which one or more periods of 24 hour care are approved for a claimant, the claimant will be eligible for the hours in that approved 24 hour care, plus whatever other hours were charged for by the service in that week, unless they were unapproved 24 hour care.

Thus, the 24 hour care limit serves the additional purpose of preventing a person, who has approved 24 hour care in a week, from being eligible for unapproved 24 hour care in that week. (The other aspect of this, ie, to prevent a person, who does not have approved 24 hour care in a week, from being eligible for unapproved 24 hour care, is provided by new subsection 53(4).)

New subsections 56(3) and (4) provide the basis for the 24 hour care limit that flows from the service (that is providing care to the child) exercising its own discretion in relation to 24 hour care. Under this, the service may certify that the child needs or needed 24 hour care in a week for one or more 24 hour care periods. The service may do this whether it is eligible itself under new section 47 or an individual is conditionally eligible under new section 42.

If the fee reduction claimant is an individual, the service must make the certification on the basis that neither the claimant, nor his or partner (if any), is able to care for the child during those 24 hour care periods because of their combined work related commitments or because exceptional circumstances exist during those periods. If the fee reduction claimant is the service, then the same criteria apply, but attaching to the individual (and his or her partner, if any) in whose care the child last was before the first session of care in the week.

The service may exercise this discretion in relation to a particular child for a total of up to fourteen 24 hour care periods in a financial year (new subsection 56(5)). After that, the Secretary has a discretion to decide the matter, initially for up to a further fourteen 24 hour care periods in the financial year (new subsections 56(6) and (7)) and for more than that if it is considered essential in the circumstances (new subsection 56(8)).

**New section 57—Minister’s determination of sole provider**

This section is the basically the same as current subsections 53(3) and (4), except that some machinery provisions have been added.

It provides for the Minister to determine an approved child care service to be the sole provider in an area of the kind of care that it provides. To make such a determination, the Minister must consider that the service would be likely to close if the determination were not made. The determination is in force for a specified period. The consequence of the determination is that all customers of the service (including itself, should it be eligible for CCB by fee reduction), whether fee reduction claimants or past period claimants, have a weekly limit of 50 hours applicable to them under new subsection 54(13).
New section 57A—Minister to determine which hours in sessions of care are to count towards the limits

This section is the new form of current subsections 52(2A) and 54(2A). It provides that the Minister must determine rules relating to how to work out which of the hours in sessions of care in a week are to count towards the limit of 20, 50 or more than 50 hours that might apply to a claimant in a week. Without this stipulation, it may not be possible to calculate the CCB payable for the limited number of hours because the claimant could quite legitimately be charged at different rates for the various sessions. For example, the claimant may use more than one type of approved child care service, in relation to which there may be different standard rates.

In this sense, the sessions of care that would be the subject of the Minister’s determination are those in the higher cost category, ie, sessions other than those specified. There is no reason to specify which of the hours in the remaining sessions of care count towards the limits as they all attract the same standard hourly rate.

The Minister’s determination is a disallowable instrument (see new section 57D).

New section 57B—Minister may determine rules

This section is the equivalent of current subsection 56(2). It allows the Minister to determine rules relating to the giving of certificates by an approved child care service, or the making of decisions or determinations by the Secretary, under new sections 54, 55 or 56, or the making of the Minister’s own determination under new section 57 (sole provider). Also, rules may deal with terms used in the Subdivision, such as “exceptional circumstances” and “work related commitments”.

The Minister’s determination is a disallowable instrument (see new section 57D).

New section 57C—Certificates to be given and decisions and determinations to be made in accordance with rules

Should any rules be made by the Minister under new section 57B, then this section obliges a decision maker under new section 54, 55, 56 or 57 to act in accordance with the rules. This is the equivalent to current subsection 56(1).

New section 57D—Minister’s determinations subject to disallowance

As indicated above, the Minister’s determination under new section 57A and any determination under new section 57B is a disallowable instrument under the Acts Interpretation Act 1901. This is already currently provided in section 56A.

New section 57E—Meaning of work/disability test

This section is discussed above in relation to new subsections 55(2) and (3).
Revised rate provisions, including the special rate applicable for individuals in hardship or children at risk

NEW DIVISION 4—CHILD CARE BENEFIT

Item 55 repeals the Divisions of the Family Assistance Act currently relating to the rate of CCB and family assistance indexation and substitutes new Divisions 4 and 5 of Part 4.

New Subdivision A—Overview of Division

New section 69—Overview of Division

This section describes the way the Division is organised.

New Subdivisions B and C deal with the rate of fee reductions and CCB if care is provided by an approved child care service.

New Subdivision B provides general provisions relating to rate in respect of CCB by fee reduction and CCB for a past period for care provided by an approved child care service. In particular, it sets out when the rate in respect of CCB by fee reduction is calculated using the CCB Rate Calculator and when it is calculated using new Subdivision C. In the case of CCB for a past period, the rate is always worked out using the CCB Rate Calculator.

New Subdivision C deals with the special rate applicable when a child is at risk of serious abuse or neglect or when a child’s family is in hardship. Such a rate may be at the discretion of either an approved child care service or the Secretary, as provided. A rate may be set on this basis either when an individual is conditionally eligible or when the service is eligible under new section 47.

The formal rate of CCB for sessions of care provided during an income year, in respect of an individual eligible for CCB by fee reduction under new section 43 or a service eligible for CCB by fee reduction under new section 47, is generally worked out after the end of the income year. However, the formal rate for certain sessions is generally set during the year, while the individual is conditionally eligible. These sessions are those in relation to which a special rate on the basis of hardship or child at risk is certified by the service providing the care, or determined by the Secretary, under new Subdivision C. These formal rate determinations or certifications are applied by the Secretary in the determination under the FA Admin Act of the person’s entitlement to be paid CCB.
Meanwhile, for sessions during the year other than these special rate sessions, the service works out a rate on the basis of the usual rate calculation rules contained in the Family Assistance Act, and uses this rate to work out the amount by which the individual’s fees are to be reduced for each session. (In working out the rate in this way, the service must apply the Secretary’s determinations of the individual’s CCB % and schooling % notified to the service under the FA Admin Act.) It is one of the service’s obligations to work out the individual’s rate in this way, as provided by the FA Admin Act. In this Division, the rate worked out in this way is referred to as the “rate of fee reductions”. Other references to the “rate of CCB” mean the formal working out of the rate, either after the end of the year or under new Subdivision C.

New Subdivision D deals with the rate of CCB if care is provided by a registered carer.

**New Subdivision B—General provisions relating to rate**

**New section 70—Application of Subdivision to parts of sessions of care**

This section makes it clear that the Subdivision applies to a rate of fee reductions or CCB for a part of a session of care as if a reference to a session included a reference to a part of a session. This basic rule is present in current section 69.

**New section 71—Weekly limit on CCB for care provided by an approved child care service**

This section limits the amount of CCB for sessions of care for which a person is eligible in a week. The general principle is that the limit is the service’s normal fees for the sessions.

The fact that the limit is worked out on the basis of the sessions of care for which the person is eligible takes account of the weekly limit of hours (which is an element of eligibility), so that this limit on the amount of CCB does not allow more CCB than is envisaged by the weekly limit of hours. For example, if a person has a limit of 20 hours, the amount of CCB for the week is limited to the service’s normal fees for up to 20 hours only.

For an individual eligible for sessions of care under new section 43 (by fee reduction), the limit is the amount that the service would have charged for the sessions if the individual were not so eligible.

For an individual eligible for sessions of care under new section 44 (for a past period), the limit is the amount charged by the service for the sessions.

For a service eligible for sessions of care under new section 47 (by fee reduction—child at risk), the limit is the amount that the service would otherwise have charged the individual in whose care the child last was before the first session in the week for the sessions.

This limit affects a special rate set under new Subdivision C as well as a rate worked out under the CCB Rate Calculator.
New section 72—Weekly limit on rate of fee reductions while individual is conditionally eligible for care provided by an approved child care service

This section provides a rule comparable to new section 71, but in relation to the rate of fee reductions worked out by the service for a week, during the year, for an individual who is conditionally eligible. Again, the principle is that the rate so worked out is limited to the service’s normal fees for the sessions of care provided in the week. Furthermore, the effect of the weekly limit of hours is again taken into account so that the limit operates correctly.

The rate in this case is not to exceed the amount that the service would have charged the individual if he or she were not so conditionally eligible, up to the weekly limit of hours determined to be applicable to the individual.

New section 73—Rate of fee reductions or CCB—individual conditionally eligible or eligible under section 43

This section sets down which of the various provisions relating to the rate of fee reductions or CCB for a session of care is to be applied in various circumstances of an individual being conditionally eligible or eligible for CCB by fee reduction.

In the case of a conditionally eligible individual, the service must generally work out the rate of fee reductions using the CCB Rate Calculator and, in doing so, must apply any references in the Calculator to a person being eligible as if they were references to the person being conditionally eligible. It must also apply any references to CCB as references to fee reductions. However, the CCB Rate Calculator is not to be used if the service has certified, or the Secretary has determined, a special rate under new Subdivision C in relation to the individual and the session. In that case, the rate of fee reductions for the session is simply the rate specified in the certificate or determination.

In the case of an eligible individual, the Secretary must generally work out the rate of CCB using the CCB Rate Calculator. However, if a certificate was given, or a determination was made, under new Subdivision C, in respect of the session while the individual was conditionally eligible, then the rate of CCB for the session remains the rate specified in the certificate or determination. Thus, the rate certified or determined generally during the year for the session will be applied in the Secretary’s determination of the individual’s entitlement to be paid CCB.

As noted in the section, whatever rate applies, new section 71 or 72, as applicable, imposes a limit on the amount or rate of CCB in a week.

New section 74—Rate of CCB – individual eligible under section 44

This section provides the simpler rule that the rate of CCB for an individual who is eligible for the lump sum type of CCB for care provided by an approved child care service is worked out using the CCB Rate Calculator. The rate so worked out is applied in the determination of the individual’s entitlement to be paid CCB. Again, it is noted that a limit is imposed by new section 71 on the amount of CCB in a week.
New section 75—Rate of CCB – approved child care service if child at risk

The rate that applies to an approved child care service that is eligible for CCB by fee reduction under new section 47 is set, usually for an initial 13 week period, by the service under new subsection 76(2), or by the Secretary under new subsection 81(4). Again, the rate so set is applied in the determination of the service’s entitlement to be paid CCB, and, again, the effect of the weekly limit is noted.

New Subdivision C—Rate of fee reductions and CCB if care provided by an approved child care service and child is at risk or individual is in hardship

New section 76—Fee reductions or CCB rate certified by an approved child care service

This is the section under which an approved child care service has the discretion to certify a special rate of fee reductions or CCB.

If an individual is conditionally eligible and the service is satisfied either that the individual is experiencing hardship (as envisaged by the Minister’s determination under new paragraph 82(3)(a)) or that the child is at risk of serious abuse or neglect, then the service generally may certify a special rate, higher than the one that would normally apply, for sessions of care falling within the period specified in the certificate. The idea is that the service would exercise the discretion if satisfied that the availability of a higher rate would assist the hardship or at risk situation.

However, the service may not give a certificate if prevented by new section 77, 78, 79 or 80.

If the service itself is eligible in respect of a child at risk, then the service must certify a rate as there is no current rate that would normally apply. However, new section 77 or 79 may prevent the service from giving such a certificate.

If, for some reason, the service is not able to give a certificate under the section, the situation may be addressed by the Secretary under new section 81.

The provisions in this Subdivision are generally reproduced from current section 71. However, the limitations under new sections 79 and 80 on the exercise of the service’s discretion are new, although that provided by new section 79 is a feature of existing childcare assistance arrangements. Otherwise, some drafting modifications have been made (in particular, to clarify how the system works while an individual is conditionally eligible) and some machinery provisions added.
New section 77—Limitation on service giving certificates for child at risk—13 weeks only

This section is one of the limitations on the service’s discretion under new section 76. It applies in relation to a child at risk. The service may only give a certificate on this basis (whether an individual is conditionally eligible or the service is eligible) if the total period for which one or more certificates have been given on the basis of the child being at risk does not exceed 13 weeks in the financial year.

If the service is not able to give a certificate because of this limitation, the matter may be determined by the Secretary under new section 81.

New section 78—Limitation on service giving certificates for individual in hardship—13 weeks only

This limitation on the service’s discretion under new section 76 applies in relation to an individual experiencing hardship. The service may only give a certificate on this basis in relation to the individual if the total period for which one or more certificates have been given by the service on either the hardship or child at risk basis, together with certificates given by any other approved child care service on the hardship basis alone, in relation to the child and the financial year does not exceed 13 weeks.

If the service is not able to give a certificate because of this limitation, the matter may be determined by the Secretary under new section 81.

New section 79—Limitation on service giving certificates—reporting period limit

This section limits the service’s discretion under new section 76 in relation either to children at risk or hardship. If the service has already exercised, during a particular reporting period, its discretion under new section 76 to the extent that the total amount of CCB resulting from that exercise of the discretion exceeds the reporting period limit for that reporting period, then the service may not exercise the discretion any further in that period. In other words, if the service makes a decision under the section that takes it over its reporting period limit, then that decision remains valid, but it may not make a further decision.

The meaning of “reporting period limit” is provided by new subsections 79(2) to (4). It is 18% (or such higher percentage as is specified) of the total amount of fee reductions, or CCB payable, as the case may be, in relation to all care provided by the service during the reporting period that is two periods before the reporting period in respect of which the limit is being worked out. Where a service needs more than the 18% they should approach the Family Assistance Office which will agree to increase this amount if the service can show that they have a genuine need for this.

Alternatively, the Secretary may determine a specific limit for a service for the reporting period. This may be done, for example, for new services, which do not have a pattern of two or more reporting periods on which to base the limit.

If the service is not able to give a certificate because of this limitation, the matter may be determined by the Secretary under new section 81.
New section 80—Limitation on service giving certificates for individuals on grounds of hardship – Secretary imposes limit

This is the last of the limitations on the service’s discretion under new section 76. It applies only in relation to hardship. Basically, the Secretary may determine that the service may no longer exercise the discretion for any conditionally eligible individuals on the grounds of hardship if it has shown a pattern, in its previous exercise of the discretion on those grounds, that is not in keeping with the Minister’s hardship specifications, under new paragraph 82(3)(a), or rules, under new paragraph 82(3)(b).

If the service is not able to give a certificate because of this limitation, the matter may be determined by the Secretary under new section 81.

New section 81—Fee reductions or CCB rate determined by the Secretary

Under this section, the Secretary has the discretion to determine a special rate of fee reductions or CCB in cases of an individual experiencing hardship or a child being at risk of serious abuse or neglect.

Generally, the Secretary will exercise the discretion only after the approved child care service providing care to the child has exercised its own discretion in the same cases, usually for a total of 13 weeks for the child in a financial year. In cases in which the service is not able to exercise its discretion (under new section 77, 78, 79 or 80), the matter may be addressed as soon as necessary by the Secretary instead.

The Secretary may determine such a special rate (higher than the rate that would normally apply) when an individual is conditionally eligible for CCB by fee reduction. The Secretary must determine such a special rate when it is the service that is eligible under new section 47. This is so because there is no current rate that would normally apply.

As is the case with the service’s discretion under new section 76, the Secretary would only exercise the discretion in respect of a conditionally eligible individual if satisfied that the availability of a higher rate would assist the hardship or at risk situation.

A determination under the section must be made on application by the individual or service, as set out in new subsection 81(5). The rate must be specified for a period, and be notified to the individual and/or the service as set out in new subsections 81(8) and (9).

New section 82—Certificate and determination to be made according to rules

This section stipulates that any certificates given, or determinations made, under the section are to abide by any rules made by the Minister on the subject. The Minister may also specify kinds of hardship for the purposes of the provisions. Any determination by the Minister under this section is a disallowable instrument under the Acts Interpretation Act 1901.
New Subdivision D—Care provided by registered carer

New section 83—Rate of CCB for care provided by registered carer

This section provides for the rate of CCB for care provided by a registered carer. It differs from the current section 73 in that schooling % is reflected as part of the formula. This component ensures that the rate for a school child is proportionately less than the rate for a child who is not a school child. This, in turn, is in line with the arrangements for care provided by an approved child care service, so that families in similar situations in terms of income and family composition will be treated comparably, regardless of which type of care is used.

New section 84—Weekly limit on CCB for care provided by a registered carer

This section, limiting the amount of CCB for care provided by a registered carer in a week, is the same as the current section 74, except for consequential changes flowing from new section 83.

NEW DIVISION 5—INDEXATION

Item 55 also reinserts unchanged the one section (new section 85) of the current Division 5 of Part 4. The reason for the repeal and substitution was merely a practical exercise to allow the numbering of the new Division 4 to be made sequential, since this section is the last in the Family Assistance Act.

Amendments to the Child Care Benefit Rate Calculator

Part-time %

Item 56 repeals the existing definition of part-time % in subclause 2(2) of the CCB Rate Calculator. Part-time % is a 10% loading on the rate of CCB for care provided by a centre based long day care service, because of the higher hourly fees that apply for part-time care in such a centre. The current definition benefits families using less than 34 hours of care in a week. The substituted definition essentially applies a taper to the loading so that families using less than 34 hours of care continue to get the 10% loading but families using 34 to 37 hours get a lesser loading so that they do not get less CCB in total than those using 33 hours.

Rate for children in a family after the third

Items 62 and 64 amend the maximum weekly benefit table in clause 11 of the CCB Rate Calculator to ensure that the rate for children in a family after the third will be the same as for the first three children. The current clause increases the CCB hourly rate for the second and third child over that for a one child family, but then reduces it back to the one child rate for the fourth and subsequent children. This means that larger families are at a disadvantage. The new element of the loading will also be indexed on the same basis as the other rate elements for multiple children.
Other technical and consequential amendments

The remaining items are minor amendments to refine terminology and drafting and (in the case of item 68) to reflect the multiple child % as an element of the minimum CCB provision, in line with the original policy (so that families benefit from a higher minimum rate for each additional child in the family in care).
Part 3—Common Provisions Relating to Family Assistance

Overview of Part 3 of Schedule 1

Part 3 amends provisions in the Family Assistance Act that are not specific to any particular type of family assistance payment. These amendments provide for the insertion of definitions that support other amendments contained in this Bill, amend the rules in Schedule 3 of the Family Assistance Act relating to adjusted taxable income and amend the indexation provisions as they apply to maximum rent assistance rates and rent thresholds.

Explanation of Amendments

Definitions

Clause 7 of Part 3 of Schedule 4 to the Family Assistance Act provides for the adjustment of certain FTB child rates. This is done by reference to the “CPC rate”.

Item 69 provides that the “CPC rate” has the meaning given by new subsection 3(3) of the Family Assistance Act. New subsection 3(3) is inserted by item 7 of Part 2 of Schedule 1 to this Bill. The “CPC rate” is twice the amount that is the maximum basic rate of age pension payable to a person who is partnered. Clause 7 of Schedule 4 then ensures that the FTB under 13 child rate cannot fall below 16.6% of the CPC rate and that the FTB 13-15 child rate cannot fall below 21.6% of the CPC rate.

These provisions are consistent with the existing family allowance rules that provide for the benchmarking and adjustment (if necessary) of the equivalent FA child rates.

Item 70 provides a rounding base of $3.65 for the “FTB advance rate”.

Item 71 inserts a new definition of “FTB child” into the Family Assistance Act. The new definition does not change the meaning of “FTB child” for FTB purposes but inserts a corresponding definition for CCB purposes.

For CCB, an “FTB child” has the same meaning as it does for FTB but with the following modifications:

- the references in paragraphs 22(7)(b) and 25(1)(b) to a claim for FTB are to be read as references to a claim for CCB; and

- the references in subsections 24(4) and (6) to eligibility for FTB are to be read as references to eligibility, or conditional eligibility, for CCB.

For CCB, “FTB child” also means a child determined by the Secretary under subsection 42(2), 44(3) or 45(3) to be an FTB child.
**Item 72** inserts a definition of “partnered (partner in gaol)” into subsection 3(1) of the Family Assistance Act. “Partnered (partner in gaol)” would have the same meaning as in the Social Security Act.

**Item 73** defines “relevant shared carer” as an individual each of whose FTB children is subject to a determination under subsection 59(1) of the Family Assistance Act.

The terms “partnered (partner in gaol)” and “relevant shared carer” are used in determining the rent threshold amount and the maximum rate of rent assistance payable to an individual under clauses 13, 14 and 14A of Schedule 1 of the Family Assistance Act.

**Item 74** inserts new section 3A into the Family Assistance Act to make it clear that a child can be in the care of more than one adult at the same time unless the family assistance law provides to the contrary. This clarification supports the new shared care arrangements provided for in **Part 1 of Schedule 1** to this Bill.

**Changes to the concept of adjusted taxable income**

**Assessment of income where individual or partner dies**

Schedule 3 of the Family Assistance Act defines in detail what is meant by an individual’s “adjusted taxable income”. The income components that comprise adjusted taxable income are set out in clause 2 of Schedule 3. Each component (except taxable income) is then further defined. Under clause 3, the adjusted taxable income of an individual who is a member of a couple includes the adjusted taxable income of the individual’s partner.

There will be instances where an individual or the individual’s partner dies part way through an income year. Where this happens, the adjusted taxable income of the deceased individual will be calculated up to the time of death. This will invariably mean a “top up” payment of FTB or CCB after income reconciliation occurs. This outcome is not intended.

**Item 76** therefore inserts new subclause 2(2) into Schedule 3 of the Family Assistance Act to modify the way in which adjusted taxable income is determined where an individual or the individual’s partner dies part way through an income year. Where such a death occurs, the adjusted taxable income of the deceased individual for the relevant income year is annualised by multiplying what would have been the deceased individual’s adjusted taxable income under clause 2 for the relevant income year by:

\[
\frac{\text{number of days in income year}}{\text{number of days individual was alive during income year}}
\]

**Item 75** makes a consequential amendment to clause 2 of Schedule 3 to ensure that it is subject to the operation of new subclause 2(2).
Assessment of income where separation occurs

The assessment of income for an income year under the family assistance law may result in an FTB or CCB debt for the period in the year before a separation due to new circumstances that may apply after the separation. This includes an increase in the person’s own income for the year due to the grant of an income support payment under the Social Security Act after separation (eg, parenting payment), as well as an increase in the former partner’s income for the year due to increased income after separation. Payment of FTB/CCB for the period before separation would have been made on the basis of an estimate of adjusted taxable income that would not have been able to take into account the new circumstances that may arise after a separation.

It is not intended that a debt for the period before a separation result from increased income after the separation.

Item 77 inserts new clause 3A into Schedule 3 to the Family Assistance Act to ensure that entitlement to FTB or CCB for the period before a separation is calculated on the basis of estimated income for that period if this is lower than the actual amount. This would avoid a debt being raised for that period in the end of year reconciliation where income had been underestimated, but would allow arrears to be paid if the income had been overestimated.

New clause 3A operates where the following conditions are met.

The first condition is that the individual was a member of a couple with partner A for a period or periods in an income year but not at the end of the income year. This may be more than one continuous period, for example, the couple separated, then reconciled, then separated again before the end of the income year.

Second, while the individual was a member of that couple, the individual’s entitlement to FTB or CCB was based on an amount of the individual’s adjusted taxable income (the current ATI amount).

Third, the current ATI amount differs from the individual’s actual adjusted taxable income for that income year (the final ATI amount).

The current ATI amount would normally be based on an estimate/s provided during the income year and the final ATI amount would be based on an assessment of adjusted taxable income by the Commissioner of Taxation. There are, however, a number of other possible scenarios. For example, the current ATI amount may have been based on an estimate provided during the income year by an individual who is not required to lodge a tax return and the final ATI amount is based on the "known amount" provided after the income year has ended; or the current ATI amount may have been based on an initial assessment by the Commissioner of Taxation of a former partner’s income that is later revised by the ATO.

Fourth, the individual’s entitlement to FTB or CCB for the period or periods during which the individual was a member of that couple would be less if worked out using the final ATI amount as opposed to using the current ATI amount.
Finally, if the current ATI amount was based on an estimate provided by the individual that is less than the final ATI amount:

- the individual did not know or did not have reason to suspect that the estimate was incorrect when it was provided; and

- if, after providing the estimate but before ceasing to be a member of the couple, the individual knew or had reason to suspect that the estimate was incorrect, the individual provided a revised estimate as soon as practicable after knowing or suspecting the estimate was incorrect.

Where these conditions are satisfied, clause 3A provides that the individual’s adjusted taxable income for the period or periods in the income year during which the individual was a member of a couple with partner A is taken to be the particular current ATI amount or amounts upon which the individual’s entitlement was based.

**Indexation of rent thresholds and maximum rent assistance rates applicable to an individual who is a relevant shared carer**

**Items 78 to 82 inclusive** amend various indexation provisions in Schedule 4 to the Family Assistance Act to ensure that new rent threshold amounts and rent assistance rates are appropriately indexed. These amendments are consequential upon the changes made by **items 26 and 30 of Schedule 1** to this Bill, which are described above.

Clause 2 of Schedule 4 to the Family Assistance Act specifies those amounts in the Family Assistance Act that require indexation.

Items 4 and 5 in the table in clause 2 currently refer to the maximum rent assistance amounts and rent threshold amounts specified in clauses 13 and 14 of Schedule 1 to the Family Assistance Act. The new threshold amounts applicable to an individual who is a relevant shared carer are not covered. Similarly, the new maximum rent assistance rates specified in new clause 14A (inserted by **item 30 of Schedule 1** to this Bill) are not mentioned.

**Item 78** inserts new items 4 and 5 into the table in clause 2. The new items incorporate references to the new thresholds and maximum rent assistance rates applicable to an individual who is a relevant shared carer. These amendments then link into items 4 and 5 in the CPI indexation table in clause 3 of Schedule 4 to ensure indexation of the new amounts.

**Item 79** amends the rounding base in items 4 and 5 of the CPI indexation table from $7.30 to $3.65. The rounding base of $3.65 reflects division of annual rates by 365 and the rounding of daily rates to the nearest cent.
The new thresholds and maximum rent assistance rates provided for in clauses 13 and 14A of Schedule 1 of the Family Assistance Act will not be current immediately before 1 July 2000 (the equivalent income support rates would have been indexed again before that date). The transitional indexation provision in clause 8 of Schedule 4 is therefore amended by items 80 and 81 so that these new amounts can also be increased by the Secretary from 1 July 2000.


Clause 9 is amended by item 82 so that it operates in the same way in relation to the new maximum rent assistance amounts specified in new clause 14A of Schedule 1 to the Family Assistance Act.
Overview of Part 1 of Schedule 2

Part 1 of Schedule 2 amends the payment rules for FTB contained in Part 3 of the FA Admin Act. These amendments can be grouped as follows:

- payment into bank account;
- requirement to provide a tax file number;
- variation of entitlement determination where unreasonable estimate provided;
- variation of entitlement determination pending determination of claim for social security pension or benefit etc;
- variation of entitlement determination to reflect revised estimate of adjusted taxable income;
- variation of entitlement determination to reflect revised estimate of maintenance income; and
- other amendments.

Explanation of amendments

Payment into bank account

The FA Admin Act provides for the payment of FTB, maternity allowance and maternity immunisation allowance at such times and in such manner as the Secretary considers appropriate. This flexible approach is complemented by provisions that allow timing and manner of payments to be more precisely described in regulations.

Part 1 of Schedule 2 to this Bill amends the FA Admin Act to repeal the regulation making powers referred to above. Instead, new provisions are inserted that ensure that the principal manner of payment of FTB by instalment is into a bank account nominated by the customer. This is consistent with the approach taken under the social security law. In relation to other payment options, flexible payment arrangements would be retained.
Payment of FTB by instalment

Section 23 of the FA Admin Act provides for the payment of FTB by instalment to a claimant. Subsection 23(1) gives the Secretary a discretion to determine the timing and manner of payment of instalments of FTB. Subsection 23(5) enables the timing and manner of making payments to be prescribed in regulations.

**Items 19, 20 and 21** amend section 23 of the FA Admin Act. Subsection 23(1) is amended by **item 19** to ensure that the principal method of payment of FTB by instalment is to the credit of a bank account nominated and maintained by the claimant. **Item 20** amends section 23(4) to enable the Secretary to determine the timing and manner of payment of instalments of FTB to a third party on behalf of the claimant. **Item 21** repeals the existing regulation making power in subsection 23(5) and replaces it with a provision facilitating the payment of FTB by instalments in a manner other than into the claimant’s bank account.

If direct credit is to be the predominant method of payment of FTB by instalment, further supporting provisions are required.

New section 7A, inserted by **item 4**, requires a person claiming FTB by instalment to nominate a bank account on the claim form or to undertake to provide account details within 28 days after the claim is made. Where it is inappropriate for a claimant to nominate a bank account (for example, where banking facilities are not accessible to the claimant because the claimant lives in a remote locality), the Secretary would have a discretion to waive the requirement.

**Item 2** makes a consequential amendment to section 7 of the FA Admin Act to ensure that a claim for FTB by instalment cannot be effective unless the bank account requirement set out in new section 7A is satisfied.

If a claimant undertakes to provide account details within 28 days after the claim is made, the claim is to remain undetermined until those details are provided. If the claimant fails to provide account details within the 28 day period, then the claim is taken not to have been made. These rules are contained in new section 15A, inserted by **item 12**.

There will be situations where a claimant is exempt from the requirement to provide bank account details at the time of claim but the Secretary considers it appropriate at a later stage to pay the claimant’s fortnightly instalments of FTB into a bank account. The following rules are inserted into the FA Admin Act to cover this situation.

**Item 29** inserts a new section 26A into the FA Admin Act. Under new section 26A, if an entitlement determination is in force under which a claimant is entitled to be paid FTB by instalment and the claimant has not nominated a bank account into which the instalment of FTB can be paid, then the Secretary may require the claimant to nominate such an account. The account may be an account maintained by the claimant either alone or jointly or in common with another person. The claimant would then have 28 days within which to comply with the requirement.
The consequences of a failure to comply with the requirement in new section 26A is set out in new section 27A, as inserted by item 35.

If a claimant fails to comply with the requirement to provide a bank account within the 28 day time limit set out in new section 26A, the Secretary has the option of varying the claimant’s entitlement determination so that it has the effect that the claimant is not entitled to be paid FTB from the day after the end of the last instalment period before the variation takes place.

This rule provides the Secretary with the discretion not to apply the sanction where a claimant has a good reason for not complying with the requirement to provide bank account details (eg, where banking facilities are not accessible to the claimant because the claimant lives in a remote locality).

If the Secretary varies the determination under new section 27A and the claimant provides his or her bank account details before the end of the income year following the one in which the variation took effect, then the Secretary must vary the determination to undo the effect described above. Where this happens, the claimant would be entitled to arrears FTB, backdated to the day after the end of the last instalment period before the variation took place.

Items 7, 8 and 42 make consequential amendments to subparagraphs 9(c)(i) and 10(1)(c)(i) and paragraph 31(3)(a) of the FA Admin Act by inserting into each provision a cross reference to the new section 27A.

Payment of FTB for a past period etc

Section 24 of the FA Admin Act provides for the payment of FTB for a past period or by single payment/in substitution because of the death of another individual. This provision also gives the Secretary a discretion to pay the lump sum or single payment at a time and in a manner determined by the Secretary. The power in subsection 24(3) allows regulations to be made prescribing the timing and manner of making payments.

Items 24 and 25 amend section 24 of the FA Admin Act as follows:

- subsection 24(2) is amended to enable the Secretary to determine the time and manner of payment of FTB to a third party on behalf of the claimant; and
- the regulation making power in subsection 24(3) is repealed.

Payment of maternity allowance or maternity immunisation allowance

Subsection 47(1) of the FA Admin Act provides the Secretary with a discretion to pay maternity allowance or maternity immunisation allowance at a time and in a manner determined by the Secretary. The power in subsection 47(3) allows regulations to be made providing for the timing and manner of making payments.
Items 50 and 51 amend section 47 of the FA Admin Act as follows:

- subsection 47(2) is amended to enable the Secretary to determine the time and manner of payment of maternity allowance/maternity immunisation allowance to a third party on behalf of the claimant; and

- the regulation making power in subsection 47(3) is repealed.

Requirement to provide a tax file number

Under section 7 of the FA Admin Act, a claim for FTB by instalment or for a past period is effective only if the tax file number (TFN) requirement in section 8 is satisfied. This requirement does not currently apply to individuals claiming FTB in substitution because of the death of another individual (that is, claims under section 33 of the Family Assistance Act).

TFNs are used in the data-matching process to ensure that correct entitlements are paid. TFNs are also to be used for the purposes of income reconciliation by virtue of new section 154A (inserted by Part 3 of Schedule 2 to this Bill). At the end of each income year, families paid on an estimate of their adjusted taxable income and required to lodge income tax returns will have their actual income, as assessed by the Commissioner of Taxation, reconciled with the income they estimated. This is the process of income reconciliation. The purpose of reconciliation is to ensure that correct family assistance entitlements have been paid for a particular income year.

Where a claim is made under section 33 of the Family Assistance Act, the income details of the deceased individual and his or her partner or partners during the relevant period are relevant in working out the FTB entitlement. Accordingly, item 6 inserts a new section 8A into the FA Admin Act that imposes a TFN requirement on claims for FTB made in substitution because of the death of another individual (that is, claims under section 33 of the Family Assistance Act).

The TFN requirement outlined in new section 8A of the FA Admin Act requires the provision of one of the following statements.

First, a claimant may provide a statement of a TFN substitution person’s TFN.

A definition of “TFN substitution person” is inserted into subsection 3(1) of the FA Admin Act by item 67. A “TFN substitution person” is defined as the deceased individual referred to in section 33 of the Family Assistance Act and any partner or partners of the deceased individual during the period in respect of which payment is claimed.

Second, a statement can be provided by the deceased individual’s partner that he or she:

- has a TFN but does not know what it is; and

- has asked the Commissioner of Taxation what the TFN is; and
• authorises the Commissioner to tell the Secretary the TFN or that the person does not have a FTN.

Third, a statement can be provided by the deceased individual’s partner that he or she:
• has applied for a TFN; and
• authorises the Commissioner of Taxation to tell the Secretary the number if the TFN is issued or if the application is refused or withdrawn.

These statements must be provided to the Secretary with the claim. Otherwise the claim is not effective.

The Secretary may exempt a claimant from the TFN requirement in the following circumstances:
• in relation to the TFN of a deceased individual or partner, where the claimant does not know the TFN;
• in relation to the partner of the deceased individual, where the claimant cannot obtain a statement by the partner as described above.

The requirements outlined above are similar to the TFN requirement in section 8 of the FA Admin Act that applies to individuals who claim FTB by instalment or for a past period.

Item 3 makes a consequential amendment to subsection 7(2) of the FA Admin Act to ensure that a claim for payment of FTB in substitution because of the death of another individual is not effective unless the TFN requirement set out in new section 8A is satisfied.

If a claimant provides the relevant TFNs at the time of claim, then the claim can be determined. Under section 15 of the FA Admin Act, however, if an individual provides a statement under subsection 8(4) or 8(5), the Secretary can only determine the claim in prescribed circumstances.

Item 12 remakes section 15 so that it also applies to a statement made by a TFN substitution person under subsections 8A(4) and 8A(5). The prescribed circumstances outlined in existing section 15 remain unaltered.

The effect is as follows.

If a statement under subsection 8(4) or 8A(4) is provided, the claim can only be determined if:
• within 28 days of the claim being made, the Commissioner of Taxation tells the Secretary the individual’s TFN; or
• 28 days passes without the Commissioner telling the Secretary that the person does not have a TFN.

If a statement under subsection 8(5) or 8A(5) is provided, the claim can only be determined if:

• within 28 days of the claim being made, the Commissioner of Taxation tells the Secretary the individual’s TFN; or

• 28 days passes without the Commissioner telling the Secretary that the individual has not applied for a TFN or that the application has been refused or withdrawn.

**Variation of determination where unreasonable estimate provided**

Section 20 of the FA Admin Act enables the Secretary to use an estimate of adjusted taxable income provided by the claimant in determining the claimant’s rate of FTB.

If, as part of the claims process, the claimant does not provide the Secretary with a reasonable estimate, the consequence is ultimately a determination under section 19 of the FA Admin Act (that the claimant is not entitled to FTB). This is because the Secretary does not have sufficient information to determine the individual’s eligibility for, or rate of, FTB.

A claimant who is receiving instalments of FTB can provide a new estimate of their adjusted taxable income at any time. In some circumstances, the claimant has an obligation to notify of changes in income, ie, where the claimant’s rate would decrease as a result of the change (see section 25 of the FA Admin Act). Furthermore, the Secretary can request the provision of a new estimate under Division 1 of Part 6 of the FA Admin Act (income is relevant in determining a claimant’s rate of FTB).

In each of these situations, the claimant may provide the Secretary with an estimate that the Secretary does not consider reasonable. If this happens, there is no immediate action that can be taken by the Secretary in relation to the claimant’s ongoing instalment payments. Payments would need to continue on the basis of the previous estimate even though it is no longer appropriate. It would only be at the end of the income year when income reconciliation occurs that the appropriate top up would be paid or debt raised.

**Item 36** therefore inserts new section 28A to deal with the situation where a claimant, in respect of whom an entitlement determination is in force, provides an unreasonable estimate of adjusted taxable income to the Secretary.

Where this happens, the Secretary must vary the determination so that it has the effect that the claimant is not entitled to be paid FTB for any day after the end of the last instalment period before the variation takes place.
If a determination is so varied and either:

- the claimant provides a reasonable estimate of adjusted taxable income by the end of the income year following the one in which the variation took effect; or

- the Secretary finds out the actual amount needed to calculate the claimant’s rate of FTB (whether from the claimant or someone else) by the end of the income year following the one in which the variation took effect,

then the Secretary must vary the determination to undo the effect described above.

An example where the second dot point might apply would be where, as part of the reconciliation process, the Secretary obtains information about the claimant’s actual adjusted taxable income for the relevant income year from the Commissioner of Taxation.

**Item 42** makes a consequential amendment to paragraph section 31(3)(a) of the FA Admin Act to ensure that a variation determination under new section 28A is not overridden by a determination under section 31.

**Items 7 and 8** insert a reference to new subsection 28A(2) into subparagraphs 9(c)(i) and 10(1)(c)(i) of the FA Admin Act. These amendments ensure that a new claim cannot be made while a variation determination under the new section 28A is in force.

**Variation of instalment determination pending determination of claim for a social security pension or benefit, a payment under a Labour Market Program or a prescribed educational scheme**

Under the eligibility rules for FTB, an individual or approved care organisation cannot be eligible for FTB in respect of a child if the child, or someone on behalf of the child, is receiving:

- a social security pension; or

- a social security benefit; or

- payments under a program included in the programs known as labour market programs; or

- payments under a prescribed educational scheme (if the child is aged 16 or more).

These rules are contained in subsections 22A(1) and 35(1) of the Family Assistance Act. “Receiving”, in relation to a social security payment, is defined in section 3 of the Family Assistance Act as having the same meaning as in the Social Security Act (that is, a person is taken to have been receiving a payment from the first day on which it was payable even if an instalment is not paid until a later day).
Situations will arise where a claim is made for one of the payments listed above, the claim is determined and payments are backdated. Where this happens, payment of FTB would continue unaffected until such time as the claim is determined and the arrears payment made. Once arrears are paid, an FTB debt may arise. This is because FTB was paid in respect of a child who was, at the same time, “receiving” a listed payment.

This issue is addressed in new section 28B (inserted by item 36). New section 28B applies where:

• a determination is in force under which the claimant is entitled to be paid FTB by instalment; and

• the individual is an FTB child of the claimant or an individual in respect of whom an approved care organisation is the claimant; and

• the individual makes a claim for a social security pension, a social security benefit, payments under a program included in the programs known as Labour Market Programs or, if the individual is aged 16 or more, payments under a prescribed educational scheme.

Where these conditions are present, the Secretary must vary the determination as follows:

• where the individual is the claimant’s only FTB child, the determination must be varied so that it has the effect that the claimant is not entitled to be paid FTB from the day after the end of the claimant’s last instalment period before the variation or from a later day determined by the Secretary; or

• where the individual is not the claimant’s only FTB child, the determination must be varied so that the daily rate of FTB for which the claimant is entitled under the determination does not take into account the child who has made a claim for any of the listed payments – this variation would have effect from the day after the end of the claimant’s last instalment period before the variation or from a later day determined by the Secretary.

A later date might be specified where it is known or expected that the claim could only be granted from the later date, such as the individual turning 16.

If the individual’s claim for any of the listed payments is rejected, withdrawn or taken not to have been made, then the Secretary must vary the determination to undo the effect mentioned above.

In this way, a debt cannot arise in the circumstance described above.

Item 42 makes a consequential amendment to paragraph section 31(3)(a) of the FA Admin Act to ensure that a variation determination under the new section 28B is not overridden by a determination under section 31.
Items 7 and 8 insert a reference to new subsections 28B(2) and (3) into subparagraphs 9(c)(i) and 10(1)(c)(i) of the FA Admin Act. These amendments ensure that a new claim cannot be made while a variation determination under new section 28A is in force.

**Variation of entitlement determination to reflect revised estimate of adjusted taxable income**

Section 20 of the FA Admin Act allows the Secretary to use an estimate of adjusted taxable income in calculating an individual’s rate of FTB.

The use of an estimate to determine the rate of FTB will be of particular relevance where an individual claims FTB by instalment. Where such a claim is made, the individual will not know his or her actual taxable income for the current year.

At the end of the income year when actual taxable income is known, the individual’s entitlement is reviewed on the basis of the individual’s adjusted taxable income for the relevant income year and the relevant adjustments made. This process is known as income reconciliation.

A number of issues arise in relation to the application of section 31 of the FA Admin Act where a revised estimate is provided to the Secretary. First, there is some doubt about whether the giving of a revised estimate is a “change in the claimant’s circumstances” for the purposes of invoking section 31. More importantly, when should such a variation take effect?

Where a revised estimate is given (and the estimate is reasonable), the intention is that the individual’s rate of FTB would be varied from the day on which that estimate is provided by the customer rather than the day on which the event that prompted the giving of a revised estimate occurred. This is because payment of FTB, when based on an estimate of adjusted taxable income, is an interim arrangement subject to income reconciliation when the individual’s adjusted taxable income is known. Any retrospective adjustments are more appropriately made in the context of income reconciliation.

Accordingly, item 31 inserts a new section 31A that deals specifically with variation of an entitlement determination where a revised estimate of adjusted taxable income is provided.

New section 31A applies where:

- a determination is in force under which the claimant is entitled to be paid FTB by instalment; and

- the Secretary has determined the claimant’s rate of FTB for a particular income year on the basis of an estimate provided by the claimant; and
• the claimant provides the Secretary with a revised estimate before or during the particular income year that is attributable to an event other than an event that also impacts on the individual’s eligibility for, or rate of FTB (such as becoming or ceasing to be a member of a couple); and

• the Secretary considers the estimate to be reasonable; and

• if the claimant’s rate of FTB were worked out using the revised estimate, a different rate would be applicable.

The third condition described above ensures that if an event has the dual quality of impacting on eligibility for, or rate of FTB and also prompting a revised estimate, then any variation of the entitlement determination is to be considered under section 31 and not new section 31A. The most obvious example of such an event is where an individual becomes, or ceases to be, a member of a couple.

Where these conditions are present, the Secretary must vary the entitlement determination as follows.

Variations with a favourable effect take effect from the day the estimate was provided to the Secretary or, if the estimate relates to a subsequent income year, from the first day in that income year.

The general rule in relation to variations having an adverse effect is that they take effect from the day the estimate was provided to the Secretary. If the day after the last day in the instalment period before the variation takes place occurs after the day on which the estimate was provided, then the variation takes effect from the latter day.

If, however, the estimate relates to a subsequent income year, the variation takes effect from the first day in that income year. If the day after the last day in the instalment period before the variation takes place occurs after the first day in the relevant income year, then the variation takes effect from the latter day.

Subsection 31A(3) provides that the variation of a determination under section 27, 27A, 28, 28A, 28B, 29 or 30 prevails over a variation under new section 31A. This provision mirrors subsection 31(3) of the FA Admin Act.

Item 37 makes consequential amendments to section 31 of the FA Admin Act as a result of the insertion of new section 31A. In particular, new subsection 31(1B) ensures that an event that causes the claimant to provide a revised estimate of adjusted taxable income to the Secretary is not covered under section 31 unless:

• the event also affects the claimant’s eligibility for, or rate of, FTB for a reason other than the amount of the claimant’s adjusted taxable income; or

• the event is the claimant’s becoming, or ceasing to be, a member of a couple.
Variation of entitlement determination to reflect revised estimate of maintenance income

Section 20 of the FA Admin Act, as amended by item 17, allows the Secretary to determine an individual’s rate of FTB on the basis of an estimate by the Secretary of the individual’s maintenance income.

For reasons similar to those described above in relation to new section 31A, item 31 inserts a new section 31B to deal specifically with the issue of variation of an entitlement determination where the Secretary revises an estimate of maintenance income.

New section 31B applies where:

- a determination is in force under which the claimant is entitled to be paid FTB by instalment; and

- the Secretary has determined the claimant’s rate of FTB for a particular income year on the basis of the Secretary’s estimate of the claimant’s maintenance income; and

- the Secretary makes a revised estimate of maintenance income before or during the particular income year that is attributable to an event other than an event that also impacts on the individual’s eligibility for, or rate of FTB (such as becoming or ceasing to be a member of a couple); and

- if the claimant’s rate of FTB were worked out using the revised estimate, a different rate would be applicable.

Where these conditions are present, the Secretary must vary the entitlement determination so that the individual’s rate of FTB is determined on the basis of the revised estimate. The variation determination would have effect from a day determined by the Secretary which cannot be earlier than the day after the end of the last instalment period before the variation takes place or the first day of the income year to which the revised estimate relates.

Section 31B also provides that the variation of a determination under section 27, 27A, 28, 28A, 28B, 29 or 30 prevails over a variation under new section 31B. This provision mirrors subsections 31(3) and 31A(3) of the FA Admin Act.

Item 37 makes consequential amendments to section 31 of the FA Admin Act as a result of the insertion of new section 31B. In particular, new subsection 31(1B) ensures that an event that causes the Secretary to revise an estimate of the claimant’s maintenance income is not covered under section 31 unless:

- the event also affects the claimant’s eligibility for, or rate of, FTB for a reason other than the amount of the claimant’s maintenance income; or

- the event is the claimant’s becoming, or ceasing to be, a member of a couple.
**Other amendments**

**Definitions**

**Item 1** amends the definition of “instalment period” so that the concept only relates to FTB. The definition for FTB purposes does not change. There is no “instalment period” for the purposes of CCB.

**Determination of claims**

Section 13 of the FA Admin Act provides for the determination of claims. When making a determination the Secretary may, under subsection 13(2), take into account only the information obtained during the claim process or that information and any other information or documents available to the Secretary.

**Item 10** repeals subsection 13(2). This provision is not necessary. When making a determination, it should be open to the Secretary to consider any relevant information at hand.

**Item 9** clarifies that the Secretary must make a determination on a claim in accordance with Subdivision B of Division 1 of Part 3 of the FA Admin Act.

**Restriction on determining claim where income tax assessment not made**

Section 14 of the FA Admin Act applies to claims for FTB for a past period that occurs in the income year before the one in which the claim is made where the claimant is required to lodge a tax return for that previous income year. The Secretary can defer determining these claims until an assessment is made under the *Income Tax Assessment Act 1936*.

As currently worded, section 14 can apply to both individuals and approved care organisations who claim FTB for a previous income year.

**Item 11** amends section 14 to make it clear that section 14 only applies to claims by individuals.

**Pattern of care eligibility – consequential amendments**

**Part 1 of Schedule 1** to this Bill amends the pattern of care eligibility rules to allow individuals with a pattern of care in relation to a child to be eligible for FTB for each day in the period of the pattern of care. Each individual with a pattern of care would then be entitled to a percentage of FTB depending on the care arrangements for the child and provided the child is in the care of the individual for 10% or more of the period.

This changed approach to pattern of care eligibility has consequences for the FA Admin Act.

Section 16 of the FA Admin Act provides for the determination of claims for FTB by instalment.
Subsection 16(3) applies in situations where there is a pattern of care in relation to a child and the claimant is eligible for FTB for the child on those days when the child is in the claimant’s care.

Under the new pattern of care arrangements, a claimant with a pattern of care in relation to a child will be eligible for FTB for each day on which the entitlement determination is in force. Subsection 16(3) therefore becomes redundant and is omitted by item 13.

Item 13 also recasts subsection 16(2) so that it is no longer subject to the operation of subsection 16(3). A similar consequential amendment is made by item 14 to omit a reference to subsection 16(3) from paragraph 16(4)(a) of the FA Admin Act.

**Provision of an estimate of maintenance income**

Section 20 of the FA Admin Act operates where information about an amount that is not available is needed to calculate an individual’s rate of FTB. In this situation, the Secretary may determine the individual’s rate on the basis of a reasonable estimate provided by the individual. For example, section 20 allows an individual to estimate his or her adjusted taxable income for the current income year for the purposes of being paid FTB by instalments. The provision also allows an estimate of maintenance income to be provided by an individual for the purpose of determining the individual’s rate of FTB.

Section 20 works well in relation to the provision of an estimate of adjusted taxable income. Most individuals are required to lodge tax returns and have a reasonable grasp of the concept.

In relation to maintenance income, however, it would be unreasonable to expect an individual to estimate his or her maintenance income because of the complexity of the definition of maintenance income and the inherent difficulty in predicting the financial and other arrangements of the other parent of the child. In the case of child support payments made through the Child Support Agency, the Secretary would be able to reassess FTB when the amount of child support varies, without the person needing to advise the change.

Item 15 therefore amends subsection 20(1) so that it only applies where the amount of adjusted taxable income is not available.

Item 17 inserts a new subsection 20(3) that applies where information about the amount of maintenance income is needed to calculate an individual’s rate of FTB but the information is not available. In this situation, new subsection 20(3) provides that the Secretary may determine the individual’s rate of FTB on the basis of an estimate of maintenance income made by the Secretary.

This approach is consistent with the current administration of the maintenance income test under the social security law.
Provision of estimate when making bereavement claim

Section 33 of the Family Assistance Act deals with situations where, due to the death of an individual (the deceased), there is an unpaid amount of FTB. The unpaid amount can then be claimed by, and paid to, another appropriate individual. Where this happens, the rate of FTB for the relevant period is based on the circumstances of the deceased, including the income of the deceased for the relevant income year. If the deceased has not already provided the Secretary with an estimate of adjusted taxable income for the relevant income year or if the actual income of the deceased individual for the relevant income year is not known, then the individual’s rate of FTB cannot be determined. This was not the intended outcome.

Item 16 therefore amends subsection 20(1) so as to enable an individual who claims FTB in substitution because of the death of another individual to provide an estimate of the amount needed to calculate the rate of FTB to which the individual is entitled.

Early payment of instalment of FTB

Under the social security law, where an amount that should be paid on a particular day cannot reasonably be paid on that day, the Secretary may direct the amount to be paid on an earlier day (section 57 of the Social Security (Administration) Act 1999 refers). An example of where this provision may be used is where an instalment payday falls on a public holiday.

Item 22 inserts an equivalent provision into the FA Admin Act.

Amendments consequential upon the relocation of certain debt recovery provisions

Section 23 of the FA Admin Act provides for the payment of FTB by instalments. Section 24 provides for the payment of FTB for a past period or by single payment/in substitution because of the death of another individual. Section 35 deals with the payment of FTB advances, while section 47 provides for the payment of maternity allowance and maternity immunisation allowance. Each of these sections contain a provision that makes it clear that payment is subject to Part 4 (overpayments and debt recovery) and sections 225 to 228 (other debts).

Amendments are made in Part 3 of Schedule 2 to this Bill to relocate sections 227 and 228 of the FA Admin Act into Part 4 of that Act. The reason is that these provisions are debt recovery provisions that allow arrears payments to be set off against a debt in prescribed circumstances.

As a result of the relocation, items 23, 26, 48 and 52 amend the payment provisions listed above to omit the current cross reference in those provisions to sections 227 and 228. The reference to Part 4 would cover setting off provisions.
Secretary to approve manner of notification of changes in circumstances

Under section 25 of the FA Admin Act, a claimant who is entitled to be paid FTB by instalment is required to notify the Secretary of anything that may impact on the claimant’s eligibility for, or rate of, FTB. This is to be done in a manner set out in the regulations.

**Item 27** amends section 25 so that notification of a change in circumstances occurs in the manner set out in a written notice to the claimant under new section 25A.

New section 25A is inserted by **item 28**. The new provision requires the Secretary to approve a manner of notification that a claimant is to use when notifying the Secretary of a change in circumstances. The Secretary must notify the claimant in writing of the approved manner of notification.

In practice, such a power would give the Secretary flexibility about how notification should occur (eg, by phone, in writing, by electronic means etc).

**Minor amendments to the FTB TFN provisions**

There are a number of technical issues that need to be addressed in relation to the TFN provisions for FTB.

**Item 5** makes a minor amendment to paragraph 8(7)(a) of the FA Admin Act to enable the Secretary to determine that the TFN requirement does not apply to a TFN claim person if the person is or was the claimant’s partner and the claimant cannot obtain from the person his or her TFN or a relevant statement.

Under section 26 of the FA Admin Act, the Secretary may request the claimant to provide the Secretary with:

- a TFN determination person’s TFN (TFN determination person is defined in subsection 3(1) of the FA Admin Act);

- a statement by a TFN determination person that the person has a TFN but does not know what it is and authorising the Commissioner of Taxation to tell the Secretary whether that person has a TFN and, if so, the number; or

- a statement by a TFN determination person that the person has applied for a TFN and authorising the Commissioner of Taxation to tell the Secretary the TFN if issued or if the application has been refused or withdrawn.

The claimant has 28 days in which to comply with the Secretary’s request.

Section 27 of the FA Admin Act provides for the variation of an entitlement determination where a claimant fails to comply with the requirements of section 26 of the FA Admin Act.
There will be situations where, in relation to a statement provided by a TFN determination person under subsection 26(3) or (4), the Commissioner will not have responded to the Secretary in the terms contemplated by subparagraphs 27(3)(b)(ii) or 27(4)(b)(ii) within 28 days after the request was made. This may happen where, for example, the person provides the statement 27 days after the request. If the Commissioner tells the Secretary that the person does not have a TFN, has not applied for a TFN or that the application has been refused or withdrawn after the end of the 28 day period, then it is not open to the Secretary to vary the claimant’s determination under subsection 27(5) of the FA Admin Act. This result is a loophole in the provisions described above.

**Items 30 and 31** amend subsections 27(3) and (4) of the FA Admin Act so that the reference to 28 days only refers to the person giving a statement. The amendments ensure that there is no time limit on the Commissioner of Taxation providing the information required under subparagraphs 27(3)(b)(ii) or 27(4)(b)(ii).

A similar issue arises under section 8 of the FA Admin Act. If a “TFN claim person” (as defined in subsection 3(1) of the FA Admin Act) makes a statement under subsection 8(4) or (5) at the time of claim, and the Commissioner of Taxation has not advised the Secretary within 28 days after the claim that the person does not have a TFN etc, then the claim is effective. Such a claim can then be determined in accordance with the normal rules in Subdivision B of Division 1 of Part 3 of the FA Admin Act. If the Commissioner tells the Secretary that the person does not have a TFN etc after 28 days, this information is of no consequence. It would then be necessary for the Secretary to request the claimant to provide a TFN/statement under section 26 of the FA Admin Act, allow the claimant up to 28 days to provide the TFN/statement and then take the relevant variation action under subsection 27(5).

This issue is addressed by **item 32** which expands the ambit of section 27 so that it also covers statements made by a TFN claim person under subsections 8(4) and 8(5) of the FA Admin Act.

**Item 32** inserts new subsections 27(4A) and (4B) into the FA Admin Act.

New subsection 27(4A) deals with the situation where:

- a TFN claim person makes a statement of the kind set out in subsection 8(4); and
- a determination is in force under which the claimant is entitled to be paid FTB by instalment or for a past period; and
- the Commissioner of Taxation tells the Secretary that the person has no TFN.

Where these conditions are met, the consequence in subsection 27(5) applies to enable the Secretary to vary the claimant’s entitlement determination.

New subsection 27(4B) deals with the situation where:

- a TFN claim person makes a statement of the kind set out in subsection 8(5); and
• a determination is in force under which the claimant is entitled to be paid FTB by instalment or for a past period; and

• the Commissioner of Taxation tells the Secretary that the person has not applied for a TFN, that an application by the person for a TFN has been refused or that the person has withdrawn the application.

Again, the consequence in subsection 27(5) may be applied where these conditions are present.

**Items 33 and 34** make minor consequential amendments to subsections 27(5) and (6) respectively as a result of the above changes.

**Variation of determination after the end of the bereavement period etc**

Section 31 of the FA Admin Act provides for the variation of an instalment determination where a change in the claimant’s circumstances occurs.

There is some doubt about whether the phrase “change in the claimant’s circumstances” is broad enough to cover the myriad of situations affecting a claimant’s entitlement to, or rate of, FTB that should lead to the variation of an existing instalment determination.

For example, the phrase, “change in the claimant’s circumstances” may not cover the following situations:

• where an individual has been overseas for more than 3 years and, at the expiration of that 3 year period, the claimant is no longer eligible for FTB by operation of section 24 of the Family Assistance Act; or

• where a bereavement period ends and, as a result, the claimant is no longer eligible for FTB or remains eligible for FTB but at a different rate.

In these situations, a variation determination is required so that the claimant’s entitlement determination can be varied to reflect the claimant’s changed circumstances.

**Items 37 to 41** address this issue by changing the terminology used in section 31. The concept of a “change in the claimant’s circumstances” is replace by the broader concept of the “occurrence of an event”. Furthermore, new subsection 31(1A) makes it clear that an expiration of time can constitute the occurrence of an event.
Minor changes to FTB advance rules

Division 2 of Part 3 of the FA Admin Act provides for the payment of FTB advances. Section 33 deals with entitlement to an FTB advance. As currently drafted, section 33 restricts the availability of FTB advances to individuals whose FTB Part A rate is worked out using Part 2 of Schedule 2 to the Family Assistance Act (subparagraph 33(1)(a)(ii) refers). Accordingly, an individual whose FTB Part A rate is calculated using Part 3 of Schedule 1 to the Family Assistance Act cannot access an FTB advance.

Subparagraph 33(1)(a)(ii) is repealed by item 45. This repeal ensures that all FTB Part A customers are given the same access to FTB advances.

Items 46 and 47 amend the entitlement rules for FTB advances so that an individual who owes a debt to the Commonwealth cannot be entitled to an FTB advance. This is consistent with the social security rules relating to the payment of advances.

Other technical changes

Items 18, 44 and 49 amend subsections 22(2), 32(2) and 46(2) of the FA Admin Act respectively. These are technical changes that ensure that a determination is not ineffective by reason only that certain notification requirements are not complied with.
Part 2—Amendments relating to child care benefit

Overview of Part 2 of Schedule 2

Division 4 of Part 3 of the Family Assistance Admin Act provides, in sections 49 to 63, for the making of regulations about how individuals and approved child care services can become entitled to payments of CCB, and how such payments are to be made. Sections 64 and 65 create offences for failure of approved child care services to comply with the requirements set out in section 42 and 47 of that Act to give the Secretary, for each instalment period (a calendar quarter or any other period determined by the Secretary), information needed to determine an individual’s or the service’s entitlement to CCB for that period.

Part 2 of Schedule 2 replaces the regulation-making provisions with substantive provisions in the family assistance law. The substantive provisions deal with:

- making claims for payment of CCB;
- tax file number requirements;
- determination of claims;
- payment of CCB (how, to whom);
- notification obligations of claimants (including offences for failure to comply with the obligations);
- Secretary’s powers;
- variation of determinations;
- obligations of approved child care services; and
- payment of advances to approved child care services.

Part 2 also repeals the offence provisions in Division 4 as they are included in new Part 8A, Division 1, inserted by item 61 of this Schedule dealing with obligations of approved child care services. In addition, it inserts a number of CCB related definitions in section 3 of the Family Assistance Admin Act.

Explanation of the amendments

Items 53, 54, 55, 56, 57, 58 and 59 insert the following definitions in section 3 of the Family Assistance Admin Act, mainly for the purposes of CCB:

‘amount of the entitlement’ is defined in item 53 as the amount determined in a determination of entitlement under new sections 51B, 52E, 52F, 53D and 54B inserted into the Family Assistance Admin Act by item 60;
'CCB%', ‘minimum taxable income %’ schooling % and taxable income % in respect of CCB claimed by an individual are defined by reference to a provision in Schedule 2 to the Family Assistance Act under which these components of CCB rate are calculated (items 54, 55, 57 and 58 refer).

‘Reporting period’ in respect of an approved child care service is defined as meaning a calendar quarter unless a different period has been determined by the Secretary in respect of a service or a class of services (if the Secretary determines a specified period, the service must be given a notice of the determination) (items 56 and 59 refer).

‘Determination’ is defined as a determination as originally made or, if varied, as varied (this definition applies for the purposes of FTB and CCB) (item 59 refers).

‘CPC rate (combined pensioner couple rate)’ at a particular time is defined as meaning twice the amount of the maximum basic rate of age pension payable at the time to a person under item 2 of Table B, point 1064-B1 of Pension Rate Calculator A in section 1064 of the Social Security Act 1991 (item 59 refers).

Item 60 repeals Division 4 of Part 3 of the Family Assistance Admin Act, which provide for making of regulations relating to how individuals and approved childcare services become entitled to CCB and how payments are made, and substitutes a new Division 4 dealing with CCB.

NEW DIVISION 4—CHILD CARE BENEFIT

New Subdivision A—Overview of process of fee reductions

New section 48—Overview of process if individual is conditionally eligible for child care benefit by fee reduction

New section 48 gives an overview of a process that applies when an individual who claimed CCB by fee reduction was determined, under new section 50F, to be conditionally eligible for the benefit.

If an individual is so determined, the individual’s fees for sessions of care provided by an approved child care service are reduced by the service (new subsection 48(1) refers).

The amount of fee reduction is calculated by the service using the provisions of the Family Assistance Act relating to the calculation of CCB as if those provisions referred to the calculation of fee reductions. Therefore, the amount of the fee reductions reflects the amount of CCB that would be paid to the individual if the individual’s entitlement to the benefit was determined at the time the fees are reduced (new subsection 48(2) refers).
The reduction of fees occurs in anticipation of a determination of entitlement that the Secretary makes under new section 51B after the end of each income year, in respect of the conditionally eligible individual, the child and the sessions of care provided during the income year while the individual is conditionally eligible (new subsection 48(3) refers).

When a determination of entitlement is made by the Secretary in respect of an income year, if the amount of the entitlement is greater than the amount of fee reductions already received by the individual in respect of the sessions in the income year, the amount of the entitlement consists of the amount of the fee reductions received and the difference between that amount and the amount determined by the Secretary (new subsection 48(4) refers).

When a determination of entitlement is made by the Secretary in respect of an income year, if the amount of the entitlement is less than the amount of fee reductions already received by the individual in respect of the sessions in the income year, the amount of the entitlement is the amount of the fee reductions less the amount of the difference between the amount of the fee reductions and the amount determined by the Secretary (new subsection 48(5) refers).

The service is reimbursed for the fee reductions the service makes for care it provides to the child via periodic advances paid to the service under Division 2 of new Part 8A (new subsection 48(6) refers).

**New Subdivision B—Making claims**

**New section 49—Need for a claim**

New subsection 49(1) provides that a person can only become entitled to be paid CCB by making a claim. New subsection 49(2) provides an exception to this rule where an approved child care service is eligible for CCB under new section 47 of the Family Assistance Act (child at risk); in this case a claim is taken to be made. The date of this claim is the date that the service reports that eligibility to the Secretary.

**New section 49A—Who can make a claim**

New section 49A provides that only individuals can make claims for CCB under this Subdivision. An approved child care service does not need to make a claim, as it is taken to have made a claim under new subsection 49(2).

**New section 49B—What may be claimed by an individual**

New section 49B provides that an individual may claim payment of CCB in one of four ways:

- payment of CCB by fee reduction for care provided by an approved child care service – that is, by ongoing reductions of child care fees;
- payment of CCB for a past period for care provided by an approved child care service – that is, as a lump sum; or

- payment of CCB for a past period for care was provided by a registered carer—that is, as a lump sum; or

- payment of CCB by single payment/in substitution because of the death of another individual – that is, as a lump sum.

**New section 49C—Form etc. of effective claim by individual**

New section 49C sets out the requirements that an individual must meet for a CCB claim to be effective.

New subsection 49C(1) provides that the claim must be made in a form and manner, contain any information, and be accompanied by any documents, that are required by the Secretary. The requirements set out in new sections 49G (bank account details), 49E and 49F (tax file numbers for claims for certain types of payment) must also be satisfied.

New subsections 49C(2), (3) and (4) set out exceptions to the rule that failure to provide required information renders a claim ineffective.

New subsection 49C(2) provides that where a claim is made for payment of CCB by fee reduction, the claim is not ineffective if a person fails to provide information relating to amounts needed to calculate the CCB%, the number of children the claimant had in care, whether the child was a school child, compliance with immunisation requirements, information relating to tax file numbers requested under new section 57B, and information relating to whether claimant chooses to have his CCB% calculated using the minimum taxable income %. This provision is subject to new section 49H (restrictions on claim).

New subsection 49C(3) provides that where a claim is made for payment of CCB for a past period for care provided by an approved child care service, the claim is not ineffective if a person fails to provide information relating to amounts needed to calculate the CCB%, the number of children the claimant had in care, and whether the child was a school child. This provision is subject to new section 49J (restrictions on claim).

New subsection 49C(4) provides that where a claim is made for payment of CCB by a single payment/in substitution for care provided by an approved child care service, the claim is not ineffective if a person fails to provide information relating to amounts needed to calculate the CCB%, the number of children the original claimant had in care, and whether the child was a school child. This provision is subject to new section 49L (restrictions on claim).
New section 49D—Deemed claim under subsection 49(2) effective in certain circumstances

New subsection 49D(1) provides that a deemed claim under subsection 49(2) (where an approved child care service is eligible for CCB) is effective if the service’s eligibility is reported to the Secretary. Subsection 49D(2) provides that the report must be in the form and manner, contain any information, and be accompanied by any documents that are required by the Secretary. This section is subject to section 49M (restriction on claims).

New section 49E—Tax file number requirement to be satisfied for claim by individual for payment of child care benefit for a past period for care provided by an approved child care service to be effective

New section 49E sets out the tax file number requirement that must be satisfied in order for a claim for payment of CCB for a past period for care provided by an approved child care service to be effective. New subsection 49E(1) explains the purpose of the section, and new subsection 49E(2) provides that one of three kinds of statement must be provided in relation to each TFN claim person. “TFN claim person” is defined in section 3 as the claimant and the claimant’s partner, or where the claim is for a past period, any partner of the claimant during the past period. The requirement does not apply if new subsections 49E(7) or (8) (see below) apply to a person. The three types of statement that may be provided are:

- a statement of the TFN person’s tax file number. This statement can only be provided by the claimant (new subsection 49E(3));

- a statement by the TFN claim person that the person does not know their tax file number, and has asked the Commissioner of Taxation to inform the person of the number, and that authorises the Commissioner of Taxation to pass the relevant information to the Secretary (new subsection 49E(4));

- a statement by the TFN claim person that the person has a tax file number application pending, and that authorises the Commissioner of Taxation to tell the Secretary the outcome of the application (new subsection 49E(5)).

New subsection 49E(6) provides that a statement made by the claimant must be in the claim, and a statement made by another person must be in a form approved by the Secretary and submitted with the claim.

New subsection 49E(7) provides that the Secretary may exempt a person from the tax file number requirement if the person is or was the claimant’s partner, and the claimant cannot obtain the person’s tax file number or a statement from the person under new subsections 49E(4) or (5).

New subsection 49E(8) provides that the tax file number requirement does not apply where the claimant has opted to have his CCB% calculated using the minimum taxable income %.
New section 49F—Tax file number requirement to be satisfied for claim by individual for payment of child care benefit by single payment/in substitution because of the death of another individual to be effective

New section 49F sets out the tax file number requirement that must be satisfied in order for a claim for payment of CCB by a single payment/substitution for care provided by an approved child care service to be effective. New subsection 49F(1) explains the purpose of the section, and new subsection 49F(2) provides that one of three kinds of statement must be provided in relation to each TFN substitution person. “TFN substitution person” is defined in section 3 as the deceased individual and any partner of the deceased during the period in respect of which the payment is claimed. The three types of statement that may be provided are:

- a statement of the TFN substitution person’s tax file number. This statement can only be provided by the claimant (new subsection 49F(3));

- a statement by a TFN substitution person who was the deceased’s partner that the person does not know their tax file number, and has asked the Commissioner of Taxation to inform the person of the number, and that authorises the Commissioner of Taxation to pass the relevant information to the Secretary (new subsection 49F(4));

- a statement by the TFN person who was the deceased’s partner that the person has a tax file number application pending, and that authorises the Commissioner of Taxation to tell the Secretary the outcome of the application (new subsection 49F(5)).

New subsection 49F(6) provides that a statement made by the claimant must be in the claim, and a statement made by another person must be in a form approved by the Secretary and submitted with the claim.

New subsection 49F(7) provides that the Secretary may exempt a TFN substitution person from the tax file number requirement if claimant does not know the person’s tax file number.

New subsection 49F(8) provides that the Secretary may exempt a TFN substitution person from the tax file number requirement if the claimant cannot obtain the a statement from the person under new subsections 49F(4) or (5).

New subsection 49F(9) provides that the Secretary may make an exemption from tax file number requirement where the claimant has opted to have his CCB% calculated using the minimum taxable income %.
New section 49G—Bank account details or statement to be provided for claims by individuals for child care benefit to be effective

New section 49G sets out the bank account requirement that must be satisfied in order for an individual’s CCB claim to be effective. New subsection 49G(1) explains the purpose of the section, and new subsection 49G(2) sets out the requirement that the claimant must provide details of a bank account maintained by the claimant (either alone or jointly with another person) into which CCB is to be paid. Alternatively the claimant may give a statement that he or she will provide details of the bank account within 28 days of making the claim. New subsection 49G(3) provides that the above information must be given in the claim. New subsection 49G(4) provides that the Secretary may exempt the claimant from the bank account requirement if the Secretary considers it appropriate.

New section 49H—Restrictions on claims by an individual for payment of child care benefit by fee reduction

New section 49H sets out restrictions on individuals’ claims for payment of CCB by fee reduction for care provided by an approved child care service (a fee reduction claim).

New subsection 49H(1) specifies the type of claims to which the section applies.

New subsection 49H(2) provides that a fee reduction claim is ineffective if at the time when the claimant’s conditional eligibility would be determined (the “determination time”), the claimant had previously made a fee reduction claim in respect of the same child, and the first claim has not been determined, or as a result of that claim the claimant is already conditionally eligible for CCB by fee reduction.

New subsection 49H(3) provides that a fee reduction claim is ineffective if –

- the claimant had previously made a fee reduction claim in respect of the same child, and a determination of conditional eligibility in relation to that claim has been varied under sections 58A, 61A or 62 with the effect that the claimant is not conditionally eligible; and

- the determination time on the later claim, is before the end of the income year following the one in which the variation took effect.

These restrictions apply because the appropriate course of action is to undo the variation that the claimant is not conditionally eligible.

New subsection 49H(4) provides that an individual’s fee reduction claim is ineffective if, at the determination time, an approved child care service is eligible for CCB for the child. This provision does not apply if the Secretary considers that special circumstances apply to the claim (new subsection 49H(5)).
New section 49J—Restrictions on claim by individual for payment of child care benefit for past period for care provided by an approved child care service

New section 49J sets out restrictions on individuals’ claims for payment of CCB for a past period for care provided by an approved child care service (a past period claim).

New subsection 49J(1) specifies the type of claims to which the section applies.

New subsection 49J(2) provides that a past period claim is ineffective if the period does not fall within one income year (‘income year’ is defined in section 3 of the Family Assistance Act and has the same meaning as in the *Income Tax Assessment Act 1997*), or does fall within one income year but the claim is made within that year, or after the end of the following income year.

New subsection 49J(3) provides that a past period claim is ineffective if the claimant had previously made a claim for CCB for care provided by an approved child care service in respect of the same child for any part of the past period, whether or not the earlier claim has been determined. This provision does not apply if new subsection 49J(4) applies.

New subsection 49J(4) provides that a past period claim is effective if the claimant had previously made a claim for CCB for care provided in the past period by an approved child care service in respect of the child, and it was determined that the claimant was not eligible for CCB because the claimant failed to meet the conditions in paragraph 44(1)(a), (d) or (e) of the Family Assistance Act (relating to FTB child, Australian residence and immunisation). This is because the circumstances that led to the failure of the claim may have changed.

New subsection 49J(5) provides that a past period claim is ineffective if the claimant was conditionally eligible for CCB by fee reduction at any time during the past period.

New subsection 49J(6) provides that a past period claim is ineffective if

- the claimant had previously made a fee reduction claim in respect of the same child, and a determination on that claim has been varied under new sections 58A, 61A or 62 with the effect that the claimant is not conditionally eligible for CCB by fee reduction; and

- the time the later claim would be determined is before the end of the income year following the one in which the variation took effect.

This is because the appropriate course of action is to undo the variation that the claimant is not conditionally eligible.

New subsection 49J(7) provides that an individual’s past period claim is ineffective in respect of any part of a past period during which an approved child care service was eligible for CCB for the child. This provision does not apply if the Secretary considers that special circumstances apply to the claim (subsection 49J(8)).

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New section 49K—Restrictions on claim by individual for payment of child care benefit for past period of care provided by a registered carer

New section 49K provides restrictions on claims for payment of CCB for a past period for care provided by a registered carer (a past period claim).

New subsection 49K(1) specifies the type of claims to which the section applies.

New subsection 49K(2) provides that a past period claim is ineffective if it relates to a period of care, which occurred more than 12 months before the date of the claim.

New subsection 49K(3) provides that a past period claim is ineffective if the claimant has previously made a claim for CCB for care provided by a registered carer in respect of the same child for any part of the past period, whether or not the earlier claim has been determined. This provision does not apply if new subsection 49K(4) applies.

New subsection 49K(4) provides that a past period claim is effective if the claimant had previously made a claim for CCB for care provided in the past period by a registered carer in respect of the child, and it was determined that the claimant was not eligible for CCB because the claimant failed to meet the conditions in paragraph 45(1)(a), (f) or (g) of the Family Assistance Act (relating to FTB child, Australian residence, and immunisation). This is because the circumstances that led to the failure of the claim may have changed.

New section 49L—Restrictions on claim by individual for payment of child care benefit by single payment/in substitution because of the death of another individual

New section 49L provides restrictions on claims for payment of CCB by a single payment/substitution because of the death of another individual (a substitution claim).

New subsection 49L(1) specifies the type of claim to which the section applies.

New subsection 49L(2) provides that a substitution claim is ineffective if it is more than a year after the income year in which the death of the other individual occurred. ‘Income year’ is defined in section 3 of the Family Assistance Act and has the same meaning as in the Income Tax Assessment Act 1997.

New subsection 49L(3) provides that where a substitution claim is made for care provided by an approved child care service and a determination of conditional eligibility was in force in respect of the other individual, the claim is ineffective in respect of care provided in a particular income year if it is made within the same income year.

New subsection 49L(4) provides that a substitution claim for care provided by a registered carer is ineffective in respect of any period of care that occurred more than 12 months before the death of the other individual occurred. This is because the deceased individual would not have been able to claim for that care.
New subsection 49L(5) provides that a substitution claim is ineffective if the claimant has previously made a substitution claim in respect of the same child, the same period, and the same other individual. This applies whether or not the original claim has already been determined, but is subject to new subsections 49L(6) and (7).

New subsection 49L(6) provides that a substitution claim for care provided by an approved child care service is effective if the claimant has previously made a substitution claim, and it was determined that the claimant was not entitled to CCB because the other individual failed to meet the condition in paragraph 44(1)(a) or (e) of the Family Assistance Act (FTB child and immunisation). This is because the circumstances that led to the failure of the claim may have changed.

New subsection 49L(7) provides that a substitution claim for care provided by a registered carer is effective if the claimant has previously made a substitution claim, and it was determined that the claimant was not entitled to CCB because the other individual failed to meet the condition in paragraph 45(1)(a) or (g) of the Family Assistance Act (FTB child and immunisation). This is because the circumstances that led to the failure of the claim may have changed.

New section 49M—Restriction on claim by an approved child care service for payment of child care benefit by fee reduction for care provided by the service to a child at risk

New section 49M provides that a claim by an approved child care service for payment of CCB for care provided to a child at risk is ineffective if, at the time the care is provided, an individual is conditionally eligible for CCB in respect of the child.

New section 49N—Claims may be withdrawn or varied

New section 49N provides for the withdrawal or variation of claims.

New subsection 49N(1) provides that an individual claiming CCB by fee reduction may withdraw or vary the claim before a determination of conditional eligibility or of no entitlement is made on the claim.

Subsection 49N(2) provides that a claim may be withdrawn or varied before the claim is determined in the case of claims for CCB:

- for a past period for care provided by an approved child care service;
- for a past period for care provided by a registered carer; or
- by a single payment/ in substitution because of the death of another individual.

New subsection 49N(3) provides that the claim may only be withdrawn or varied in a manner determined by the Secretary, and new subsection 49N(4) provides that if a claim is withdrawn it is taken never to have been made.
New Subdivision C—Determinations to be made on claim if individual claims payment of child care benefit by fee reduction

The following pattern of determinations applies when an individual makes an effective claim for payment of CCB by fee reduction for care provided by an approved child care service to a child.

If the individual does not meet the requirements of conditional eligibility in section 42 of the Family Assistance Act (as substituted by item 54 of Part 2 of Schedule 1 to this Bill), a determination of no entitlement is made under new section 50G.

If the individual meets the requirements of conditional eligibility in section 42, four determinations are made on claim: a determination of conditional eligibility under new section 50F, a determination of a weekly limit of hours under new section 50H, a determination of CCB % under new section 50J and a determination of schooling % under new section 50K. These determinations have an ongoing application and are used by the service to calculate the rate and amount of fee reductions applicable to the individual and the child for as long as the individual remains conditionally eligible. After the end of the income year in which the determinations were made, a determination of entitlement is made under new section 51B, or a determination of no entitlement is made under new section 51C (as the case may be), in respect of that income year. Subsequently, after the end of each income year during which the individual was conditionally eligible, a determination of entitlement, or no entitlement (as the case may be), is made in respect of that income year (the only trigger for the entitlement determination is the fact that a determination of conditional eligibility is in force for any part of the income year). If a determination of no entitlement is made in respect of a particular income year (which may happen where no sessions of care were provided during that year), that determination does not affect the determination of conditional eligibility, which continues to be in effect.

Determinations of conditional eligibility, weekly limit of hours, CCB % and schooling % may be varied, under new Subdivisions M, N, P, Q, R U and V, from the day specified in the variation. If varied, the determinations continue to be in force with the effect as varied.

New section 50—Determinations on effective claim

New section 50 specifies that -

- new Subdivision C deals with determinations made, on claim, when an effective claim is made for payment of CCB by fee reduction for care provided by an approved child care service (a claim which is ineffective, is taken not to have been made);

- the determinations in question are made in respect of each child for whom the claim is made;

- the determinations are used by the service as a basis for reducing the claimant’s fees during the income year in which care is provided; and
after the end of the income year, a determination of entitlement (or no entitlement) is made in respect of the income year.

New section 50A—Secretary must make determinations

On claim, the Secretary is required to determine a claim, by making a determination of conditional eligibility under new section 50F, or a determination of no entitlement under section 50G, as provided for by new section 50B. (This requirement is subject to restrictions specified in new sections 50D and 50E.).

If a determination of conditional eligibility is made in respect of the claimant, the Secretary must also make a determination of a weekly limit of hours applicable to the claimant and the child the subject of the claim (under new section 50H), a determination of CCB % (under new section 50J) and a determination of schooling % (under new section 50K), as required by new section 50C.

New section 50B—Determination of conditional eligibility or no entitlement to be made

New subsection 50B(1) lists the circumstances in which a determination of conditional eligibility under new section 50F, or a determination of no entitlement under new section 50G (as the case may be) is to be made, on claim, as soon as practicable. The relevant circumstances are:

- when the claimant gives the Secretary, in the claim form, a statement of the tax file numbers of each of the TFN claim persons, as requested under new section 57B (in accordance with the definition of ‘TFN claim person’ inserted in section 3 of the Family Assistance Admin Act by item 65 of Part 3, Schedule 2 to this Bill, the TFN claim person in this case is the claimant and the claimant’s partner);

- when the claimant gives the Secretary a statement of the claimant’s tax file number and the Secretary exempts the claimant’s partner under new subsection 57B(6) from the requirement to make a statement relating to the partner’s tax file number; or

- when the claimant opts, in the claim form, to have the CCB % (applicable to the calculation of the rate of fee reductions and the rate of the benefit) calculated using the minimum taxable income % as the taxable income % (the effect of this option is that the CCB % is set at the minimum level).

New subsection 50B(2) provides that in circumstances other than those listed above, the making of a determination of conditional eligibility, or no entitlement, is subject to restrictions provided for in new section 50D.
New section 50C—Other determinations to be made if determination of conditional eligibility is made

New section 50C provides that if a determination of conditional eligibility is made in respect of the claimant, the Secretary must also make a determination of a weekly limit of hours applicable to the claimant and the child who is the subject of the claim (under new section 50H), a determination of CCB % (under new section 50J) and a determination of schooling % (under new section 50K).

New section 50D—Restriction on when determinations under sections 50F or 50G can be made

The Secretary may defer the making of a determination of conditional eligibility, or no entitlement determination in situations provided for in new section 50D relating to the TFN requirement that applies at claim. If the claimant provides the relevant TFNs in the claim form, the determinations can be made as soon as reasonably practicable (new section 50B refers).

Under new subsection 50D(1) however, if

- both TFN claim persons make a statement under new subsections 57B(3) or (4); or
- one of the TFN claim persons makes such a statement and the other TFN claim person gives the person’s TFN; or
- the claimant makes such a statement and the Secretary exempts the claimant’s partner under new subsection 57B(6) from the requirement to make any statement relating to TFN;

the Secretary can only make a determination of conditional eligibility or of no entitlement if:

- within 28 days of the claim, the Commissioner of Taxation tells the Secretary the relevant TFNs, or that the person who made a statement under new subsections 57B(3) or (4) has not applied for a TFN, or that the application by the person for a TFN has been refused, or that the person has withdrawn the application for a TFN; or
- after 28 days have passed without receiving any information from the Commissioner of Taxation.

If, in the claim form, neither TFNs nor the statements referred to in new subsection 57B(3) or (4) were given in respect of each TFN claim person, and the claimant did not opt for the application of the minimum taxable income % to the calculation of the claimant’s CCB%, the Secretary may make a request under new section 57C for the provision of TFNs of each of the TFN claim persons.
Under new subsection 50D(3), if the request under new section 57C was made, and the claimant complies with the request within 28 days of the request, the Secretary can only make a determination of conditional eligibility, or a determination of no entitlement (as the case may be), when the claimant complies with the request.

Under new subsection 50D(4), if the request under new section 57C was made, and the claimant does not comply with the request within 28 days of the request, the Secretary can only make a determination of conditional eligibility, or no entitlement, after 28 days have passed.

Under new subsection 50D(2), if the request under new section 57C was not made, the Secretary must make a determination of conditional eligibility, or no entitlement, as soon as practicable.

New section 50E—Restriction on determination under section 50F or 50G if bank account details not provided

The Secretary may also defer the making of a determination of conditional eligibility, or no entitlement, if the claimant makes a statement referred to in paragraph 49G(2)(b) relating to the provision of the claimant’s bank account details. Under new subsection 50E(1), the Secretary may only make a determination of conditional eligibility, or no entitlement, if within 28 days after the claim is made, the claimant nominates the account and provides the required bank account details.

New subsection 50E(2) provides that if the Secretary cannot make the determination because 28 days have passed without the claimant providing the required bank account details, the claim is taken never to have been made.

New section 50F—Determination of conditional eligibility

If the Secretary is satisfied that the claimant, at the time the Secretary makes the determination, is conditionally eligible under section 42 of the Family Assistance Act in respect of a child, the Secretary must determine that the claimant is conditionally eligible for CCB by fee reduction in respect of the child.

New section 50G—Determination that no entitlement

If the Secretary is satisfied that the claimant, at the time the Secretary makes the determination, is not conditionally eligible under section 42 of the Family Assistance Act in respect of a child, the Secretary must determine that the claimant is not entitled to be paid CCB by fee reduction in respect of the child.
New section 50H—Determination of weekly limit of hours

If the Secretary makes a determination of conditional eligibility under section 50F, the Secretary must determine the weekly limit of hours for which the claimant may be paid the benefit applicable to the claimant and the child. [Subdivision G of Division 4 of Part 3 of the Family Assistance Act, as amended by item 54 of Part 2 of Schedule 1 to this Bill, limits the number of hours of care in a week for which an individual, or a service, may be eligible for CCB to the number of hours worked out under that Subdivision.].

New subsection 50H(2) provides access, for the purposes of working out the limit applying to individuals who are conditionally eligible, to the provisions of Subdivision G of Division 4 of Part 3 of the Family Assistance Act under which the weekly limit of hours is determined for individuals who are ‘eligible’ for CCB. When determining the limit of hours for a conditionally eligible individual, references in that Subdivision to a person eligible are to be treated as if they were references to a person conditionally eligible under section 42 of that Act.

New subsection 50H(3) provides that the weekly limit of hours determined under this section must be 50 hours only if circumstances referred to in subsection 54(2), (4), (6), (13) or (14) apply; otherwise a 20 hours limit applies.

A determination of a weekly limit of hours under this section may be later varied, under new Subdivision N, R, U or V with the effect that a different limit will apply from a day specified in the variation (a later day than the day on which a determination under new section 50H comes into force).

New section 50J—Determination of CCB%

If the Secretary makes a determination of conditional eligibility under section 50F, the Secretary must determine the CCB % applicable to the claimant and the child.

CCB % (worked out under subclause 2 of Part 1 of Schedule 2 to the Family Assistance Act) is a component of rate of CCB claimed by an individual for care provided by an approved child care service.

Schedule 2 to the Family Assistance Act includes provisions under which CCB % is worked out for individuals who are ‘eligible’ for CCB. These provisions are therefore to be used when entitlement determinations under new sections 51B, 52E and 53D are made.

New subsection 50J(2) provides access to the provisions of Schedule 2 to the Family Assistance Act for the purposes of working out the CCB % applying to individuals who are conditionally eligible. When determining CCB % for a conditionally eligible individual, references in that Schedule to a person eligible for CCB are to be treated as if they were references to a person conditionally eligible under section 42 of that Act.
New section 50K—Determination of schooling 

If the Secretary makes a determination of conditional eligibility under section 50F, the Secretary must determine the schooling % applicable to the claimant and the child.

Schooling % (worked out under subclause 2 of Part 1 of Schedule 2 to the Family Assistance Act) is a component of rate of CCB claimed by an individual for care provided by an approved child care service.

Schedule 2 to the Family Assistance Act includes provisions under which schooling % is worked out for individuals who are ‘eligible’ for CCB. These provisions are therefore to be used when entitlement determinations under new section 51B, 52E and 53D are made.

New subsection 50K(2) provides access to the provisions of Schedule 2 to the Family Assistance Act for the purposes of working out the schooling % applying to individuals who are conditionally eligible. When determining the schooling % for a conditionally eligible individual, references in that Schedule to a person eligible for CCB are to be treated as if they were references to a person conditionally eligible under section 42 of that Act.

New section 50L—When determinations are in force

New subsection 50L(1) expresses the rule that a determination of conditional eligibility under section 50F comes into force on the day the determination is made, or on the day specified in the notice of the determination, and remains in force at all times afterwards.

However, new subsection 50L(2) allows the Secretary to specify, as the day the determination comes into force, a day not more than 4 weeks before the day the claim was made. This exception only applies if the Secretary is satisfied that the claimant meets the conditional eligibility requirements in section 42 of the Family Assistance Act on a day before the claim and since that day (new subsection 50L(3) refers).

The 4-week backdating exception is subject to a restriction under new subsection 50L(4). The Secretary is not allowed to specify a day before the day the determination is made as the day on which the determination of conditional eligibility comes into force if the determination is made on a claim that was made while an earlier determination of conditional eligibility was in force in respect of the claimant with the effect that the claimant was not conditionally eligible as a result of the variation under section 58B (which relates to failure to comply with immunisation requirement).

New subsection 50L(5) provides that determinations of weekly limit of hours, CCB % and schooling % in respect of the claimant and the child come into force at the same time the determination of conditional eligibility comes into force and remains in force while the determination of conditional eligibility is in force.
New subsection 50L(6) provides for the cessation of the determination of conditional eligibility when a determination of conditional eligibility in force in respect of a claimant was varied with the effect that the claimant was not conditionally eligible and the claimant made a new claim for payment of CCB by fee reduction. In this situation, the previous determination of conditional eligibility (as varied) ceases to be in force on the day on which a determination in respect of the latter claim comes into force.

New subsection 50L(7) provides for the cessation of the determination of conditional eligibility on request of the claimant. In this situation, the determination of conditional eligibility ceases to be in force on the day specified in the notice under new subsection 50L(8).

New subsection 50L(8) specifies the requirements of the notice. The notice must be given to the claimant and the service concerned and must specify the day on which the determination ceases to be in force. The cessation is not ineffective if these notice requirements are not complied with.

**New section 50M—Notice of determinations if claimant conditionally eligible**

The Secretary is required, under new section 50M, to give the claimant, and the service, or services, that the claimant indicates are, or will, provide care to the child who is the subject of the claim, the notice of determinations of conditional eligibility, weekly limit of hours, CCB % and schooling % applicable to the claimant and the child.

New subsection 50M(2) specifies the details of the notice. New subsection 50M(3) provides that the determinations are not ineffective if the notice requirements are not complied with.

**New section 50N—When determination of no entitlement is in force**

New subsection 50N(1) expresses the rule that a determination of no entitlement under section 50G comes into force on the day the determination is made and remains in force at all times afterwards.

New subsection 50N(2) provides for the cessation of the determination of no entitlement when, following the determination of no entitlement, the claimant makes a new effective claim for payment of CCB by fee reduction, or for a past period for care provided by an approved child care service. In this situation, the previous determination of no entitlement ceases to be in force on the day on which a determination in respect of the latter claim comes into force.

**New section 50P—Notice of determination of no entitlement**

The Secretary is required, under new section 50P, to give the claimant a notice of a determination of no entitlement made under section 50G. The notice must also state that the claimant may apply for review of the determination. New subsection 50P(2) provides that the determination is not ineffective if the notice requirements are not complied with.
New Subdivision D—Determination of entitlement if individual determined to be conditionally eligible for child care benefit by fee reduction

New section 51—Determination to be made if determination of conditional eligibility in force

New section 51 specifies that this Subdivision deals with a determination of entitlement if a determination of conditional eligibility is in force in respect of an individual and a child at any time during an income year.

New section 51A—Secretary must determine entitlement

New section 51A requires the Secretary to make a determination of a claimant’s entitlement, after the end of each income year, for that income year, if during that year a determination of conditional eligibility was in force (for any length of time) in respect of the claimant.

New section 51B—Determination of entitlement

If the Secretary is satisfied that the claimant is eligible under section 43 of the Family Assistance Act for CCB by fee reduction in respect of a session of care provided by an approved child care service to a child during an income year, the Secretary must determine that the claimant is entitled to be paid CCB by fee reduction, and assess the rate and the amount for which the claimant is eligible for that income year.

New subsection 51B(2) states that in making the determination of entitlement, the Secretary takes into account determinations made in respect of the claimant during the income year and certificates of rate and weekly limit of hours given by the service in respect of the claimant during the year.

New section 51C—Determination that no entitlement

If the Secretary is not satisfied that the claimant is eligible under section 43 of the Family Assistance Act as specified in new section 51B for a particular income year, the Secretary must determine that the claimant is not entitled to be paid CCB by fee reduction in respect of that year.

New section 51D—When determination is in force

A determination under this Subdivision comes into force when it is made and remains in force at all times afterwards.
New section 51E—Notice of determination

New section 51E requires the Secretary to give notice of the entitlement, or no entitlement, determination under this Subdivision to the claimant. New subsection 51E(1) specifies the requirements of the notice. New subsection 51E(2) provides that a determination is not ineffective if those notice requirements are not complied with.

New Subdivision E—Determination of entitlement if individual claims payment of child care benefit for a past period

New section 52—Determination on effective claim

This new section specifies that this new Subdivision deals with a determination of entitlement, made in respect of an individual and each child who is the subject of the claim, if an individual has made an effective claim for payment of CCB for a past period for care provided by an approved child care service, or for care provided by a registered carer. If a claim is not effective, it is taken not to have been made.

New section 52A—Secretary must determine claim

On claim, the Secretary is required to determine a claim (by making a determination of entitlement under new section 52E or 52F, as appropriate, or a determination of no entitlement under section 52G). This requirement is subject to restrictions specified in new sections 52B, 52C and 52D where bank account details have not been provided or tax file number requirement has not been met or tax assessment has not been made.

New section 52B—Restriction on determining claim where bank account details not provided

This restriction applies to claims for payment of CCB for a past period for care provided by an approved child care service and for care provided by a registered carer.

The Secretary may defer determining the claim if the claimant makes a statement referred to in paragraph 49G(2)(b) relating to the provision of the claimant’s bank account details. Under new subsection 52B(1), the Secretary may only determine the claim, if within 28 days after the claim is made, the claimant nominates the account and provides the required bank account details.

New subsection 52B(2) provides that if the Secretary cannot make the determination because 28 days have passed without the claimant providing the required bank account details, the claim is taken never to have been made.
New section 52C—Restriction on determining claim where tax file number not provided etc.

This restriction applies to a claim for payment of CCB for a past period for care provided by an approved child care service.

Under new section 49E, the tax file number requirement must be satisfied for such a claim to be effective. If the TFN claim person (as defined in subsection 3(1) of the Family Assistance Admin Act) makes a statement under new subsection 49E(4) or (5), the claim is effective. However, under new subsection 52C(1), the Secretary can only determine the claim if the Commissioner of Taxation tells the Secretary the person’s tax file number.

New subsection 52C(2) provides that if the Commissioner of Taxation tells the Secretary that the person does not have a tax file number, or has not applied for a TFN, or that the application by the person for a TFN has been refused, or that the person has withdrawn the application for a TFN, the claim is taken never to have been made.

New section 52D—Restriction on determining claim for care provided by an approved child care service when tax assessment not made

This restriction applies to a claim for payment of CCB for a past period for care provided by an approved child care service.

This new section provides that such a claim can only be determined before all necessary tax assessments have been made if the claimant opted, in the claim form, to have the CCB% applicable to him or her, calculated at the minimum level or if tax assessments is made in relation to the TFN claim person who is required to lodge an income tax return for the income year for which CCB is claimed.

New section 52E—Determination of entitlement—claim for care provided by an approved child care service

If the Secretary is satisfied that the claimant is eligible under section 44 of the Family Assistance Act for CCB for a past period for care provided by an approved child care service to a child, the Secretary must determine that the claimant is entitled to be paid CCB for the past period and determine the amount of the entitlement.

New section 52F—Determination of entitlement—claim for care provided by a registered carer

If the Secretary is satisfied that the claimant is eligible under section 45 of the Family Assistance Act for CCB for a past period for care provided by a registered carer to a child, the Secretary must determine that the claimant is entitled to be paid CCB for the past period for the child and determine the amount of the entitlement.
New section 52G—Determination that no entitlement

If the Secretary is not satisfied that the claimant for CCB for care provided to a child by an approved child care service is eligible under section 44, or the claimant for CCB for care provided to a child by a registered carer is eligible under section 45, of the Family Assistance Act, the Secretary must determine that the claimant is not entitled to be paid CCB for the past period in respect of the child.

New section 52H—When a determination is in force

New subsection 52H(1) expresses the rule that a determination under this Subdivision comes into force when it is made and remains in force at all times afterwards.

New subsections 52H(2) and (3) specify two situations in which a determination of no entitlement made in respect of an earlier claim ceases to be in force.

New subsection 52H(2) provides that a determination of no entitlement made because of a failure to meet a requirement in paragraph 44(1)(a), (d) or (e) (relating to FTB child, Australian residence requirement and the immunisation requirement) ceases to be in force on the day on which a subsequent claim made by the claimant for CCB for a past period for care provided by an approved child care service is determined.

New subsection 52H(3) provides that a determination of no entitlement made because of a failure to meet a requirement in paragraph 45(1)(a), (f) or (g) (relating to FTB child, Australian residence requirement and the immunisation requirement) ceases to be in force on the day on which a subsequent claim made by the claimant for CCB for a past period for care provided by a registered carer is determined.

New section 52J—Notice of determination

New section 52J requires the Secretary to give notice of the entitlement, or no entitlement, determination under this Subdivision to the claimant. New subsection 52J(1) specifies the requirements of the notice. New subsection 52J(2) provides that a determination is not ineffective if those notice requirements are not complied with.

New Subdivision F—Determination of entitlement if individual claims payment of child care benefit by single payment/in substitution

New section 53—Determination on effective claim

New section 53 specifies that this new Subdivision deals with a determination of entitlement if an effective claim is made for payment of CCB by single payment/in substitution because of the death of another individual. If the claim is not effective, it is taken not to have been made.
New section 53A—Secretary must determine claim

On claim, the Secretary is required to determine a claim (by making a determination of entitlement under new section 53D, or a determination of no entitlement under section 53E). This requirement is subject to restrictions specified in new sections 53B and 53C when bank account details have not been provided or tax file number requirement has not been met.

New section 53B—Restriction on determining claim where bank account details not provided

The Secretary may defer the determination of a claim, if the claimant makes a statement referred to in paragraph 49G(2)(b) relating to the provision of the claimant’s bank account details. Under new subsection 53B(1), the Secretary may only make a determination of entitlement, or no entitlement (as the case may be), if within 28 days after the claim is made, the claimant nominates the account and provides the required bank account details.

New subsection 53B(2) provides that if the Secretary cannot make the determination because 28 days have passed without the claimant providing the required bank account details, the claim is taken never to have been made.

New section 53C—Restriction on determining claim where tax file number not provided etc.

Under new section 49F, the tax file number requirement must be satisfied for a claim for CCB by single payment/in substitution because of the death of another individual to be effective. If the TFN substitution person (defined in subsection 3(1) of the Family Assistance Admin Act as the deceased individual and any partner of the deceased individual during the period for which the benefit is claimed) makes a statement under new subsection 49F(4) or (5), the claim is effective. However, under new subsection 53C(1), the Secretary can only determine the claim if the Commissioner of Taxation tells the Secretary the person’s tax file number.

New subsection 53C(2) provides that if the Commissioner of Taxation tells the Secretary that the person does not have a tax file number, or has not applied for a TFN, or that the application by the person for a TFN has been refused, or that the person has withdrawn the application for a TFN, the claim is taken never to have been made.

New section 53D—Determination of entitlement

If the Secretary is satisfied that the claimant is eligible under section 46 of the Family Assistance Act for CCB by single payment/in substitution because of the death of another individual for care provided to a child, the Secretary must determine that the claimant is entitled to be paid that CCB for the child and must determine the amount for which the Secretary considers the claimant to be eligible.
New section 53E—Determination that no entitlement

If the Secretary is not satisfied that the claimant for CCB by single payment/in substitution because of the death of another individual for care provided to a child is eligible under section 46 of the Family Assistance Act, the Secretary must determine that the claimant is not entitled to be paid CCB by single payment/in substitution because of the death of another individual in respect of the child.

New section 53F—When determination is in force

New subsection 53F(1) expresses the rule that a determination under this Subdivision comes into force when it is made and remains in force at all times afterwards.

New subsections 53F(2) and (3) specify two situations in which a determination of no entitlement made in respect of an earlier claim ceases to be in force.

New subsection 53F(2) provides that a determination of no entitlement, made on a claim for CCB by single payment/in substitution for care provided to a child, because of a failure to meet a requirement in paragraph 44(1)(a) or (e) (relating to FTB child and the immunisation requirement) ceases to be in force on the day on which a subsequent claim made by the claimant for CCB by single payment/in substitution for care provided to the child is determined.

New subsection 53F(3) provides that a determination of no entitlement, made on a claim for CCB by single payment/in substitution for care provided to a child, because of a failure to meet a requirement in paragraph 45(1)(a) or (g) (relating to FTB child and the immunisation requirement) ceases to be in force on the day on which a subsequent claim made by the claimant for CCB by single payment/in substitution for care provided to the child is determined.

New section 53G—Notice of determination

New section 53G requires the Secretary to give the claimant the notice of the entitlement, or no entitlement, determination (as the case may be), made under this Subdivision. New subsection 53G(1) specifies the requirements of the notice. New subsection 53G(2) provides that a determination is not ineffective if those notice requirements are not complied with.
New Subdivision G—Determination of entitlement if claim by approved child care service for payment of child care benefit by fee reduction for care provided by the service to a child at risk

New section 54—Determination on effective claim

New section 54 specifies that this new Subdivision deals with a determination of entitlement if an approved child care service made an effective claim for payment of CCB by fee reduction for care provided by the service to a child at risk of serious abuse or neglect (under new subsections 49(2) and 49D, a service is taken to have made an effective claim if the service’s eligibility under section 47 of the Family Assistance Act is reported by the service to the Secretary).

New subsection 54(2) provides that if an effective claim is made by the service, a determination of a weekly limit of hours under new section 54C is taken to have been made in respect of the service.

New section 54A—Secretary must determine claim

The Secretary is required to determine a claim (by making a determination of entitlement under new section 54B).

New section 54B—Determination of entitlement

New subsection 54B(4) specifies that this determination is made after the end of each financial year during which the service was eligible under section 47 of the Family Assistance Act in respect of a child. The effect of this provision is that if a service reports to the Secretary during a financial year its eligibility under section 47 of the Family Assistance Act in respect of care provided to the child during that year, a determination of entitlement is made in respect of the service and the child after the end of the financial year.

When a child is considered by the service to be at risk of serious abuse or neglect, an approved child care service makes its own decision as to its eligibility under section 47 of the Family Assistance Act (the Secretary does not determine the service’s eligibility – new subsection 54B(3) refers). Therefore, if the service makes a claim, by reporting to the Secretary its eligibility under section 47 of that Act, the service will always be entitled to be paid the CCB so claimed.

New subsection 54B(1) provides that, if the claimant considers itself eligible under section 47 of the Family Assistance Act for CCB by fee reduction for one or more sessions of care provided to a child at risk during a financial year (the decision in respect of the eligibility belongs to a service), and reports that eligibility to the Secretary, the Secretary must determine that the claimant is entitled to be paid CCB for the child. The Secretary must also determine the amount for which the Secretary considers the claimant to be eligible.
New subsection 54B(2) provides that in determining the amount, the Secretary takes into account the CCB rate and the weekly limit of hours that applies as a result of certificates given by the service in circumstances specified in subsections 54(10), 55(6), 56(4) and 76(2) of the Family Assistance Act and any determination (of rate and weekly limit of hours) made by the Secretary during the financial year in respect of the service and the child. As a service’s decisions are not reviewable (section 104 of the Family Assistance Admin Act, as amended by item 103 of Part 3 of Schedule 2 of this Bill, refers) the Secretary cannot alter the rate and the limit of hours that applies as a result of the service’s certificates.

New section 54C—Determination of weekly limit of hours

Subdivision G of Division 4 of the Family Assistance Act, as amended by item 54 of Part 2 of Schedule 1 to this Bill, limits the number of hours of care in a week for which an individual, or a service, may be eligible for CCB to the number of hours worked out under that Subdivision.

If a service is eligible for CCB under section 47 of the Family Assistance Act, a determination of a weekly limit of hours applicable to the service and the child is taken to have been made under new section 54C with the effect that the limit is 20 hours.

That determination may be later varied under new Subdivision U with the effect that a different limit will apply from a day specified in the determination (a later day that the day on which a determination under new section 54C comes into force).

New section 54D—Notice of determination

New section 54D requires the Secretary to give the claimant the notice of the entitlement determination made under this Subdivision. New subsection 54D(1) specifies the requirements of the notice. New subsection 54D(2) provides that a determination is not ineffective if those notice requirements are not complied with.

New Subdivision H—Matters relating to determinations

This Subdivision deals with matters relating to the calculation of CCB % and schooling %. CCB % and schooling % are components of rate of CCB claimed by an individual for care provided by an approved child care service.

If the Secretary makes a determination of conditional eligibility under section 50F, the Secretary must determine the CCB % and schooling % applicable to the claimant and the child.

Both CCB % and schooling % are worked out under subclause 2 of Part 1 of Schedule 2 to the Family Assistance Act.

New sections 55, 55A, 55B and 55C deal with matters relevant to the determination of CCB % and new section 55D deals with matters relevant to the determination of schooling %.
New section 55—Determination of CCB % under section 50I may be based on estimate

This new section applies when a CCB % is required to be determined under new section 50J in respect of a conditionally eligible individual.

CCB % applicable to an individual and a child is calculated on the basis of the individual’s adjusted taxable income for the current income year. [Adjusted taxable income is defined in clause 2 of Schedule 3 to the Family Assistance Act.]. If the individual is a member of a couple, the partner’s taxable income for the appropriate year is also relevant.

Where a claim is made for CCB by fee reduction, an individual’s taxable income for the relevant income year will not be known. Accordingly, new section 55 allows the Secretary to use a reasonable estimate of the amount provided by the individual for the purposes of calculating the CCB% applicable to the individual and the child.

Under new subsection 55(2), if the individual does not give the Secretary a reasonable estimate of the individual’s taxable income, the CCB% applicable to the individual will be calculated using the minimum taxable income % as the taxable income %, with the effect that the CCB% will be set at the minimum level. The consequence specified in subsection 55(2) does not apply to an income support recipient.

New section 55A—Determination of rate under Subdivision F may be based on estimate

If an individual claims CCB by single payment/in substitution because of the death of another individual, the deceased individual’s CCB% is calculated on the basis of that individual’s taxable income for the year for which the claim is made. If the deceased individual was a member of a couple, the partner’s taxable income for the appropriate year is also relevant.

When a claim is made, the other individual’s taxable income for the relevant income year may not be known. Accordingly, new section 55A allows the Secretary to use a reasonable estimate of the amount provided by the claimant for the purposes of calculating the CCB% applicable to the other individual and the child. Under new subsection 55A(2), if the claimant does not give the Secretary a reasonable estimate of the other individual’s taxable income, the CCB% will be calculated using the minimum taxable income % as the taxable income %, with the effect that the CCB% will be set at the minimum level.

New section 55B—CCB% applicable to individual when certain other information not provided

New section 55B applies to the calculation of CCB % where an individual makes a claim for CCB by fee reduction or for CCB for a past period for care provided by an approved child care service or for CCB by single payment/in substitution for care provided by an approved child care service.
This new section deals with 2 situations in which the applicable CCB% is to be set at the minimum level.

If the claimant, in the claim form, opted to have the CCB % calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %, the CCB % is to be so calculated, with the effect that the CCB % is set at the minimum level.

If the information required to work out the number of children the claimant (or the deceased individual, in the case of a claim by single payment/in substitution) has, or had, in care of a particular kind, the CCB % is calculated using the minimum taxable income % as the taxable income, with the effect that the CCB % is set at the minimum level.

**New section 55C—CCB% applicable to individual when tax file number information not given**

New section 55C applies to the calculation of CCB % where an individual makes a claim for CCB by fee reduction.

In the following situations the CCB % is calculated using the minimum taxable income % as the taxable income, with the effect that the CCB % is set at the minimum level:

- if, in the claim, the person (the individual or the individual’s partner) makes a statement that the person has a tax file number but does not know what the number is or makes a statement that the person applied for a tax file number and a determination of conditional eligibility is made, as provided for in new section 50D, after the Commissioner of Taxation tells the Secretary that the person does not have a TFN, or has not applied for TFN or the application was withdrawn or refused;

- if, in the claim, none of the TFN statements referred to in section 57B are made, the exemption referred to in new subsection 57B(6) does not apply, the claimant does not opt to have the CCB % set at the minimum level, the Secretary makes a request under new section 57C that the claimant provide the relevant TFNs and determination of conditional eligibility is made, as provided for in new section 50D, after 28 days have passed without the claimant complying with the request.

**New section 55D—Schooling % applicable to individual when certain information not provided**

This new section applies to the calculation of schooling % where an individual makes a claim for CCB by fee reduction or for CCB for a past period for care provided by an approved child care service or for CCB by single payment/in substitution for care provided by an approved child care service.
If, in the claim, the information whether the child who is the subject of the claim is a school child (attends school) or not is not provided, the applicable schooling % is determined to be 85% (if the information is provided, the schooling % applicable to the child that is not a school child is 100 %).

**New Subdivision J—Payment**

**New section 56—Payment in respect of claim for child care benefit by fee reduction where claim for payment by individual**

Under new subsection 56(1), the Secretary must pay to a claimant (being an individual) the amount of the difference between the amount of the entitlement of child care benefit and the total amount of fee reductions (if any) where the fees for sessions of care provided during an income year were reduced by an approved child care service under new section 219A. The amount of the difference is to be paid at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant.

While the general rule is that the claimant entitled to child care benefit is to be paid at such time and in such manner as the Secretary considers appropriate, there may be occasions when it is appropriate for the Secretary to pay someone else on behalf of the claimant. The power to do so is contained in new subsection 56(2). This may happen where the claimant is incapable of looking after his or her own affairs or in cases where the claimant asks the Secretary to make such a direction. It is envisaged that the discretion in new subsection 56(2) would be used infrequently where the claimant does not consent to the direction. A decision by the Secretary under this provision is subject to review.

Under new subsection 56(3), the Secretary may direct that the whole or a part of an amount, which is to be paid to a claimant, is to be paid in a different way than to the credit of a bank account. If a direction is given, then the amount is to be paid in accordance with the direction. This provision enables a payment to be made to a claimant, for example, by way of cheque.

New subsection 56(4) provides that new section 56 is subject to Part 4 of the Family Assistance Admin Act, which deals with overpayments and debt recovery.

**New section 56A—Payment of child care benefit for a past period and by single payment/in substitution**

Under new subsection 56A(1), the Secretary must pay the amount of the entitlement of child care benefit to a claimant (being an individual) if the claimant is entitled to be paid child care benefit for a past period of care provided by either an approved child care service or a registered carer or the claimant is entitled to be paid child care benefit by single payment/in substitution. The amount payable is to be paid at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant.
While the general rule is that the claimant entitled to child care benefit is to be paid at such time and in such manner as the Secretary considers appropriate, there may be occasions when it is appropriate for the Secretary to pay someone else on behalf of the claimant. The power to do so is contained in new subsection 56A(2). This may happen where the claimant is incapable of looking after his or her own affairs or in cases where the claimant asks the Secretary to make such a direction. It is envisaged that the discretion in new subsection 56A(2) would be used infrequently where the claimant does not consent to the direction. A decision by the Secretary under this provision is subject to review.

Under new subsection 56A(3), the Secretary may direct that the whole or a part of an amount which is to be paid to a claimant is to be paid in a different way from that provided in new subsection 56A(1). If a direction is given, then the amount is to be paid in accordance with the direction. This provision enables a payment to be made to a claimant by way, for example, of cheque.

New subsection 56A(4) provides that new section 56A is subject to Part 4 of the Family Assistance Admin Act, which deals with overpayments and debt recovery.

**New section 56B—Payment of child care benefit by fee reduction where claim by an approved child care service**

Under new subsection 56B(1), the Secretary must pay, to the claimant (being an approved child care service), the amount of the difference between the amount of the entitlement of child care benefit by fee reduction for sessions of care provided to a child at risk during a financial year and the total amount already received by the claimant in respect of the financial year from one or more payments of an advance amount to cover the costs of providing care to the child at risk. The amount payable is to be paid at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant.

Under new subsection 56B(2), the Secretary may direct that the whole or a part of an amount which is to be paid to a claimant is to be paid in a different way from that provided in new subsection 56B(1). If a direction is given, then the amount is to be paid in accordance with the direction. This provision enables a payment to be made to a claimant, for example, by way of cheque.

New subsection 56B(3) provides that new section 56B is subject to Part 4, which deals with overpayments and debt recovery.
New Subdivision K—Obligations to notify change of circumstances

New section 56C—Individual's obligation to notify change of circumstances

New subsection 56C(1) provides that a claimant (being an individual), who is subject to a determination of conditional eligibility made under new section 50F, must notify the Secretary if anything happens that causes the claimant to cease to be conditionally eligible or if the claimant becomes aware that anything is likely to happen that will have that effect. The claimant must notify the Secretary in the manner set out in the written notice given to the claimant under new section 57 as soon as practicable after becoming aware of the change in circumstances. There is a penalty for failing to comply with these obligations.

New subsection 56C(2) provides that a claimant (being an individual), who is subject to a determination of conditional eligibility made under new section 50F and a CCB % determination made under new section 50J where CCB % is calculated using Schedule 2 to the Family Assistance Act, must notify the Secretary if anything happens that causes a reduction in the CCB % or the claimant becomes aware that anything is likely to happen that will have that effect as soon as practicable after becoming aware. The claimant in notifying the Secretary must do so in the manner set out in the written notice given to the claimant under new section 57. There is a penalty for failing to comply with these obligations. Obligations under this subsection do not apply to an individual whose CCB% is set at the minimum level.

New subsection 56C(3) provides that a claimant (being an individual), who is subject to a determination of conditional eligibility made under new section 50F and a weekly limit of hours determination made under new section 50H that is more than 20 hours for a reason other than the child being at risk, must notify the Secretary if anything happens that causes a reduction in the weekly limit of hours or the claimant becomes aware that anything is likely to happen that will have that effect as soon as practicable after becoming aware. The claimant in notifying the Secretary must do so in the manner set out in the written notice given to the claimant under new section 57. There is a penalty for failing to comply with these obligations.

New subsection 56C(4) provides that a claimant (being an individual), who is subject to a determination of conditional eligibility made under new section 50F and a weekly limit of hours determination made under new section 50H that is a 24 hour care limit with one or more 24 hour care period, must notify the Secretary if anything happens that causes a reduction in the number of 24 hour care periods in a week or the claimant becomes aware that anything is likely to happen that will have that effect as soon as practicable after becoming aware. The claimant in notifying the Secretary must do so in the manner set out in the written notice given to the claimant under new section 57. There is a penalty for failing to comply with these obligations.
New subsection 56C(5) provides that a claimant (being an individual), who is subject to a determination of conditional eligibility made under new section 50F and a schooling % determination made under new section 50K under which the schooling % is 100%, must notify the Secretary if anything happens that causes a reduction in the schooling % to 85% or the claimant becomes aware that anything is likely to happen that will have that effect as soon as practicable after becoming aware. The claimant in notifying the Secretary must do so in the manner set out in the written notice given to the claimant under new section 57. There is a penalty for failing to comply with these obligations.

New subsection 56C(6) provides that a claimant (being an individual and a child), who is subject to a determination of conditional eligibility made under new section 50F and the rate of child care benefit for a session of care determined under subsection 81(2) of the Family Assistance Act (because of hardship), must notify the Secretary if anything happens that affects the rate determined or the claimant becomes aware that anything is likely to happen that will have that effect as soon as practicable after becoming aware. The claimant in notifying the Secretary must do so in the manner set out in the written notice given to the claimant under new section 57. There is a penalty for failing to comply with these obligations.

**New section 56D—Approved child care service's obligation to notify change of circumstances**

New subsection 56D(1) provides that a claimant (being an approved child care service), who is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a child at risk and a weekly limit of hours determination made under new section 54C in respect of the claimant and the child is in force and the weekly limit of hours is more than 20 because of the application of either one of subsections 54(3), (5), (7), (9) or (12) or subsections 55(3), (5) or (8) of the Family Assistance Act, must notify the Secretary if anything happens that causes a reduction in the weekly limit of hours or the claimant becomes aware that anything is likely to happen that will have that effect as soon as practicable after becoming aware. The claimant in notifying the Secretary must do so in the manner set out in the written notice given to the claimant under new section 57. There is a penalty for failing to comply with these obligations.

New subsection 56D(2) provides that a claimant (being an approved child care service), who is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a child at risk and a rate determination made by the Secretary under subsection 81(4) of the Family Assistance Act is in force, must notify the Secretary if anything happens that has the effect that the rate should not apply or the claimant becomes aware that anything is likely to happen that will have that effect as soon as practicable after becoming aware. The claimant in notifying the Secretary must do so in the manner set out in the written notice given to the claimant under new section 57. There is a penalty for failing to comply with these obligations.
New subsection 56D(3) provides that where an individual makes a claim for child care benefit by fee reduction for care provided by an approved child care service and a determination of conditional eligibility made under new section 50F is in force where the rate applicable is determined under subsection 81(3) of the Family Assistance Act, then the approved child care service must notify the Secretary if anything happens that has the effect that the rate should no longer apply or if the service becomes aware that anything is likely to happen that will have that effect as soon as practicable after becoming aware. The service has this responsibility because it is the service that claims the higher rate under subsection 81(3). The service in notifying the Secretary must do so in the manner set out in the written notice given to the claimant under new section 57. There is a penalty for failing to comply with these obligations.

New subsection 56D(4) provides that where an individual makes a claim for child care benefit by fee reduction for care provided by an approved child care service and determinations of conditional eligibility made under new section 50F and a weekly limit of hours under new section 50H are in force and the weekly limit of hours is set by application of subsection 54(12) or 55(8) of the Family Assistance Act (because of a child at risk), then the approved child care service must notify the Secretary if anything happens that has the effect that the weekly limit of hours should not be as high or if the service becomes aware that anything is likely to happen that will have that effect as soon as practicable after becoming aware. The service has this responsibility because it is the service that put in the application for the limit of hours under subsection 54(12) or 55(8). The service in notifying the Secretary must do so in the manner set out in the written notice given to the claimant under new section 57. There is a penalty for failing to comply with these obligations.

New subsection 56D(5) provides that if a determination under subsection 57 of the Family Assistance Act is in force in respect of an approved child care service being a sole provider of a child care service in an area, the service must notify the Secretary if anything happens that has the effect that it would no longer be the sole provider or if the service becomes aware that anything is likely to happen that will have that effect as soon, as practicable after becoming aware. The service in notifying the Secretary must do so in the manner set out in the written notice given under new section 57. There is a penalty for failing to comply with these obligations.

**New Subdivision L—Secretary's powers**

**New section 57—Secretary's power to approve a manner of notification for the purposes of sections 56C and 56D**

New section 57 provides that the manner of notification to be used by a person when notifying of a thing under new section 56C or new section 56D (change of circumstances) is approved by the Secretary (new subsection 57(1)). The Secretary is required to notify a person of the approved manner of notification by way of a written notice (new subsection 57(2)).
New section 57A—Secretary's power to require bank account details

Under new section 57A, the Secretary may require a claimant (being an individual) who is conditionally eligible for CCB by fee reduction under a determination made under new section 50F to provide details of a bank account maintained by the claimant alone, or jointly in common with someone else, into which the amount of the difference referred to in new subsection 56(1) is to be paid. The claimant must provide the details of the bank account within 28 days of the Secretary making the requirement.

New section 57B—Secretary's powers to request tax file number etc of TFN claim persons

Under new section 57B the Secretary may request, in a claim form relating to CCB by fee reduction, that a statement of one of the kinds set out in new subsections 57B(2),(3) or (4) is made in relation to each TFN claim person. For the purposes of a claim for CCB by fee reduction, ‘TFN claim person’ is defined in subsection 3(1) of the Family Assistance Admin Act as the claimant and the claimant’s partner.

New subsection 57B(2) provides that the first kind of statement that may be made under a request made by the Secretary under new subsection 57B(1) is a statement of the TFN claim person’s tax file number. This statement, irrespective of who the TFN determination person is, can only be made by the claimant.

New subsection 57B(3) provides that the second kind of statement that may be made under a request made by the Secretary under new subsection 57B(1) is a statement by the TFN claim person that the person has a tax file number but does not know what the number is and that the person has asked the Commissioner for Taxation to inform the person of the tax file number and the Commissioner of Taxation is authorised by the person to tell the Secretary whether the person has a tax file number and what that number is.

New subsection 57B(4) provides that the third kind of statement that may be provided under a request made by the Secretary under new subsection 57B(1) is a statement by the TFN claim person that the person has an application for a tax file number pending and the Commissioner of Taxation is authorised by the person to tell the Secretary if a tax file number is issued what that number is, or if the application is refused that it has been refused or if the application is withdrawn that it has been withdrawn.

New subsection 57B(5) provides that a statement that the claimant makes must be made in the claim. A statement made by the claimant’s partner must be in a document, in the form approved by the Secretary, given by the claimant together with the claim.

New subsection 57B(6) allows the Secretary to make an exemption from the requirement that a TFN claim person must make a statement relating to the person’s TFN, if the TFN claim person is the claimant’s partner and the claimant cannot obtain from the partner the partner’s TFN or other TFN statement.
New subsection 57B(7) provides that the requirement that each TFN claim person must make a statement relating to the person’s TFN does not apply if the claimant, opted in the claim to have the CCB % applicable to the claimant calculated using the minimum taxable income & as the taxable income %, with the effect that the CCB % is set at the minimum level.

**New section 57C—Secretary's power to request tax file numbers etc. of certain TFN claim persons**

The Secretary may request an individual who claims payment of child care benefit by fee reduction for care provided by an approved child care service to provide the tax file number of a TFN claim person. For the purposes of a claim for CCB by fee reduction, ‘TFN claim person’ is defined in subsection 3(1) of the Family Assistance Admin Act as the claimant and the claimant’s partner. The tax file number is to be provided within 28 days of the making of the request. The request may only be made if the claimant does not opt to have the applicable CCB % calculated under Schedule 2 to the Family Assistance Act using the minimum taxable income % as the taxable income %, and the tax file number of a TFN claim person is not given to the Secretary in the claim, and no statement under new subsection 57B(3) or (4) is made by the TFN claim person, and the Secretary did not exempt, under new section 57B(6), the partner of the claimant from the requirement to provide a tax file number or make a statement under new subsection 57B(3) or (4).

**New section 57D—Secretary's power to request tax file numbers of TFN determination persons**

If a claimant (being an individual) is either conditionally eligible for child care benefit by fee reduction under a determination in force under new section 50F or entitled to be paid child care benefit for a past period of care provided by an approved care child service under a determination in force under new section 52E, the Secretary may request the claimant, under new subsection 57D(1), to give a statement in relation to a specified TFN determination person. For CCB purposes, ‘TFN determination person’ is defined in subsection 3(1) of the Family Assistance Admin Act as the claimant and the claimant’s partner (if a claim is for CCB for a past period, the definition includes any partner of the claimant during the past period). The statement is to be given within 28 days of the Secretary's request and it is of a kind provided for under new subsections 57D(2), (3) or (4), as the claimant chooses.

New subsection 57D(2) provides that the first kind of statement that may be made by a claimant under a request made by the Secretary under new subsection 57D(1) is a statement of the TFN determination person’s tax file number. This statement, irrespective of who the TFN determination person is, can only be made by the claimant.
New subsection 57D(3) provides that the second kind of statement that may be made under a request made by the Secretary under new subsection 57D(1) is a statement by the TFN determination person that the person has a tax file number but does not know what the number is and that the person has asked the Commissioner for Taxation to inform the person of the tax file number and the Commissioner of Taxation is authorised by the person to tell the Secretary whether the person has a tax file number and what that number is.

New subsection 57D(4) provides that the third kind of statement that may be provided under a request made by the Secretary under new subsection 57D(1) is a statement by the TFN determination person that the person has an application for a tax file number pending and the Commissioner of Taxation is authorised by the person to tell the Secretary if a tax file number is issued what that number is, or if the application is refused that it has been refused or if the application is withdrawn that it has been withdrawn.

**New section 57E—Secretary's power to require immunisation details**

The Secretary may, by written notice given to a claimant (being an individual) in respect of whom a determination of conditional eligibility in force under new section 50F, require that a child meets the immunisation requirement set out in section 6 of the Family Assistance Act. The claimant is required to satisfy the request within 63 days of the notice being given to the claimant.

**New section 57F—Secretary's power to require data verification information**

The Secretary may, by written notice, request a claimant (being an individual) in respect of whom a determination of conditional eligibility in force under new section 50F, that the claimant provide, within the time specified in the notice, the information specified in the data verification form that accompanies the request.

**New Subdivision M—Variations of determinations if failure to provide tax file numbers, bank account details or failure to meet the immunisation requirement**

**New section 58—Variation where failure to provide tax file number**

New section 58 applies to a claimant who is a conditionally eligible individual and to a claimant in respect of whom a determination of entitlement is in force relating to a claim for CCB for a past period for care provided by an approved child care service.

New section 58 sets out the circumstances in which the TFN requirements in section 57D are not satisfied and the consequences of failing to satisfy those requirements within 28 days of being requested to do so. The TFN requirements are not satisfied if:

- within 28 days of the request, the claimant gives the Secretary a statement by the TFN determination person that the person does not know his or her TFN and the Commissioner for Taxation tells the Secretary that the person does not have a TFN (new subsection 58(3) refers); or
• within 28 days of the request, the claimant gives the Secretary a statement by the TFN determination person that the person has applied for a TFN and the Commissioner for Taxation tells the Secretary that the person has not applied for a TFN or that the application has been refused by the Commissioner or withdrawn by the person (subsection 58(4) refers).

If the TFN requirements are not satisfied then, the consequences are as follows:

• under new subsection 58(5), where a CCB % determination is in force in relation to the claimant—the determination is varied with the effect that the claimant’s CCB % is calculated using the minimum taxable income % as the taxable income % from the Monday after the day on which the variation is made; or

• under new subsection 58(6), where a past period determination is in force in relation to the claimant—the determination of entitlement is varied so that the amount of the entitlement is recalculated using the CCB rate based on CCB % worked out using the minimum taxable income % as the taxable income %. The claimant is then entitled for that past period only to the amount as recalculated and not to the previously determined amount.

However, the Secretary has the discretion not to apply the consequences set out in subsection 58(5) or (6) if the TFN determination person is the claimant’s partner and the claimant cannot obtain the partner's TFN or a relevant statement under subsection 57D(3) or (4). This rule is set out in new subsection 58(2).

The consequence in subsection 58(5) or (6) can be undone in certain circumstances. These are as follows:

If a CCB % has been varied under new subsection 58(5) and the Secretary finds out the TFN number of the relevant person before the end of the income year in which the variation took effect, then the effect of the variation is undone.

If a past period entitlement determination is varied under new subsection 58(6) and the Secretary finds out the TFN number of the relevant person at any time after the variation took effect, then the effect of the variation is undone.

These rules are contained in new subsection 58(8).

New section 58A—Variation where failure to comply with request for bank account details

New section 58A applies where the Secretary required a conditionally eligible claimant to provide relevant bank account details (a request under new section 57A) and the claimant did not comply with the request within 28 days from the request.
As a consequence of the failure to comply with the request, new subsection 58A(3) allows the Secretary to vary the determination of conditional eligibility so that the claimant is not conditionally eligible from the Monday after the end of the 28-days period following the request. Under new subsection 58A(2), the Secretary may exempt the claimant from that consequence.

If a determination is varied under new subsection 58A(3) and the Secretary finds out the relevant bank account details before the end of the income year following the one in which the variation took effect, then the effect of the variation is undone.

**New section 58B—Variation where failure to comply with requirement to meet immunisation requirement**

New section 58B applies where the Secretary required a conditionally eligible claimant that the child who is the subject of the determination meets the immunisation requirement (as defined in section 6 of the Family Assistance Act) (a request under new section 57F) and the claimant did not comply with the request within 63 days from the request.

As a consequence of the failure to comply with the request, the Secretary, under new section 58B, must vary the determination of conditional eligibility so that the claimant is not conditionally eligible from the Monday after the day the variation is made.

**New Subdivision N—Variations of determinations if failure to provide data verification**

Under new section 57F, the Secretary may require a conditionally eligible claimant to provide data verification information in the form attached to the request. New Subdivision N deals with variations relating to the data verification form. New sections 59, 59A, 59B, 59C, 59D and 59F provide for variation of determinations of conditional eligibility, schooling %, CCB % and weekly limit of hours as a result of failure to provide data verification information. New section 59E provides for variation resulting from the provision of the required information.

**New section 59—Variation for failure to return the data verification form**

If the data verification form is not returned within the time specified in the data verification request, the Secretary may vary the determination of conditional eligibility with the effect that the claimant is not conditionally eligible from 1 July in the income year following the year in which the request was made.
New section 59A—Variation for failure to provide information in the data verification form relating to the name and address of the approved child care service

If the data verification form is returned within the time specified in the data verification request but the information requested in the form relating to the name and address of the approved child care service is not provided, the Secretary may vary the determination of conditional eligibility with the effect that the claimant is not conditionally eligible from 1 July in the income year following the year in which the request was made.

New section 59B—Variation for failure to provide information in the data verification form relating to conditional eligibility

If the data verification form is returned within the time specified in the data verification request but the information requested in the form relating to conditional eligibility is not provided, the Secretary may vary the determination of conditional eligibility with the effect that the claimant is not conditionally eligible from 1 July in the income year following the year in which the request was made.

New section 59C—Variation for failure to provide information in the data verification form relating to schooling %

If the data verification form is returned within the time specified in the data verification request but the information requested in the form relating to schooling % is not provided, and the claimant’s schooling % is determined to be 100%, the Secretary may vary the determination of schooling % with the effect that the schooling % is 85% from 1 July in the income year following the year in which the request was made.

The Secretary must undo the effect of the variation if, before the end of the income year following the one in which the variation took effect, the claimant gives the Secretary the relevant information or the Secretary finds out the relevant information.

New section 59D—Variation for failure to provide information in the data verification form relating to CCB %

If the data verification form is returned within the time specified in the data verification request but the information requested in the form relating to CCB % is not provided, or the claimant provides an estimate of the claimant’s adjusted taxable income relating to the subsequent income year which the Secretary does not consider reasonable, the Secretary may vary the determination of CCB % with the effect that the CCB % is recalculated using the minimum taxable income % as the taxable income % from 1 July in the income year following the year in which the request was made.
The Secretary must undo the effect of the variation if, before the end of the income year following the one in which the variation took effect, the claimant gives the Secretary the relevant information or the claimant gives the Secretary an estimate of the claimant’s adjusted taxable income that the Secretary considers reasonable, or the Secretary finds out the actual amount of the claimant’s adjusted taxable income.

**New section 59E—Variation where information in the data verification form affects CCB%**

If the data verification form is returned within the time specified in the data verification request and the information relating to CCB % provided by the claimant affects the claimant’s CCB %, the Secretary must vary the determination of CCB % with the effect that the CCB % is recalculated using the information provided, from 1 July in the income year following the year in which the request was made.

**New section 59F—Variation for failure to provide information in the data verification form relating to weekly limit of hours**

If the data verification form is returned within the time specified in the data verification request but the information requested in the form relating to a weekly limit of hours is not provided, the Secretary may vary the determination of a weekly limit of hours with the effect that the limit is 20 hours from 1 July in the income year following the year in which the request was made.

The Secretary must undo the effect of the variation if, before the end of the income year following the one in which the variation took effect, the claimant gives the Secretary the relevant information or the Secretary finds out the relevant information.

**New Subdivision P—Other variations of determinations relating to CCB%**

New Subdivision P deals with variations of CCB% that do not result from requests made by the Secretary (variations resulting from the Secretary’s requests are dealt with in new Subdivisions M, N and R).

**New section 60—Variation where entitlement determination for child care benefit for a past period uses minimum taxable income % as the taxable income % and claimant gives certain information so that entitlement is recalculated**

Under new section 55B, if a claimant for CCB for a past period for care provided by an approved child care service does not provide in the claim the information needed to work out the number of children in care of a particular kind, or the claimant opts for the minimum level of CCB%, the claimant’s entitlement amount is calculated on the basis of CCB% worked out using the minimum taxable income % as the taxable income % (so that CCB is paid at the minimum level).
If, subsequently, the claimant provides the information needed to work out the number of children in care of a particular kind, or informs the Secretary that he or she wants the CCB % to be calculated using the claimant’s adjusted taxable income amount and provides the relevant TFNs (as the case requires), the Secretary must vary the entitlement determination to recalculate the entitlement amount using the claimant’s adjusted taxable income. The claimant is then entitled to be paid the difference (if any) between the amount previously determined and the amount as varied.

**New section 60A—Variation where entitlement determination for child care benefit by single payment/in substitution uses minimum taxable income % as the taxable income % and claimant gives certain information so that entitlement is recalculated**

Under new section 55B and new subsection 55A(2), if in respect of a claim for CCB by single payment/in substitution for care provided by an approved child care service the information needed to work out the number of children in care of a particular kind or the information relating to an estimate of an adjusted taxable income is not available, or the claimant opts for the minimum level of CCB %, the claimant’s entitlement amount is calculated on the basis of CCB % worked out using the minimum taxable income % as the taxable income % (so that CCB is paid at the minimum level).

If, subsequently, the claimant provides the information needed to work out the number of children in care of a particular kind, or provides the relevant estimate of an adjusted taxable income needed to calculate the amount of the benefit, or informs the Secretary that he or she wants the CCB % to be calculated using the relevant adjusted taxable income amount and provides the relevant TFNs (as the case requires), the Secretary must vary the entitlement determination to recalculate the entitlement amount using the relevant adjusted taxable income. The claimant is then entitled to be paid the difference (if any) between the amount previously determined and the amount as varied.

**New section 60B—Variation where minimum taxable income % used under section 55, 55B or 55C as the taxable income % and claimant gives certain information so that CCB % is recalculated**

Under new subsection 55(2), if a claimant who is conditionally eligible does not give the Secretary an estimate of the claimant’s adjusted taxable income, the claimant’s CCB % is determined using the minimum taxable income % as the taxable income % (it is set at the minimum level). If the claimant subsequently gives the Secretary the estimate that the Secretary considers reasonable, new section 60B requires the Secretary to vary the CCB % using that estimate with the effect from the Monday after the day the variation is made.
Under new paragraphs 55B(c)(i) and (ii), if a claimant who is conditionally eligible does not provide in the claim the information needed to work out the number of children in care of a particular kind, or the claimant opts in the claim for the minimum level of CCB%, the claimant’s CCB % is calculated using the minimum taxable income % as the taxable income %. If, subsequently, the claimant provides the information needed to work out the number of children in care of a particular kind, or (as the case requires) informs the Secretary that he or she wants the CCB % to be calculated using an estimate of the claimant’s adjusted taxable income amount and provides the relevant TFNs and provides the amount of the estimate that the Secretary considers reasonable, new section 60B requires the Secretary to vary the CCB % with the effect that the CCB % is recalculated under Schedule 2 of the Family Assistance Act from the Monday after the day the variation is made.

Under new section 55C, in situation where the TFN claim persons do not have TFNs or when the claimant fails to comply with the TFN requirements under new section 57C, the CCB % of a conditionally eligible claimant is set at the minimum level. If, subsequently, the claimant gives the Secretary the TFN of each TFN determination person, new section 60B requires the Secretary to vary the CCB % with the effect that the CCB % is recalculated under Schedule 2 of the Family Assistance Act from the Monday after the day the variation is made.

If the Secretary makes a variation under new subsection 60B(1) (basically, with effect prospectively), the variation will also affect a determination under new section 51B of the amount of the claimant’s entitlement to be paid CCB in respect of particular income years. The income years affected are the one in which the variation took effect, and the one before that income year. The effect of the variation is that the amount of the claimant’s entitlement is to be calculated, or recalculated (as the case may be), using the CCB % worked out under Schedule 2 (ie, the usual level of CCB % for the claimant’s income and not the minimum level originally determined). Thus, the variation to the claimant’s CCB % will have retrospective effect through its application to the claimant’s determination of entitlement.

New section 60C—Variation where CCB % calculated under Schedule 2 to the Family Assistance Act and Secretary receives information from Commissioner of Taxation

If CCB % of a conditionally eligible claimant is calculated under Schedule 2 of the Family Assistance Act in the situation referred to in paragraph 50D(1)(e) (where the Commissioner of Taxation did not provide any information concerning the claimant’s and partner’s TFN) and later the Commissioner of Taxation tells the Secretary that the claimant or the claimant’s partner has not applied for a TFN, or the application has been refused or withdrawn, new section 60C requires the Secretary to vary the determination of CCB % with the effect that the CCB % is calculated using the minimum taxable income % as the taxable income % from the Monday after the day the variation is made.

The Secretary must undo the variation if, before the end of the income year following the one in which the variation took effect, the Secretary finds out the TFN of the claimant and/or the claimant’s partner (as the case requires).
New section 60D—Variation where income tax return not lodged

New section 60D deals with the situation where an entitlement determination under new section 51B is in force in respect of a conditionally eligible claimant, with the effect that the claimant is entitled to CCB by fee reduction for a particular income year, the claimant or the claimant's partner or both are required to lodged a tax return for that particular income year but have not done so and an income tax assessment has not been made in relation to each relevant person. If this happens, new subsection 60D(1) provides the entitlement determination must be varied with the effect that the entitlement amount for the particular income year is recalculated using the minimum taxable income % as the taxable income % (with the effect that the CCB% and therefore the rate of CCB is set at the minimum level). As the claimant is only entitled to be paid for the particular income year the recalculated amount, it means that the amount of CCB already paid for the particular income year would be a debt, recoverable under Part 4 of the Family Assistance Admin Act.

This provision supports the end of year income reconciliation process. Although CCB by fee reduction can be paid on the basis of an estimate, the rate of CCB is ultimately based on a person's actual income in a relevant income year. This amount cannot be known until a return is lodged and an assessment made. It is only then that a person's "real" entitlement can be determined.

If the Commissioner of Taxation subsequently makes an assessment in relation to each relevant person, then, under new subsection 60D(3), the determination of entitlement for the particular income year must again be varied, using the claimant’ adjusted taxable income as assessed, with the effect that the claimant is entitled to be paid the amount recalculated under the new variation and not the amount calculated under the previous variation.

New section 60E—Variation where estimate of an amount given other than in response to a request by the Secretary is not reasonable

If CCB% of a conditionally eligible claimant is calculated on the basis of an estimate of the claimant’s adjusted taxable income for a particular income year and, during that year, the claimant gives the Secretary a revised estimate that the Secretary does not consider reasonable, then under new section 60E the Secretary must vary the claimant’s CCB % so that it is calculated using the minimum taxable income % as the taxable income % from the Monday after the day the variation is made.

The variation will be undone if, before the end of the income year following the one in which the variation took effect, the claimant provides a revised estimate that the Secretary considers reasonable as a result of which a variation under new section 65B is made, or the Secretary finds out the actual amount needed to calculate the CCB%.
New Subdivision Q—Variation of determinations relating to conditional eligibility and schooling %

New section 61—Variation where schooling % is 85 % under section 55D and information about whether the child is a school child provided

Where information whether the child who is the subject of a claim for CCB by fee reduction is a school child is not provided at claim, the schooling % applicable to the claimant and the child is determined under new section 55D to be 85%.

If the claimant later provides the information that the child is not a school child, new section 61 requires the Secretary to vary the determination of schooling % again with the effect that the schooling % is 100 % from the Monday after the day on which the variation is made.

New section 61A—Variation where failure to notify that the service has ceased to provide care to child

New section 61A enables the Secretary to vary a conditional eligibility determination, that is in force with the effect that the claimant is conditionally eligible, where there is reason to believe that the approved child care service the claimant indicated as providing care to the child has ceased to provide the care.

Where this happens, the Secretary may vary the determination under new subsection 61A(1) with the effect that the claimant is not conditionally eligible from the Monday after the day the variation is made.

If, before the end of the income year following the year in which the determination took effect, the Secretary finds out that the service provides care to the child, then the Secretary must vary the determination to undo the effect of the previous variation (new subsection 61A(2) refers).

New Subdivision R—Variations of determinations because of failure to meet requirements arising under Division 1 of Part 6

New Subdivision R provides for variation of a determination of conditional eligibility, a weekly limit of hours, CCB% and schooling % when the Secretary, in order to make a decision about the claimant’s conditional eligibility or a weekly limit of hours or CCB % or schooling % at any time, requires the claimant or claimant’s partner, under Division 1 of Part 6 of the Family Assistance Admin Act, to give information or provide a document, and the requirement is not complied with.
New section 62—Variation where failure to provide information relevant to conditional eligibility

New section 62 provides that if the Secretary’s requirement is relevant to the issue of the claimant’s conditional eligibility and the claimant or the claimant’s partner fails to comply with the requirement, the determination of conditional eligibility may be varied with the effect that the claimant is not conditionally eligible from the Monday after the day the variation is made.

Under new subsection 62(2), if the claimant subsequently gives the information or produces the documents by the end of the income year following the one in which the variation took effect, the Secretary must undo the variation determination under new subsection 62(1).

New section 62A—Variation where failure to provide information relevant to CCB %

New section 62A provides that if the Secretary’s requirement is relevant to the issue of the claimant’s CCB % and the claimant or the claimant’s partner fails to comply with the requirement, the determination of CCB % may be varied with the effect that the CCB % is calculated using the minimum taxable income % as the taxable income % from the Monday after the day the variation is made (the variation will result in the CCB % being set at the minimum level).

Under new subsection 62A(3), if the claimant subsequently gives the information or produces the documents by the end of the income year following the one in which the variation took effect, the Secretary must undo the variation determination under new subsection 62A(1).

New section 62B—Variation where failure to provide information relevant to schooling %

New section 62B provides that if the Secretary’s requirement is relevant to the issue of the claimant’s schooling % and the schooling % of the claimant is 100 % and the claimant or the claimant’s partner fails to comply with the requirement, the determination of schooling % may be varied with the effect that the schooling % is 85 % from the Monday after the day the variation is made.

Under new subsection 62B(3), if the claimant subsequently gives the information or produces the documents by the end of the income year following the one in which the variation took effect, the Secretary must undo the variation determination under new subsection 62B(1).
New section 62C—Variation where failure to provide information relevant to a weekly limit of hours

New section 62C provides that if the Secretary’s requirement is relevant to the issue of the claimant’s weekly limit of hours and the claimant or the claimant’s partner fails to comply with the requirement, the determination of a weekly limit of hours may be varied with the effect that the limit is reduced to a limit specified by the Secretary from the Monday after the day the variation is made.

Under new subsection 62C(3), if the claimant subsequently gives the information or produces the documents by the end of the income year following the one in which the variation took effect, the Secretary must undo the variation determination under new subsection 62C(1).

New Subdivision S—Further variations after certain variations that can be undone

New section 62D—Secretary finds out information after undoing period is over

If a variation affecting the determination of CCB % or a weekly limit of hours or schooling % is made, the effect of which may be undone within a specified period, and the period passes within the effect of the variation being undone, and the Secretary finds out the information the lack of which caused the variation, new section 62 D requires the Secretary to vary again the affected determination, using the information provided, with the effect from the Monday after the day the variation is made.

New Subdivision T—Notice requirement for variations

New section 63—Notice of variation of determination

Under new section 63, the Secretary must notify the claimant of any variation determination that is made under new Subdivision M, N, P, Q, R or S stating the effect of the variation, and inform the claimant of his or her review rights.

_A service providing care to the child the subject of a determination, must be given notice of a variation concerning conditional eligibility, CCB %, a weekly limit of hours or schooling %._

A variation determination is not ineffective if the notice does not comply with these requirements.
New Subdivision U—Variations of determinations of weekly limit of hours because of a circumstance in section 54, 55 or 56 of the Family Assistance Act

New Subdivision U deals with variations of weekly limit of hours determinations that are made if circumstances specified in sections 54, 55 and 56 of the Family Assistance Act arise. As provided for in this Subdivision, the variations are made by the Secretary, on application by an individual or a service, or they are taken to have been made where an approved child care service gives certificates as mentioned in this Subdivision.

New section 64—Determination of weekly limit of hours may be varied

New section 64 provides that where a determination of a weekly limit of hours has been made in respect of an individual and a child, or a determination of a weekly limit of hours has been taken to have been made in respect of a service and a child, those determinations made be varied so that a different limit applies in a week.

Under new subsection 64(2), the variations provided for in this Subdivision depend on whether a circumstance listed in new section 54, 55 or 56 of the Family Assistance Act (which specify the circumstances and the limits applying in those circumstances) applies in a week in respect of a claimant.

New section 64A—Varying a determination so that a limit of 50 hours in a week applies

New section 64A provides that where a determination of a weekly limit of hours has been made in respect of an individual and a child, or a determination of a weekly limit of hours has been taken to have been made in respect of a service and a child, the Secretary may vary the determination, or the determination may be taken to have been varied, so that a limit of 50 hours in a week applies.

The Secretary may make the variation on application if a circumstance specified section 54 of the Family Assistance Act (other than subsection 54(10) of that Act that relates to a child at risk) applies in the week and neither a limit of more than 50 hours nor a 24 hour care limit applies in the week.

New subsection 64A(3) specifies who may apply for a variation under this new section (depending on the circumstance, it may be an individual or an approved child care service).

New subsection 64A(4) provides that if an approved child care service gives a certificate under subsection 54(10) of the Family Assistance Act (child at risk) in respect of a week, the determination of the weekly limit of hours is taken to have been varied so that a limit of 50 hours in the week applies.
New subsection 64A(5) provides that if a variation under new subsection (2) takes place and the variation would have effect for any period for which a variation under new section 59F or 62C has effect, the variation under new section 59F or 62C prevails. This provision ensures that the variation power in new section 64A cannot override the effect of those other variations. This prevalence rule does not apply if the variation under new subsection 64A(2) is made because of a circumstance listed in subsection 54(12) of the Family Assistance Act (child at risk).

New section 64B—Varying a determination so that a limit of more than 50 hours in a week applies

New section 64B provides that where a determination of a weekly limit of hours has been made in respect of an individual and a child, or a determination of a weekly limit of hours has been taken to have been made in respect of a service and a child, the Secretary may vary the determination, or the determination may be taken to have been varied, so that a limit of more than 50 hours in a week applies.

The Secretary may make the variation on application if a circumstance specified section 55 of the Family Assistance Act (other than subsection 55(6) of that Act that relates to a child at risk) applies in the week and a 24 hour care limit does not apply in the week.

As provided by new subsection 64B(3), the actual limit of more than 50 hours that applies in the week is the limit worked out by the Secretary using the relevant provisions of section 55 (other than subsection 55(6)—child at risk) of the Family Assistance Act.

New subsection 64B(4) specifies who may apply for a variation under this new section (depending on the circumstance, it may be an individual or an approved child care service).

New subsection 64B(5) provides that if an approved child care service gives a certificate under subsection 55(6) of the Family Assistance Act (child at risk) in respect of a week, the determination of the weekly limit of hours is taken to have been varied so that a limit of the particular number of hours, that is more than 50, worked out by the service using subsection 55(6) of that Act applies in the week.

New subsection 64B(6) provides that if a variation under new subsection (2) takes place and the variation would have effect for any period for which a variation under new section 59F or 62C has effect, the variation under new section 59F or 62C prevails. This provision ensures that the variation power in new section 64B cannot override the effect of those other variations. This prevalence rule does not apply if the variation under new subsection 64B(2) is made because of a circumstance listed in subsection 55(8) of the Family Assistance Act (child at risk).
New section 64C—Varying a determination so that a 24 hour care limit in a week applies

New section 64C provides that where a determination of a weekly limit of hours has been made in respect of an individual and a child, or a determination of a weekly limit of hours has been taken to have been made in respect of a service and a child, the Secretary may vary the determination, or the determination may be taken to have been varied, so that a 24 hour care limit in a week applies.

The Secretary may make the variation on application if circumstances specified subsection 56(6) or (8) of the Family Assistance Act apply in the week.

New subsection 64C(3) specifies that an application for this variation may be made only by the claimant.

New subsection 64C(4) provides that if an approved child care service gives a certificate under subsection 56(3) or (4) of the Family Assistance Act in respect of a week, the determination of the weekly limit of hours is taken to have been varied so that a 24 hour care limit applies in the week.

New subsection 64C(5) provides that if a variation under this new section takes place and the variation would have effect for any period for which a variation under new section 59F or 62C has effect, the variation under new section 59F or 62C prevails. This provision ensures that the variation power in new section 64C cannot override the effect of those other variations.

New section 64D—Varying a determination so that a limit of 20 hours in a week applies

New section 64D provides that where a determination of a weekly limit of hours has been made in respect of an individual and a child, or a determination of a weekly limit of hours has been taken to have been made in respect of a service and a child, the Secretary may vary the determination so that a 20 hour care limit in a week applies.

The Secretary may make the variation if a limit of 50 hours, more than 50 hours or a 24 hour care limit does not apply in the week.

New section 64E—Notice of variation of determination under this Subdivision

New section 64E specifies notification requirements relating to variations made under this new Subdivision.

A variation determination is not ineffective if the notice does not comply with these requirements.

New section 64F—Form of application

New section 64F specifies the requirements relating to the application for a variation under this new Subdivision.
New Subdivision V—Variations of determinations for changes in circumstances

New Subdivision V (new sections 65, 65A, 65B, 65C and 65D) enables the Secretary to vary all ongoing determinations, that is, a conditional eligibility, CCB %, schooling % or a weekly limit of hours determination at any time after its making to take account of changes in the claimant's circumstances that impact on conditional eligibility, the CCB%, schooling % or the limit of hours.

A determination can be varied so that it has effect at all times after the change in circumstances. The effect of the variation determination can be prospective or retrospective.

The new sections are required because the review provisions in Part 5 of the Family Assistance Admin Act only allow for the review of a decision with the effect from the date of that decision. For example, a CCB % determination is in force on day 1 and a change in circumstances subsequently occurs on day 20 which affects the claimant's CCB % and the Secretary is notified of the change on day 25. The effect of the change is that the claimant CCB % should be increased from day 20. The only decision that can be reviewed under Part 5 is the original CCB % determination. This is not appropriate in the given scenario. What is needed is a power to vary the determination from day 20. New section 65A allows this type of variation to be made.

A variation under new Subdivision V is a "decision" that can be reviewed under Part 5 of the Family Assistance Admin Act.

By contrast, if the original determination was incorrect, the Secretary would have the power under the review provisions in Part 5 to set aside the incorrect original decision and substitute a new decision with the effect from day 1. Similarly, the claimant could seek review of the original determination.

New section 65—Variation of determination of conditional eligibility to reflect changes in conditional eligibility

New section 65 provides for variation of a conditional eligibility determination so it has the effect that the claimant is not conditionally eligible for CCB by fee reduction from the day of the occurrence of the event that affected the claimant’s conditional eligibility.

New subsection 65(2) provides that, if the expiration of a period of time is relevant to conditional eligibility, the occurrence includes the expiration.

New section 65A—Variation of determination of CCB % to reflect changes in CCB %

New section 65A provides for variation of a CCB % determination so it has the effect that the claimant’s CCB % is varied from the date of the occurrence of the event that affected the CCB %.
New subsection 65A(2) provides that, if the expiration of a period of time is relevant to CCB %, the occurrence includes the expiration.

New subsection 65A(3) specifies that the occurrence to which this new section applies does not include the occurrence of the event that causes the claimant to provide to the Secretary a revised estimate of the claimant’s adjusted taxable income, unless that event affects the claimant’s CCB % not only for the reason that it changes the claimant’s adjusted taxable income or the event is that the claimant becomes to be a member of a couple, or ceases to be a member of a couple.

New subsection 65A(4) limits the effect of a beneficial variation determination in certain circumstances. If:

- the Secretary does not become aware of the occurrence of the event and the claimant does not notify the Secretary of the event until after the end of the income year following the one in which the event occurred; and

- the Secretary would be required under new subsection 65A(1) to increase the claimant’s CCB % as a result of the event,

then the Secretary is required to increase the claimant’s CCB % from the beginning of the income year that precedes the year in which the Secretary becomes aware of the occurrence of the event.

New subsection 65A(5) provides that if a variation under this new section takes place and the variation would have effect for any period for which a variation under new section 58, 59D, 60C, 60D, 60E or 62A has effect, the variation under new section 58, 59D, 60C, 60D, 60E or 62A prevails. This provision ensures that the variation power in new section 65A cannot override the effect of those other variations.

**New section 65B—Variation of determination of CCB % to reflect revised adjusted taxable income estimates**

New section 65B provides for variation of a CCB % determined on the basis of an estimate of the claimant’s adjusted taxable income for a particular income year, or a CCB % initially so determined that has been subsequently varied under new section 60E because a revised estimate provided by the claimant was not reasonable, so it is recalculated on the basis of a revised reasonable estimate of the adjusted taxable income.

This variation applies where the claimant provides during that particular income year a new revised estimate of an adjusted taxable income that is not caused by the event the occurrence of which would result in a variation under new section 65A, and the CCB % calculated using the revised estimate would be different than the % previously determined.

New subsection 65B(2) specifies the date of effect of this variation. If the estimate relates to the particular income year, the CCB % is varied from the Monday after the day the variation is made. If the estimate relates to a new income year, the CCB % is varied from 1 July of that income year.
New subsection 65B(3) provides that if a variation under this new section takes place and the variation would have effect for any period for which a variation under new section 58, 59D, 60C, 60D, 60E or 62A has effect, the variation under new section 58, 59D, 60C, 60D, 60E or 62A prevails. This provision ensures that the variation power in new section 65B cannot override the effect of those other variations.

**New section 65C—variation of determination of schooling % to reflect changes in schooling %**

New section 65C provides for variation of a schooling % determination so it has the effect that the claimant’s schooling % is varied from the date of the occurrence of the event that affected the schooling %.

New subsection 65C(2) limits the effect of a beneficial variation determination in certain circumstances. If:

- the Secretary does not become aware of the occurrence of the event and the claimant does not notify the Secretary of the event until after the end of the income year following the one in which the event occurred; and
- the Secretary would be required under new subsection 65C(1) to increase the claimant’s schooling % as a result of the event,

then the Secretary is required to increase the claimant’s schooling % from the beginning of the income year that precedes the year in which the Secretary becomes aware of the occurrence of the event.

New subsection 65C(3) provides that if a variation under this new section takes place and the variation would have effect for any period for which a variation under new section 62B or 59C has effect, the variation under new section 62B or 59C prevails. This provision ensures that the variation power in new section 65C cannot override the effect of those other variations.

**New section 65D—Variation of determination of weekly limit of hours to reflect changes in weekly limit of hours**

New section 65D provides for variation of a weekly limit of hours determination so it has the effect that the claimant’s weekly limit of hours is varied from the date of the occurrence of the event that affected the limit.

New subsection 65D(2) provides that, if the expiration of a period of time is relevant to the weekly limit of hours, the occurrence includes the expiration.

New subsection 65D(3) limits the effect of a beneficial variation determination in certain circumstances. If:

- the Secretary does not become aware of the occurrence of the event and the claimant does not notify the Secretary of the event until after the end of the income year following the one in which the event occurred; and
the Secretary would be required under new subsection 65D(1) to increase the claimant’s schooling % as a result of the event.

then the Secretary is required to increase the claimant’s weekly limit of hours from the beginning of the income year that precedes the year in which the Secretary becomes aware of the occurrence of the event.

New subsection 65D(4) provides that if a variation under this new section takes place and the variation would have effect for any period for which a variation under new section 62C or 59F has effect, the variation under new section 62C or 59F prevails. This provision ensures that the variation power in new section 65D cannot override the effect of those other variations.

New section 65E—Notice of variation under this Subdivision

Under new section 65E, the Secretary must notify the claimant and the approved child care service concerned of any variation determination that is made under this new Subdivision. The notice must state the effect of the variation and inform the claimant of his or her review rights.

A variation determination is not ineffective if the notice does not comply with these requirements.

Item 61 inserts new Part 8A after Part 8 of the Family Assistance Admin Act dealing with obligations of approved child care services (in new Division 1) and with payment of advances to approved child care services (in new Division 2).

New Part 8A—Obligations of, and advances to, approved child care services

New Division 1—Obligations of a approved child care services

New Division 1 sets out obligations of an approved child care service that the service has as a child care service provider (obligations of an approved child care service arising out of its eligibility for CCB are dealt with in new Subdivision K of Division 4 Part 3 of the Family Assistance Admin Act). Compliance with obligations imposed under the family assistance law is a condition for the continuing approval of an approved child care service (subsection 196(2) of the Family Assistance Admin Act refers). If the Secretary becomes satisfied that a service fails to meet this condition, the Secretary may consider imposing one or more of the sanctions under section 200 of that Act. There are also penalties for failing to comply with the obligations specified in this new Division.

New section 219A—Obligation to act on notices received or certificates given

New section 219A imposes obligations on a service which provides care to the child of a person determined to be conditionally eligible for child care benefit by fee reduction.
Under the family assistance law, there is a range of notices that the Secretary may give to a service, as well as a number of matters that a service may certify, in connection with a person's eligibility for assistance, a child's circumstances, the provision of care to the child and the entitlements that accrue in respect of that care. These notices and certificates all establish matters that have consequences for the fees the service may charge, so that when a service receives such a notice, or certifies such a matter, it must carry out certain actions to ensure that the fees it charges are calculated correctly and consistently with the matter that has been notified or certified.

The Secretary’s notices given to a service are the notices of determinations, or variation of determinations, that relate to an individual’s conditional eligibility for CCB by fee reduction, CCB%, schooling %, a weekly limit of hours and a special rate (child at risk and hardship cases). A service may give certificates relating to CCB rate during an initial period in child at risk and hardship cases and certificates relating to a weekly limit of hours in child at risk cases. The table in new section 219A lists these notices and certificates and, in each case, details what a service must do.

As it is evident from the provisions in the table, the main responsibilities of a service in relation to an individual in respect of whom a notice of conditional eligibility has been given in relation to a child, is to calculate the rate and amount of fee reductions using the relevant provisions of the Family Assistance Act and having regard to both the Secretary’s determinations (and variations of those determinations) and the certificates the services gives, reduce the child care fees the individual has to pay for the child by the amount of the fee reductions and charge only the reduced fees.

The service to which the notice is given, or which certifies the matter has to act on the notice, or certificate, as soon as practicable and in the manner specified in the table.

**New section 219B—Obligation to reduce fees of individuals when approved child care service is eligible for child care benefit**

New section 219B provides that where a service is eligible for child care benefit by fee reduction for sessions of care provided to a child at risk, the service must calculate the appropriate amount of child care benefit and reduce the fees charged by that amount (new subsection 219B(1) refers).

New subsection 219B(2) specifies pre-determined information (the rate as certified by the service and the weekly limit of hours that has been determined to be applicable) that the service must take into account in doing the calculation.

New subsection 219B(3) provides that it must be done as soon as practicable in the particular circumstances.

The penalty for non-compliance with the obligations under this new section is 60 penalty units.

**New section 219C—Obligation to pass on further fee reductions to individuals if notice of service's entitlement shows entitlement is greater than the fee reductions originally passed on**
New section 219C provides that where a service is eligible for sessions of care provided to a child at risk, the child was in the care of an individual before the first session and, in respect of the child's care, the service is paid an amount of the difference between the entitlement amount and the amount already paid to the service via the payment of advances, the service must pass that amount of the difference on to the individual as soon as practicable.

The penalty for non-compliance with the obligations under this new section is 60 penalty units.

**New section 219D—Obligation if the service receives notice that the service's approval has been suspended or cancelled**

New subsection 219D(1) provides that if a service receives notice that its approval has been suspended or cancelled, it must cease reducing fees for sessions of care on or after the day of receipt of the notice.

New subsection 219D(2) provides that if an approved child care service is notified that the suspension of its approval has been revoked, it must reduce the fees charged to a conditionally eligible individual for sessions of care provided after the day of receipt of the notice.

The penalty for non-compliance with the obligations under this new section is 60 penalty units.

**New section 219E—Obligation to provide receipts**

New subsection 219E(1) provides that where a service has reduced an individual's fees as required by new sections 219A and 219B, it must give a receipt in respect of the payment of those fees. The subsection also specifies basic information that a receipt must contain.

The penalty for non-compliance with the obligations under this new section is 60 penalty units.

New subsection 219E(2) provides that the Secretary may make rules dealing with how receipts should be given, to whom, and any other information that must be provided.

New subsection 550(3) specifies that such rules are a disallowable instrument.

**New section 219F—Obligation to keep records**

New subsection 219F(1) provides that a service must keep, in accordance with rules made under the new subsection 219F(3), records relating to specified aspects of its operation, and the eligibility of individuals for child care benefit.

New subsection 219F(2) provides that a service must keep records for 36 months from the end of the year to which they relate.
The penalty for non-compliance with the obligations under this new section is 60 penalty units.

New subsection 219F(3) provides that the Secretary must make rules specifying the kinds of records that must be kept in relation to the matters listed in subsection (1) and any other matters in respect of which records must be kept. New subsection 219F(4) specifies that these rules are a disallowable instrument.

**New section 219G—Former approved child care service to keep records**

New subsection 219G(2) requires the last operator of a service that ceases to be an approved child care service to keep records as the service would otherwise have been obliged to keep under new section 219F had it not ceased to be an approved child care service.

Despite the service ceasing to be an approved child care service, new subsection 219G(1) requires the last operator of the service to retain such records for the period for which the service would have been required to keep it under new section 219F.

The penalty for non-compliance with the obligations under this new section is 60 penalty units.

**New section 219H—Appointment of authorised officers**

New section 219H provides that the Secretary may appoint an appropriately qualified officer to be an authorised officer for the purposes of exercising powers under new section 219K concerned with entering premises to inspect records. The appointment must be made in writing.

**New section 219J—Identity cards**

This new section deals with identity cards for persons appointed by the Secretary as authorised officers. New subsection 219J(1) provides that the Secretary may provide an authorised officer with an identity card. The form of the card must be approved by the Secretary. The identity card must bear a recent photograph of the authorised officer.

**New section 219K—Power to enter premises to inspect records**

New subsection 219K(1) deals with the powers of an authorised officer. An authorised officer may, for the purpose of inspecting records, enter the premises of an approved child care service during the service’s hours of operation or the premises of the former operator of an approved child care service during the business hours. In the case of an approved child care service, the relevant records are the records required to be kept under new subsection 219F(1). In the case of the former operator of an approved child care service, the relevant records are the records required to be kept under new subsection 219G(2).
New subsection 219K(2) describes the circumstances in which an authorised officer is authorised to enter premises. An authorised officer may not enter premises unless the occupier, or a person who can reasonably be considered to represent the occupier, has given consent. In addition to obtaining consent, the authorised officer must comply with any request by the occupier to show his or her identity card.

New subsection 219K(3) requires an authorised officer to leave premises if asked by the occupier or a person who can reasonably be considered to represent the occupier.

New subsection 219K(4) provides that it is a responsibility of an approved child care service to cooperate with an authorised officer exercising powers under new section 219K. (This responsibility is set out in new subsection 196(2A) inserted in the Family Assistance Admin Act by item 139 of Part 3 of Schedule 2 to this Bill.) Refusal to consent to the authorised officer's entry, or withdrawal of consent, is a failure to comply with this responsibility and may result in the Secretary imposing one or more sanctions under section 200 of that Act.

**New section 219L—Occupier to provide authorised officer with access to records and assistance**

New subsection 219L(1) requires the occupier of the premises of an approved child care service, or a person who can reasonably be considered to represent the occupier, to produce any of the records the service keeps in compliance with the obligation under new subsection 219F(1). The occupier may be asked to produce the records to the authorised officer or to any other person assisting the authorised officer.

New subsection 219L(2) requires the occupier of the premises of the former operator of an approved child care service, or a person who can reasonably be considered to represent the occupier, to produce any of the records the former operator keeps in compliance with the obligation under new subsection 219G(2). The occupier may be asked to produce the records to the authorised officer or to any other person assisting the authorised officer.

New subsection 219L(3) requires the occupier or any person who can reasonably be considered to represent the occupier to give the authorised officer all reasonable assistance in the exercise of the authorised officer's powers.

The penalty for non-compliance with the obligations under this new section is 60 penalty units.

New subsection 219L(4) provides that it is a responsibility of an approved child care service to cooperate with a person exercising the powers of an authorised officer. (This responsibility is set out in new subsection 196(2A) inserted in the Family Assistance Admin Act by item 139 of Part 3 of Schedule 2 to this Bill.) Failure to produce the record or give assistance is a failure to comply with this responsibility and may result in the Secretary imposing one or more sanctions under section 200 of that Act.
New section 219M—Obligation to notify Secretary if operator intends to stop operating an approved child care service

New subsection 219M(1) provides that the operator of a service must give at least 30 days advance notice before ceasing to operate the service. Such notice must be given in accordance with new subsection 219M(2). New subsection 219M(2) provides that such notice must be given in a manner notified to the service in writing by the Secretary.

The penalty for non-compliance with the obligations under this new section is 60 penalty units.

New section 219N—Obligation to give reports to Secretary

New subsection 219N(1) provides that a service must give the Secretary a report, in relation to any care given to a child in a reporting period, in a specified manner and including specified information, subject to the child’s particular circumstances. New subsection 219N(2) requires the report to be given during the next reporting period, in a form and manner approved by the Secretary.

The penalty for non-compliance with the obligations under this new section is 60 penalty units.

New subsection 219N(3) sets out the information to be provided in a report if an individual is conditionally eligible for CCB in respect of the child. Apart from the information set out in the new subsection, the report must include any other information required by the Secretary in the approved form.

New subsection 219N(4) sets out the information to be provided in a report if the service is eligible for CCB in respect of the child. Apart from the information set out in the subsection, the report must include any other information required by the Secretary in the approved form.

New subsection 219N(5) sets out the information to be provided in a report if no individual is conditionally eligible and the service is not eligible in respect of the child. Apart from the information set out in the subsection, the report must include any other information required by the Secretary in the approved form.

New subsection 219N(6) provides that a service may, at any time, correct any errors in a report it has provided.

New section 219P—Former operator of an approved child care service to report

New subsection 219P(1) requires the last person to operate a service prior to it ceasing to be an approved child care service to submit a report to the Secretary in respect of its final reporting period.

The penalty for non-compliance with the obligations under this new section is 60 penalty units.
New subsection 219P(2) provides that the information that must be in the report is the information that the service would otherwise have been required to include under the new section 219N.

New subsection 219P(3) requires the former operator to give the report under this section within 90 days of the service ceasing to be an approved child care service and to give it in a form and manner approved by the Secretary.

New subsection 219P(4) defines "final reporting period" to mean the reporting period in which the service ceased to be an approved child care service.

**New Division 2—Advances to approved child care services**

**New section 219Q—Secretary may determine advances to be paid to approved child care services**

During a reporting period, a service makes fee reductions to the children of conditionally eligible individuals (new section 219A refers) and children in respect of whom the service is eligible (new section 219B refers). New subsection 219Q(1) provides that the Secretary may determine advances to be paid to a service to cover those fee reductions.

New subsection 219Q(2) provides that for each advance, the Secretary may also determine if the advance is to be paid in whole or by instalments and the date or dates on which payment will be made.

**New section 219R—Payment of advances**

New section 219R enables any difference between an earlier advance for a reporting period and the amount that should have been advanced for that reporting period to be corrected by an adjustment to a subsequent advance. (The Secretary may determine under the new section 219S how the difference is to be dealt with under new section 219R.)

New subsection 219R(1) provides that the amount of an advance is the amount determined under the new section 219Q, plus or minus any adjustment necessary in respect of a previous reporting period. If there is no adjustment necessary, the amount payable is the amount determined under section 219Q.

The new subsection 219R(2) provides that the section is subject to Part 4 of the Act, dealing with overpayments and debt recovery.

**New section 219S—Acquittal of advances paid to approved child care services**

New subsection 219S(1) provides that on receipt of a report, the Secretary must compare the amount of the advance determined under new section 219Q for the relevant reporting period with the amount passed on by the service in reduced fees for that period.
New subsection 219S(2) provides that if, for a reporting period, the amount of an advance is later found to exceed the amount of the reduced fees, the Secretary may determine that the excess portion is to be offset against an advance for another reporting period. New subsection 219S(3) provides that if the Secretary makes such a determination, the amount must be offset in accordance with new subsection (2).

New subsection 219S(4) provides that if, for a reporting period, the amount of an advance is later found to be less than the amount of the reduced fees, the Secretary may determine that the shortfall be paid as part of another advance. New subsection 219S(5) provides that if the Secretary makes such a determination, the amount must be paid in accordance with new subsection (4).

**New section 219T—Notice of determinations to pay and acquit advances**

As explained, the Secretary makes determinations under new section 219Q to pay advances. New section 219T provides that the Secretary must give a service notice of such a determination and sets out the information it must contain so that the service understands how the amount of the advance was arrived at and has clear expectations as to how and when it will be paid.

The determination is not ineffective if these notice requirements are not complied with.
Part 3—Common Provisions Relating to Family Assistance

Overview of Part 3 of Schedule 2

Part 3 amends common provisions in the FA Admin Act that apply to family assistance payments generally.

These amendments provide for the insertion and amendment of definitions that support other amendments made in Parts 1 and 2 of Schedule 2 to this Bill.

Amendments are also made in the areas of payment protection, overpayments and debt recovery, review of decisions, information management, approval of child care services and registered carers and other matters.

Explanation of Amendments

Amendments to definitions

Items 62 to 67 amend the definitions in subsection 3(1) of the FA Admin Act.

Item 62 inserts a definition of “bank”. This term is used in the new provisions that require a claimant to provide bank account details. “Bank” is defined as including, but not being limited to, a body corporate that is an authorised deposit-taking institution for the purposes of the meaning of the Banking Act 1959.

Item 63 inserts a definition of Family Assistance Administration Act. This term means the A New Tax System (Family Assistance) (Administration) Act 1999.

Item 64 amends the definition of “family assistance law” so that it also includes the transitional and saving provisions contained in Schedules 5 and 6 to this Bill.

Item 65 to 67 amend definitions relevant for the purposes of the TFN requirement.

The definition of “TFN claim person” is amended so that the definition also applies to claims for CCB. For FTB, the definition remains unchanged.

For CCB, a “TFN claim person” means:

- the claimant; and

- if the claim is for CCB by fee reduction – the claimant’s partner (if any) at the time of claim; and

- if the claim is for CCB for a past period for care provided by a service – any partner of the claimant during the past period.
The definition of “TFN determination person” is amended so that the definition also applies to claims for CCB. For FTB, the definition remains unchanged. For CCB, a “TFN determination person” means:

- in relation to a determination under which a claimant who is an individual is conditionally eligible for CCB by fee reduction—the claimant or any partner of the claimant since the determination was made; or

- in relation to a determination under which a claimant who is an individual is entitled to be paid CCB for a past period for care provided by a service – the claimant or any partner of the claimant during the past period.

A new definition of “TFN substitution person” is inserted into subsection 3(1) of the FA Admin Act. The new definition is relevant for the new provisions that impose a TFN requirement for claims in substitution because of the death of another individual. Where such a claim is made, the TFN substitution person is the deceased individual and any partner of the deceased individual during the period in respect of which the payment is claimed.

Amendments relating to payment protection

Section 66 of the FA Admin Act provides for the inalienability of FTB, FTB advances, maternity allowance, maternity immunisation allowance, CCB and, if provided for in regulations, advances to services.

Item 68 repeals the regulation making power referred to above and inserts the payment of advances to services as a payment that is inalienable.

This general rule against inalienability has effect subject to provisions that allow the Secretary to redirect payment to a third party on behalf of the person. For CCB, this issue is dealt with by regulation making power that is reflected in the wording of paragraph 66(2)(a). This regulation making power is being repealed and replaced with substantive provisions. Item 69 reflects these changes by omitting the reference to a regulation making power from paragraph 66(2)(a) and inserting instead a reference to the relevant CCB provisions dealing with payment to a third party.

Items 70 to 75 make consequential amendments to subsection 66(2) as a result of the relocation of existing sections 227 and 228 of the FA Admin Act (these provisions become new sections 84A and 92A) and other changes to the overpayment and debt recovery provisions contained in Part 3 of Schedule 2 to this Bill.

Amendments relating to overpayments and debt recovery

Part 4 of the FA Admin Act deals with overpayments and debt recovery. Part 4 is amended as follows.

Section 68 of the FA Admin Act defines the term “amount paid to a person” as used in Part 4 of the FA Admin Act. Item 76 replaces existing subsection 68(1) with new subsections 68(1) and (1A).
Under new subsection 68(1), an amount paid to a person in respect of whom an determination of entitlement to be paid CCB has been made means the amount of the entitlement.

Under new subsection 68(1A), an amount paid to a person in respect of whom an determination of entitlement to be paid CCB by fee reduction has been made consists of:

- the amount received by the individual as fee reductions in the relevant income year or by a service in the relevant financial year from one or more payments of an amount of an advance to reimburse the service for fee reductions made for care provided by the service; and

- the amount, as paid to the person, of the difference referred to in subsection 56(1) in the case of an individual and in subsection 56B(1) in the case of a service.

Section 69 of the FA Admin Act defines the term “an amount being paid to an approved child care service”. This definition is recast by item 77 so that it more accurately reflects CCB terminology and concepts.

New section 69 provides that a reference to an amount being paid to a person when the person is an approved child care service includes an amount that is paid to the service at a time when the service is no longer approved or the service operator no longer operates the service.

**Item 78** repeals section 71 and inserts a series of new provisions that outline the situations in which debts arise under the FA Admin Act.

New section 71 outlines the situations in which payments of FTB, maternity allowance or maternity immunisation allowance are debts owed to the Commonwealth. New section 71 replicates the substance of existing subsections 71(1) and (5).

New section 71A ensures that an amount of an FTB advance that has not been repaid by reductions from an individual’s FTB Part A rate is a debt owed to the Commonwealth. The amount of the debt is worked out by dividing the FTB advance rate by 365 and then multiplying the result by the number of days in the individual’s FTB advance period during which the individual’s Part A was reduced because of the payment of the advance.

The remaining new provisions deal with CCB debts.

New section 71B provides that if an amount of:

- fee reductions have been made in respect of an individual in respect of a period; or

- CCB has been paid to a person in respect of a period,

and the person was not entitled to the amount, the amount paid is a debt due to the Commonwealth by the person.
Under new section 71C, if a person receives an amount of CCB that is greater than the amount that should have been paid to the person under the family assistance law, then the difference between the amount paid and the correct amount is a debt due to the Commonwealth by the person.

New section 71D deals with the situation where CCB is paid to a service or an individual because of a false or misleading statement made by the individual.

New subsection 71D(1) applies where:

- an individual knowingly makes a false or misleading statement to a service or an officer;
- an amount of CCB is paid to a service for a session of care provided to a child who was in the individual’s care immediately before the session was provided; and
- because of the false or misleading statement, the service considers itself to be eligible for CCB or considers itself to be eligible for an amount of CCB in respect of the child and the session.

Where this happens, the difference between the amount paid to the service and the amount that would have been paid to the service but for the false or misleading statement is a debt due to the Commonwealth by the individual. New subsection 71D(2) provides that the amount that would have been paid to the service but for the false or misleading statement can be nil.

New subsection 71D(3) applies where:

- an individual knowingly makes a false or misleading statement to a service;
- the service, in reliance on the statement certifies a rate of CCB or gives a certificate relating to a weekly limit of hours; and
- an amount of CCB is paid to the individual because of the certificate.

Where this happens, the difference between the amount paid to the individual and the amount that would have been paid to the individual but for the false or misleading statement is a debt due to the Commonwealth by the individual.

New section 71E deals with situations where CCB is paid because of a false or misleading statement made by a service.

New subsection 71E(1) applies where:

- a service certifies a rate in relation to a session of care provided to an FTB child of an individual or the individual’s partner or a child who was in the care of the individual’s care immediately before the session was provided;
• the service certifies the rate knowing that the reason for certifying the rate does not apply to the child or the individual; and

• an amount of CCB is paid because of the certificate.

Where this happens, the difference between the amount paid and the amount that would have been paid if the service had not certified the rate is a debt due to the Commonwealth by the service.

New subsection 71E(2) applies where:

• a service gives a certificate relating to a weekly limit of hours in sessions of care provided to an FTB child of an individual or the individual’s partner or a child who was in the individual’s care immediately before the session was provided;

• the service gives the certificate knowing that the reason for giving the certificate does not apply to the child or the individual; and

• an amount of CCB is paid because of the certificate.

Where this happens, the difference between the amount paid and the amount that would have been paid if the service had not given the certificate is a debt due to the Commonwealth by the service.

New subsection 71E(3) applies where a service knowingly makes a false or misleading statement to an officer, a determination of rate is made by the Secretary in reliance of the statement and an amount of CCB is paid accordingly. In this situation, the difference between the amount paid because of the determination and the amount that would have been paid if the service had not made the statement is a debt due to the Commonwealth by the service.

New subsection 71E(4) applies where a service knowingly makes a false or misleading statement to an officer, a variation of a determination of a weekly limit of hours is made by the Secretary in reliance of the statement and an amount of CCB is paid accordingly. In this situation, the difference between the amount paid and the amount that would have been paid if the service had not made the statement is a debt due to the Commonwealth by the service.

New section 71E(5) applies where:

• a service considers itself eligible for CCB in respect of care provided to a child at risk;

• the service knows that the child is not at risk;

• a determination of entitlement to be paid CCB by fee reduction has been made in respect of the service; and

• an amount of CCB is paid because of the determination.
In this situation, the difference between the amount paid and the amount that would have been paid if the service was not so eligible is a debt due to the Commonwealth by the service.

New section 71F takes account of the possibility of the one amount being a debt owed by both an individual and a service.

This can happen where an individual owes a debt under new section 71B or 71C and all or some of that amount of the debt is attributable to a false or misleading statement by a service for which the service also owes a debt under new section 71E. Where this happens, new subsection 71F(1) provides that the amount of the debt owed by the individual that is also a debt of the service is a debt owed by the service and not the individual.

The converse scenario is where a service owes a debt under new section 71B or 71C and all or some of the amount of the debt is attributable to a false or misleading statement by an individual for which the individual also owes a debt under new section 71D. Where this happens, new subsection 71F(2) provides that the amount of the debt owed by the service that is also a debt of the individual is a debt owed by the individual and not the service.

New section 71G deals with the situation where an advance is paid to a service to reimburse the service the amount of fee reductions made for care provided by the service to a child and during or after the reporting period in respect of which the advance is paid, the service’s approval is suspended or cancelled or the service ceases to operate. Where this happens, so much of the amount of the advance that has not been used by the service to reimburse itself for care provided to the child by the day on which the service’s approval is suspended or cancelled or the service ceases to operate, is a debt due by the service to the Commonwealth.

Under new section 71H, a debt arises where:

- a service has committed amounts of CCB in a reporting period by certificates given under section 76 of the Family Assistance Act; and

- the total amount of CCB committed exceeds the reporting period limit for that reporting period; and

- the service gives a further certificate during that reporting period; and

- an amount of CCB is paid because of that further certificate.

In this situation, the difference between the amount paid and the amount that would have been paid if the further certificate had not been given is a debt due to the Commonwealth by the service.
Item 79 amends paragraph 74(a) of the FA Admin Act by omitting the word “instalment” and substituting “amount”. Section 74 operates to create a debt where a person other than the payee who is paid an instalment of family assistance by cheque obtains the value of the cheque without the endorsement of the payee. The effect of this amendment is to expand the coverage of section 74 so that it cover any “amount” of family assistance that is paid by cheque and not just an “instalment” of family assistance paid by cheque.

Section 77 of the FA Admin Act provides for the payment of interest on a debt where the debtor fails to enter into an agreement to repay the debt. Section 77 does not apply if the debtor is a person who is receiving instalments of family assistance or the debtor is a service who is receiving group payments. These exclusions, contained in paragraph 77(1)(b) are flawed in two respects. First, the only instalment payments available under the family assistance law are instalments of FTB. Second, a group payment to a service is not a concept known under the family assistance law (although it is a concept relevant under the current child care payments regime). Item 80 amends paragraph 77(1)(b) to remedy these flaws.

Section 78 of the FA Admin Act provides for the payment of interest on a debt where the debtor breaches an agreement to pay the debt. Item 80 makes similar amendments to paragraph 78(1)(b) for similar reasons.

Item 81 repeals sections 82 and 83 of the FA Admin Act and replaces these provisions with new section 82.

New section 82 serves the same purpose as its predecessor (outlines the available methods of recovering a debt) but is relocated into Division 3 of Part 4 of the FA Admin Act and amended to take account of the changes made to the debt recovery provisions by Part 3 of Schedule 2 to this Bill (as described below). Existing section 83 is not required and is therefore not replaced.

Item 82 repeals existing section 84 and substitutes a new section 84. The new provision operates to enable recovery of a debt arising under the FA Admin Act or the Social Security Act by deductions from instalments of FTB. This is a more precise description of the deductions that can be made under section 84. FTB is the only family assistance payment that can be paid by instalment and therefore deducted under section 84 to recover a debt.

The new section 84 does not incorporate existing subsections 84(3) and (4).

Deductions from CCB are not appropriate because the ongoing benefit of CCB is passed on to a customer by fee reduction. Existing subsection 84(3) is therefore repealed. When an end of year entitlement determination is made in relation to CCB, a CCB debt can be offset against arrears of CCB under new section 84A (described below).
Existing subsection 84(4) is not required. New section 82 provides for the recovery of a debt by one or more specified means including deductions from instalments of FTB. Deductions cannot occur if the debt is waived or written off by operation of Division 4 or where the debt is recovered using an alternative method of recovery (in this case there is no debt to which section 84 can apply).

**Item 82** also inserts new section 84A. The new provision is based on existing section 227 of the FA Admin Act. Section 227 is essentially a method of debt recovery and is therefore moved from its present location to Division 3 of Part 4 (methods of recovery).

New section 84A applies to a person who is entitled to an arrears payment of family assistance and to a debt owed by the person that is recoverable under new section 84A or is a debt under the Social Security Act.

Where new section 84A applies, the Secretary may determine that the whole or part of the entitlement to arrears of family assistance is to be set off against the debt.

However, the Secretary may set off an entitlement to arrears of CCB only against a CCB debt.

**Item 83** repeals section 85 of the FA Admin Act. This provision relates to CCB group payments. This concept is not used in relation to CCB in the family assistance law.

Section 86 of the FA Admin Act provides time limits on taking recovery action under sections 84 and 85.

**Items 84 to 90** amend various provisions in section 86 so that:

- the time limits in section 86 also apply to recovery action taken under new sections 84A and 87A;
- references to the repealed section 85 are omitted; and
- section 86 does not refer to action “under this section”—action to recover a debt is not taken under section 86 but under the relevant debt recovery provision.

**Item 91** inserts a new section 87A into the FA Admin Act.

New section 87A applies to a debt that, under section 82, is recoverable by means of setting off the debt against amounts of one or more advances to be paid to a service.

The setting off works as follows:

- the Secretary is to determine the amount by which each advance to the service is to be reduced; and
- each advance is reduced by the amount determined by the Secretary until the debt is paid.
The Secretary may vary, from time to time, the amount by which an advance is to be reduced.

Section 88 provides for the recovery of a debt by legal proceedings and imposes time limits on the taking of action under section 88 to recovery a debt. **Items 92, 93 and 94** make some technical changes to subsection 88(6). References to new sections 84A and 87A are also inserted into subsection 88(6) to ensure that if action must be taken to recover a debt under subsection 88(2) or (3) within a particular period and, within that period, action is also taken under new section 84A or 87A to recover the debt, then action under section 88 may be commenced within a period of 6 years after the end of the action under new section 84A or 87A. Subsection 88(6) operates in the same manner where action is taken under section 84 to recover a debt.

Section 90 of the FA Admin Act provides time limits on the recovery of a debt by garnishee notice. **Item 95** amends subsection 90(5) so that if action must be taken to recover a debt under subsection 90(1) or (2) within a particular period and, within that period, action is also taken under section 84, 84A, 87, 87A or 88 to recover the debt, then action under section 90 may be commenced within a period of 6 years after the end of the action under one of these sections.

Under section 91 of the FA Admin Act, the Secretary can allow a person to pay a debt in one or more instalments. **Item 96** makes a technical change to subsection 91(1) so that section 91 applies if, under section 82, a debt owed by a person is recoverable by the Commonwealth by one or more instalments.

**Item 97** repeals existing section 92 and inserts new sections 92 and 92A.

New section 92 operates where a person (the debtor) owes a debt under the FA Admin Act or other prescribed legislation and another person who is entitled to be paid FTB by instalment consents to deductions being made from the person’s instalments of FTB to recover the debt.

In this situation, the Secretary may make such deductions from the other person’s instalments of FTB.

Consent may be revoked at any time.

New section 92A is based on existing section 228 of the FA Admin Act. Section 228 is essentially a method of debt recovery and is therefore moved from its present location to Division 3 of Part 4 (methods of recovery).

New section 92A operates where a person (the debtor) owes a debt under the FA Admin Act or other prescribed legislation and another person who is entitled to arrears of family assistance (excluding arrears of CCB) consents to the deductions of an amount of the person’s arrears payment to recover the debt.

In this situation, the Secretary may make the relevant deduction from the other person’s arrears of family assistance.
Consent may be revoked at any time.

**Item 98** makes a minor technical amendment to section 93 of the FA Admin Act.

Section 95 of the FA Admin Act enables the Secretary to write off a debt. This can be done where, among other things, the debt is irrecoverable at law. Subsection 95(3) specifies the circumstances in which a debt is taken to be irrecoverable at law.

**Item 99** amends subsection 95(3) to omit the existing reference to the repealed section 85. **Items 99 and 100** insert references to new sections 84A (setting off arrears of family assistance) and 87A (setting off against advances) into subsection 95(3). The effect is that a debt is also taken to be irrecoverable at law if the debt cannot be recovered under new sections 84A and 87A because the relevant time limit has lapsed.

The Secretary can also write off a debt under section 95 where the debtor has no capacity to repay the debt. Subsection 95(4) further defines what is meant by a capacity to repay a debt.

**Item 101** inserts a new subsection 95(4). The new provision ensures that if a debt is recoverable under section 84, 84A, 87 or 87A, the person is taken to have capacity to repay the debt unless recovery under those provisions would cause the person severe financial hardship. This new provision is similar to existing subsection 95(4) except that it also refers to recovery of a debt by the means provided for in new sections 84A and 87A.

Section 99 of the FA Admin Act provides for the waiver of debts that are less than $200 where it is not cost effective for recovery action to be taken in relation to the debt. Subsection 99(2) provides that this rule does not apply if the debt is at least $50 and can be recovered by deductions under section 84 or 85 of the FA Admin Act or section 1231 of the Social Security Act. **Item 102** recasts subsection 99(2) as follows:

- the reference to deductions under the repealed section 85 is omitted;
- the general waiver rule in subsection 99(1) does not apply if the debt is at least $50 and can be recovered by setting off under section 84A or 87A.

**Amendments relating to review of decisions**

**Item 103** repeals Division 1 of Part 5 of the FA Admin Act and substitutes a new Division 1. The complete remaking of Division 1 is necessary because of the volume of changes required to effectively cover the range of CCB decisions available and the insertion of new rules providing for the date of effect of certain decisions and time limits on the review of other decisions.

Subdivision A of Division 1 provides for review of decisions initiated by the Secretary.
New Subdivision A—Review initiated by the Secretary

New section 104—Decisions that may be reviewed by the Secretary on own initiative

New section 104 specifies the decisions that are reviewable under new section 105. These decisions are:

- a decision of any officer under the family assistance law except a determination under section 51B in respect of an individual in so far as it relates to a rate certified, or a certificate relating to weekly limit of hours, given by a service;

- an entitlement determination under section 54B in respect of a service in so far as it relates to the service’s eligibility for CCB under section 47 of the Family Assistance Act or to a rate certified, or a certificate relating to a weekly limit of hours, given by a service;

- a decision by the Secretary under Division 2 of Part 8A (that deals with advances to services);

- a decision under subsection 91A(3) of the Child Support (Assessment) Act 1989 that is made after 1 July 2000.

New section 105—Secretary may review certain decisions on own initiative

New section 105 allows the Secretary to review such a decision on the Secretary’s own initiative if the Secretary is satisfied that there is sufficient reason to do so and even if there has been an application made to the SSAT or AAT in respect of the decision. However, the Secretary cannot review a decision under new section 105 if a person has applied for review of that decision under new section 109A.

If the Secretary reviews a decision under new section 105, the Secretary may affirm or vary the original decision or set aside the original decision and substitute a new decision.

If the original decision is set aside and the Secretary is satisfied that an event would have occurred had the original decision not been made, then that event can be deemed to have occurred for the purposes of the review.

New section 106—Notice of review decisions to be given

New section 106 outlines the situations in which a notice of the review decision must be given and to whom.

A review decision relating to conditional eligibility for CCB by fee relief must be notified to an applicant and any service providing care to the child concerned in the following circumstances. First, the review decision must be to vary the original decision or to set aside the original decision and substitute a new decision. Second, the review decision must relate to one of the following types of determinations:
• conditional eligibility;
• a weekly limit of hours (unless the hours are set because the child concerned is at risk);
• CCB%;
• schooling %;
• rate;
• no entitlement determination.

A review decision relating to conditional eligibility for CCB by fee relief where the original decision:

• is varied or set aside and a new decision substituted; and

• relates to a weekly limit of hours or rate set because the child concerned is at risk,

must be notified to the service providing care to the child concerned.

Otherwise, where an original decision is varied or is set aside and a new decision substituted, the Secretary must give notice of the review decision to anyone affected by the decision. If the original decision is a decision under subsection 91A(3) of the Child Support (Assessment) Act 1989 about an agreement, then the review decision must be notified to both parties to the agreement.

The notice must state the effect of the review decision and the fact that there are further review rights in relation to the decision.

The validity of a review decision is not affected by a failure to comply with the above notice obligations.

If a review decision is made to vary or set aside an original decision and, by the time the review decision is made, an application has been made to the SSAT or AAT for review of the original decision, then the Secretary must also notify the SSAT or AAT of the review decision.

New section 107—Date of effect of certain decisions made under section 105

New section 107 provides date of effect rules for favourable decisions relating to the payment of FTB by instalment and certain CCB decisions.

New subsection 107(1) applies to review decisions relating to the payment of FTB by instalment that have a favourable effect (ie, that create or increase entitlement) where the review decision is made more than 52 weeks after the person concerned was notified of the original decision. The date of effect of such a review decision is:

• the date that would give full effect to the review decision; or
• if this day is earlier than the first day in the income year before the income year in which the review decision is made, that first day.

This rule allows full arrears to be paid following Secretary initiated review if the review decision is made within 52 weeks after notification of the original decision or by the end of the income year after the income year in which the circumstance to which the review relates occurred.

New subsection 107(2) provides a similar outcome in relation to review decisions relating to a determination of a weekly limit of hours, CCB%, schooling% or a no entitlement determination, where the review decision has a favourable effect (ie, it creates or increases entitlement to be paid CCB by fee reduction) and is made more than 52 weeks after the person concerned was notified of the original decision.

The date of effect rules described above do not apply where the review was undertaken by the Secretary because the Commissioner of Taxation had made an assessment of taxable income for a particular income year of each person:

• whose taxable income is relevant in determining the person’s eligibility for, or rate of FTB or CCB%; and

• who was required to lodge a tax return in respect of that income year,

on the basis of the return lodged by each such person before the end of the next income year.

This rule in new subsection 107(3) ensures that full arrears are available if the review decision relates to an initial assessment of taxable income by the Commissioner of Taxation and the relevant person lodged his or her tax return before the end of the income year following the income year to which the assessment relates.

Subdivision B of Division 1 provides for review of decisions initiated by an applicant.

**New section 108—Decisions that may be reviewed under section 109A**

As a general rule, a decision of an officer under the family assistance law and a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* that is made on or after 1 July 2000 can be subject to customer initiated review under new section 109A.

However, new subsection 108(2) specifies those decisions that are not subject to review under new section 109A. These decisions are:

• a decision made by the Secretary personally or by another agency head;

• a determination under section 51B in respect of an individual in so far as it relates to a rate certified, or a certificate relating to a weekly limit of hours, given by a service;
• an entitlement determination under section 54B in respect of a service in so far as it relates to the service’s eligibility for CCB under section 47 of the Family Assistance Act or to a rate certified, or a certificate relating to a weekly limit of hours, given by a service;

• a decision by the Secretary under Division 2 of Part 8A (that deals with advances to services;

• a determination about a person’s eligibility for, or entitlement to FTB that is wholly or partly based on an estimate of adjusted taxable income other than a determination under section 19 or 28A because the person provided an unreasonable estimate of adjusted taxable income;

• a determination about a person’s entitlement to CCB or a person’s CCB% that is wholly or partly based on an estimate of adjusted taxable income other than a determination under specified provisions because the person provided an unreasonable estimate of adjusted taxable income.

In relation to the last two exceptions, new subsection 108(3) allows these decisions to be reviewed under new section 109A where the review is sought after the end of the income year to which the estimate relates and either:

• the Commissioner of Taxation had made an assessment of taxable income for a particular income year of each person whose taxable income is relevant in determining the person’s eligibility for, or rate of FTB or CCB% and who was required to lodge a tax return in respect of that income year, on the basis of the return lodged by each such person before the end of the next income year; or

• there was no person whose taxable income was relevant in determining the person’s eligibility for, or rate of family assistance or CCB% who was required to lodge a tax return.

New subsection 108(4) provides that a determination about a person’s eligibility for, or entitlement to, FTB that was based on an estimate of maintenance income in a particular income year can be reviewed under new section 109A after the end of that income year.

The rules in new subsections 108(3) and (4) are a mechanism for ensuring that decisions based on an estimate in respect of a particular income year are not reviewed until the end of that income year. This is when the process of comparing estimates with adjusted taxable income and, where relevant, maintenance income takes place. However, this does not mean that determinations cannot be prospectively varied where a person provides a revised estimate to the Secretary that is reasonable or the Secretary revises a person’s maintenance income for a particular income year.

New section 109—Persons affected by certain child support decisions

New section 109 deals with decisions under subsection 91A(3) of the Child Support (Assessment) Act 1989 about a particular agreement.
This provision ensures that both parties to the agreement are taken to be “affected” by the decision for the purposes of applying for review of the decision under new section 109A, although only one party can apply for review. If a person does apply for review of such a decision, the decision reviewer must ensure that the other party to the agreement is informed of the application and its contents and is given the opportunity to make a submission in connection with the review.

**New section 109A—Review initiated by applicant of certain decisions**

A person affected by a reviewable decision may apply to the Secretary for review of that decision.

The Secretary can either review the original decision or arrange for an authorised review officer (ARO) to do so.

The original decision can then be affirmed or varied or set aside and a new decision substituted.

Under new subsection 109A(3), if the original decision is set aside and the Secretary or ARO is satisfied that an event would have occurred had the original decision not been made, then that event can be deemed to have occurred for the purposes of the review.

New subsection 109A(4) deals with the situation where a person applies to the SSAT for review of a decision without first having applied to the Secretary for review of the decision. Where this happens, the person is taken to have applied to the Secretary for review of the decision under new section 109A.

**New section 109B—Notice to be given of decisions under section 109A**

New section 109B outlines the situations in which a notice of the review decision must be given and to whom.

A review decision concerning an individual’s conditional eligibility to be paid CCB by fee relief must be notified to the individual and any service providing care to the child concerned in the following circumstances. First, the review decision must be to vary the original decision or to set aside the original decision and substitute a new decision. Second, the review decision must relate to a determination of conditional eligibility, a weekly limit of hours, CCB%, schooling %, rate or a determination of no entitlement.

Otherwise, the Secretary or ARO must give the applicant written notice of his or her review decision. If the original decision is a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about an agreement, then the other party to the agreement must also be notified of the review decision.
New section 109C—Authorised review officers (AROs)

New section 109C enables the Secretary to authorise officers to be AROs for the purposes of Division 1 of Part 5 of the FA Admin Act. The Secretary can only authorise an officer of an agency other than the Department to be an ARO with the agreement of the agency head.

New section 109D—Review applications – time limits applicable to review of certain decisions

Subject to various exceptions discussed below, an application for internal review of a decision (other than an excepted decision) must be made within 52 weeks after the applicant is notified of the original decision.

New subsection 109D(6) defines an “excepted decision” as a decision:

- relating to the payment of FTB by instalment; or
- to raise a debt under Division 2 of Part 4 of the FA Admin Act.

Under new subsection 109D(2), the 52 week time limit can be extended by the Secretary in special circumstances.

New subsections 109D(3) and (4) provide further exceptions to the 52 week time limit on applying for internal review.

The rules in new subsection 109D(3) have the effect of extending the time limit in specified circumstances to the end of the income year after the income year in which the circumstance occurred/ended.

For FTB past period decisions, the time limit would be extended to the end of the income year after the income year in which the past period occurs. This is done by excepting from the 52 week time limit a decision that a person is or is not entitled to be paid FTB for a past period if the period occurs in the income year in which the application is made or the previous income year.

For FTB bereavement decisions, the time limit would be extended to the end of the income year after the income year in which the death occurs.

For decisions that relate to a period spanning two income years (e.g., a decision that a weekly limit of hours applies to a person for a specified period), the time limit would be extended to the end of the income year following the income year in which the period ended.

Similar outcomes apply in relation to the following decisions:

- a rate of CCB applies to a person for a specified period;
- a weekly limit of hours, CCB% or schooling% applies to a person;
• that a person is not entitled to CCB by fee reduction;

• that a person is not entitled to CCB provided by a registered carer for a past period;

• that person is or is not entitled to a CCB bereavement payment for care provided by a registered carer.

Under new subsection 109D(4), an application for review of a decision can also be made outside the 52 week time limit where the decision relates to an assessment of taxable income of a relevant person by the Commissioner of Taxation and the person lodged his or her tax return before the end of the income year following the income year to which the assessment relates.

Similarly, where the decision relates to:

• a review of taxable income of a relevant person by the Commissioner of Taxation and the person lodged his or her tax return before the end of the income year following the income year to which the assessment relates; or

• in the case of FTB, a review of child support entitlement of a relevant person by the Child Support Registrar,

and the application for review is made within 13 weeks after the relevant person is notified by the Commissioner or the Child Support Registrar of the outcome of the review, then the 52 week time limit on review would not apply.

New subsections 109D(5) and (6) define the terms and expressions used in new section 109D. Depending on the context in which the term appears, “relevant person” means:

• any person whose taxable income is relevant in determining a person’s eligibility for, or rate of, family assistance or CCB%; and

• any person whose entitlement to child support is relevant in determining a person’s rate of FTB.

The concept of excepted decision has been described above.

“Determination decision” means a determination as originally made or as varied from time to time.

New section 109E—Date of effect of certain decisions relating to payment of FTB by instalment

New section 109E provides date of effect rules for favourable decisions relating to the payment of FTB by instalment.
New subsection 109E(1) applies to review decisions relating to the payment of FTB by instalment that have a favourable effect (ie, that create or increase entitlement) where the application for review is made more than 52 weeks after the person concerned was notified of the original decision. The date of effect of such a review decision is:

- the date that would give full effect to the review decision; or

- if this day is earlier than the first day in the income year before the income year in which the application is made, that first day.

This rule allows full arrears to be paid following customer initiated review if an application for review is made within 52 weeks after notification of the original decision or by the end of the income year after the income year in which the circumstance to which the review relates occurred.

New subsection 109E(2) allows the Secretary, in special circumstances, to determine that new subsection 109E(1) applies as if existing references to 52 weeks were to such longer period as determined by the Secretary.

Under new subsection 109E(3), the above date of effect limitation does not apply to a review decision that is made on an application for review of an original decision where the original decision relates to an assessment of taxable income of a relevant person by the Commissioner of Taxation and the person lodged his or her tax return before the end of the income year following the income year to which the assessment relates.

Similarly, where the original decision relates to:

- a review of taxable income of a relevant person by the Commissioner of Taxation and the person lodged his or her tax return before the end of the income year following the income year to which the assessment relates; or

- a review of child support entitlement of a relevant person by the Child Support Registrar,

and the application for review is made within 13 weeks after the relevant person is notified by the Commissioner or the Child Support Registrar of the outcome of the review, then the date of effect limitation in new subsection 109E(1) would not apply to the resultant review decision.

New subsection 109E(4) defines the term “relevant person” for the purposes of new subsection 109E(3). Depending on the context in which the term appears, “relevant person” means:

- any person whose taxable income is relevant in determining a person’s eligibility for, or rate of, FTB; and

- any person whose entitlement to child support is relevant in determining a person’s rate of FTB.
New section 109F—Withdrawal of review application

Under new section 109F, an applicant can withdraw an application for review at any time before a review decision is made in relation to the application. Withdrawal of an application can be made in writing or any other manner approved by the Secretary.

If an application is withdrawn, it is taken never to have been made.

New section 109G—Secretary may continue payment etc. pending outcome of application for review

Where an adverse family assistance decision is made, the decision depends on the exercise of a discretion or the holding of an opinion and a person applies under new section 109A for review of the decision, the Secretary may, under new section 109G, decide that the adverse decision is to be “ignored” pending determination of the review.

If the adverse family assistance decision has the effect that the person ceases to be entitled to family assistance or that entitlement is reduced, then the Secretary may declare that entitlement to family assistance continues as if the adverse decision were not made.

If the adverse family assistance decision has the effect that the person ceases to be conditionally eligible for CCB by fee reduction, then the Secretary may declare that conditional eligibility continues as if the adverse decision were not made.

If the adverse family assistance decision has the effect of reducing the person’s weekly limit of hours, CCB% or schooling%, then the Secretary may declare that the limit or percentage continues as if the adverse decision were not made.

The Secretary’s declaration starts to have effect on the day on which it is made or an earlier day specified by the Secretary and stops having effect if the application for review is withdrawn, a review decision is made by the Secretary or an ARO or the declaration is revoked by the Secretary.

“Adverse family assistance decision” is defined in new subsection 109G(5).

New section 109H—Notification of further rights of review

New section 109H sets out the requirements for a notice given under new section 109B.

The notice must inform the person of their right to appeal to the SSAT and the AAT and must include a statement about the review decisions that:

- sets out the reasons for the decision;
- sets out the finding of fact; and
refers to the evidence or other material on which those finding were based.

The notice must also include a statement to the effect that if the applicant is dissatisfied with the SSAT’s decision, the applicant may apply to the AAT for review of the SSAT’s decision.

Under new subsection 109H(2), the validity of a review decision is not affected by a contravention of the notice requirements in new subsection 109H(1).

**Items 104 to 121 inclusive** amend Division 2 of Part 5 of the FA Admin Act. These provisions provide for review of decisions by the SSAT.

Section 111 of the FA Admin Act deals with applications for review by the SSAT and outlines those decisions that cannot be reviewed by the SSAT.

**Item 104** amends subsection 111(1) by inserting new subsections 111(1A) and (1B).

New subsection 111(1A) ensures that decisions made by the Secretary personally or by an agency head can be reviewed by the SSAT. This amendment corrects an oversight in section 111 as originally enacted.

Under new subsection 111(1B), if a decision is made under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about a particular agreement, then both parties to the agreement are taken to be persons whose interests are affected by the decision. This effectively allows either party to apply for review by the SSAT of such a decision.

**Items 105 to 107 inclusive** amend subsection 111(2) of the FA Admin Act as follows.

Paragraph 111(2)(a) is amended to insert references to CCB provisions that deal with the form and manner of claim. These references replace paragraph 111(2)(b), which is repealed. A minor technical amendment is made to paragraph 111(2)(c) so that the bracketed description accurately reflects the heading used in sections 108 or 112 of the FA Admin Act.

**Item 108** inserts a new subsection 111(3). The new provision defines “decision reviewer” as the person (ie, the Secretary or an ARO) who has reviewed the decision as required by new subsection 109A(2).

**Item 109** inserts new section 111A into the FA Admin Act dealing with time limits on review by the SSAT.

Under new subsection 111A(1), a person affected by a decision of a decision reviewer under Division 1 (internal review) must apply to the SSAT for review of that decision no later than 13 weeks after notification of the decision of the decision reviewer.
This rule does not apply to an “excepted decision”, defined in new subsection 111A(3) as a decision:

- relating to the payment to the person of FTB by instalment; and
- relating to the raising of a debt under Division 2 of Part 4.

Under new subsection 111A(2), the SSAT has the discretion to extend the 13 week time limit in new subsection 111A(1) in special circumstances.

**Item 109** also inserts new subsection 111B.

New section 111B provides date of effect rules for favourable decisions relating to the payment of FTB by instalment.

New subsection 111B(1) applies to SSAT decisions relating to the payment of FTB by instalment that have a favourable effect (i.e., that create or increase entitlement) where the application for review is made more than 13 weeks after the person concerned was notified of the internal review decision. In these circumstances, the date of effect of the SSAT review decision is:

- the date that would give full effect to the SSAT decision; or
- if this day is earlier than the first day in the income year before the income year in which the application to the SSAT is made, that first day.

This rule allows full arrears to be paid following SSAT review if an application for SSAT review is made within 13 weeks after notification of the internal review decision or by the end of the income year after the income year in which the circumstance to which the review relates occurred.

New subsection 111B(2) allows the SSAT, in special circumstances, to determine that new subsection 111B(1) applies as if existing references to 13 weeks were to such longer period as determined by the SSAT.

Under section 112 of the FA Admin Act, where an adverse family assistance decision is made, the decision depends on the exercise of a discretion or the holding of an opinion and a person applies to the SSAT for review of the decision, the Secretary may declare that entitlement to family assistance is to continue unaffected by the adverse decision.

Section 112, as currently drafted, does not adequately cover the impact of a declaration by the Secretary on adverse CCB decisions that are not entitlement determinations.

**Items 110, 111 and 112** cover this ground.
**Item 112** inserts a new definition of “adverse family assistance decision”. A decision having the effect that:

- the person ceases to be conditionally eligible for CCB by fee reduction; or
- the weekly limit of hours, CCB% or schooling% applicable to the person is reduced,

is included in the definition of “adverse family assistance decision”, along with the existing cessation or reduction of entitlement to family assistance.

**Item 110** modifies subsection 112(1) so that it only applies in relation to adverse family assistance decisions having the effect that entitlement to family assistance ceases or is reduced, while **item 111** inserts a new subsection 112(1A) to deal with the new categories of adverse family assistance decision described above.

Under new subsection 112(1A), if the adverse family assistance decision has the effect that the person ceases to be conditionally eligible for CCB by fee reduction, then the Secretary may declare that conditional eligibility continues as if the adverse decision were not made. If the adverse family assistance decision has the effect of reducing the person’s weekly limit of hours, CCB% or schooling%, then the Secretary may declare that the limit or percentage continues as if the adverse decision were not made.

Section 113 of the FA Admin Act outlines the review powers of the SSAT. Under existing subsection 113(2), if the SSAT sets aside a decision and substitutes it with a decision that the person is entitled to have a payment, the SSAT must either assess the amount of the payment or ask the Secretary to assess the amount. This provision does not adequately cater for the following CCB decisions:

- that a person is conditionally eligible for CCB by fee reduction;
- that the weekly limit of hours, CCB% or schooling% applicable to a person is to be increased.

**Item 113** recasts subsection 113(2) so that these decisions are covered.

Where the SSAT decides that a person is conditionally eligible for CCB by fee reduction, the SSAT must ask the Secretary to determine the weekly limit of hours, CCB% and schooling% applicable to a person and, if the limit or percentage affects the amount of entitlement – assess that amount.

Where the SSAT decides that the weekly limit of hours, CCB% or schooling% applicable to a person is to be increased, the SSAT must either determine the limit or percentage or ask the Secretary to do so.

Section 115 of the FA Admin Act provides for the date of effect of SSAT decisions. **Item 114** repeals this provision.
The date of effect of SSAT decisions relating to the payment of FTB by instalment is dealt with by new section 111B. Otherwise, an SSAT decision would have effect as specified in the decision.

**Items 115 to 119 inclusive** amend various provisions in the FA Admin Act relating to procedures for review by the SSAT so as to cover review of decisions made under subsection 91A(3) of the *Child Support (Assessment) Act 1989*. These decisions are currently reviewable under the social security law because of the connection between the reasonable maintenance action test (applicable for family allowance) and subsection 91A(3). From 1 July 2000, family allowance will be replaced by FTB. The reasonable maintenance action test will, from the date, be relevant for FTB. Subsection 91A(3) will retain its connection to the reasonable maintenance action test applicable to FTB and will therefore be reviewable under the family assistance law.

**Items 115 and 116** amend section 118 of the FA Admin Act so that if a party to an agreement that is the subject of a decision under subsection 91A(3) of the *Child Support (Assessment) Act 1989* applies to the SSAT for a review of that decision, the other party to the agreement is made a party to the review. The other party can waive his or her right to be made a party to the review.

**Item 117** amends section 122 of the FA Admin Act so that if a decision is made under subsection 91A(3) of the *Child Support (Assessment) Act 1989* about a particular agreement, then both parties to that agreement are parties whose interests are affected by the decision. This ensures that both parties to the agreement are informed of any application that has been made to the SSAT for review of the decision.

**Item 118** amends subsection 139(1) to ensure that the Executive Director of the SSAT may give directions as to the procedures to be followed by the SSAT in reviewing both decisions under the family assistance law and decisions under subsection 91A(3) of the *Child Support (Assessment) Act 1989*.

**Item 119** amends subsection 139(5) to ensure that a presiding member of the SSAT cannot give directions as to the procedure to be followed in a particular hearing that are inconsistent with subsection 91A(3) of the *Child Support (Assessment) Act 1989*.

**Item 120** inserts new section 141A into the FA Admin Act. The new provision ensures that the Secretary gives an approved child care service notice of a decision by the SSAT where:

- the SSAT makes a decision in respect of an individual claiming CCB by fee reduction;
- the decision is relates to a determination of conditional eligibility, a weekly limit of hours, CCB% or schooling% applicable to an individual or a determination of rate under specified provisions;
- on the day the SSAT makes the decision, the service is still providing care to the child and a determination that the individual is conditionally eligible for CCB is in force.
Section 142 of the FA Admin Act provides for review of decisions by the AAT.

Item 121 amends section 142 so that if a decision is made under subsection 91A(3) of the Child Support (Assessment) Act 1989 about a particular agreement then both parties to the agreement are taken to be persons whose interests are affected by the decision. This deeming rule is relevant for the purposes applying the Administrative Appeals Tribunal Act 1975 to, or to a matter arising out of, the decision.

Under section 144 of the FA Admin Act, the AAT can review specified decisions that are not subject to internal or SSAT review. One such decision that can be reviewed by the AAT is a decision not to approve a child care service for the purposes of the family assistance law (see paragraph (a)). Under the family assistance law, a service can be approved from a particular day. This decision is not covered under the current formulation in paragraph (a).

Item 122 therefore amends paragraph 144(1)(a) to enable the AAT to also review a decision to approve a service from a particular day.

When the suspension of a child care service is revoked, it is revoked from a specified day. Item 123 amends paragraph 144(1)(d) to reflect this.

Amendments relating to information management

Under section 154 of the FA Admin Act, the Secretary may require a person to give information or produce documents if the Secretary considers the information or documents to be relevant to prescribed matters relating to entitlement and payment of family assistance.

There are other situations in which a similar power is required. These are covered in new subsections 154(2) to (4), as inserted by item 124.

Under these new provisions, the Secretary would also have the power to require a person to give information or produce documents relevant to any of the following matters:

- whether a person who has claimed family assistance (other than CCB by fee reduction) but who has not had the claim determined is eligible for family assistance;

- the amount of CCB for which a person is eligible;

- whether an individual who has claimed CCB by fee reduction is conditionally eligible;

- if a determination were to be, or is, made that the individual is conditionally eligible, the weekly limit of hours, CCB% or schooling% that would be, or is, applicable to the individual;

- what rate of CCB or weekly limit of hours is applicable in respect of a service that is eligible for CCB by fee reduction for care provided to a child at risk.
**Item 125** inserts new section 154A into the FA Admin Act.

In broad terms, the new provision provides authority for the exchange of tax file number (TFN) data between the Secretary and the Commissioner of Taxation for the purpose of income reconciliation. At the end of each income year, families paid on an estimate of their adjusted taxable income and required to lodge income tax returns will have their actual income, as assessed by the Commissioner of Taxation, reconciled with the income they estimated. The purpose of reconciliation is to ensure that correct family assistance entitlements have been paid for a particular income year. As the Australian Taxation Office (ATO) uses TFNs as the unique identifier for its customers, using TFNs is the most reliable and timely means by which to reconcile the ATO's income details with family assistance payment details.

More specifically, new subsection 154A(1) identifies the TFNs that are subject to the disclosure rules in the new section 154A, that is, TFNs provided to the Secretary under a provision of the FA Admin Act and for the purposes of that Act.

However, new section 154A will also apply to TFNs provided for the purposes of family allowance, family tax payment or parenting payment in the nature of non-benefit PP (partnered) by operation of **item 21 in Schedule 5** to this Bill. This is because customers who are receiving these social security payments on 30 June 2000 will be “transferred” to FTB without the need for an effective claim. These customers will not be required to satisfy the TFN requirement that is part of the claim process for FTB.

New subsection 154A(2) allows the Secretary to provide to the Commissioner of Taxation a TFN for the purpose of being informed of the amount determined by the Commissioner to be the taxable income of the individual to whom the TFN relates.

Under new subsection 154A(3), the Commissioner may provide the Secretary with particulars of the taxable income of the individual to whom the TFN relates together with the individual’s TFN if the Commissioner determines the taxable income of the individual before the end of 2 years after the end of the income year to which the TFN relates.

New subsection 154A(4) requires the Commissioner to destroy the Commissioner’s record of a TFN provided in respect of a particular income year 2 years after the end of that income year.

Section 157 of the FA Admin Act enables the Secretary to obtain certain information about a class of persons for prescribed purposes.

Subsection 157(1) allows the Secretary to require a person to provide information about a class of person to:

- detect cases where amounts of family assistance have been paid to persons not entitled to the payments; and
- verify the eligibility of persons who have claimed family assistance.
**Item 126** clarifies the operation of subsection 157(1) by ensuring that Secretary can require the provision of information to verify the eligibility, conditional eligibility or the applicable weekly limit of hours of persons who have claimed family assistance.

Under existing subsection 157(3), the Secretary may require information about a particular class of persons irrespective of whether or not any persons in that class can be identified as having been paid or entitled to, or who have made claims for, family assistance.

**Item 127** recasts subsection 157(3) so that it is also irrelevant whether or not any persons in that class can be identified as having been persons in respect of whom determinations of conditional eligibility for CCB by fee reduction are in force.

**Item 128** corrects an oversight in subsection 161(1) of the FA Admin Act. A reference to the *Child Support (Registration and Collection) Act 1988* is added into subsection 161(1) to ensure that Division 2 of Part 6 of the FA Admin Act does not prevent the disclosure of information for the purposes of that Act.

Section 171 of the FA Admin Act provides for the extra-territorial application of Division 3. **Item 129** amends section 171 to take account of specific CCB decisions that are not covered by the existing provision.

Division 3 also applies to:

- all persons, irrespective of their nationality, in respect of whom determinations of conditional eligibility for CCB by fee reduction are in force; and
- all persons, irrespective of their nationality, who are eligible for CCB by fee reduction under section 47 of the Family Assistance Act.

Under section 173 of the FA Admin Act, a person must not knowingly or recklessly make a false or misleading statement to:

- deceive an officer exercising powers, or performing duties or functions, under the family assistance law; or
- affect an entitlement to payment of family assistance; or
- affect the rate of payment.

**Items 130 and 131** address some issues particular to CCB that are not covered under existing section 173.

**Item 130** ensures that a person must not knowingly or recklessly make a false or misleading statement to deceive an approved child care service exercising powers, or performing duties or functions, under the family assistance law.
**Item 131** provides that a person must not knowingly or recklessly make a false or misleading statement to affect conditional eligibility for CCB by fee reduction, a weekly limit of hours, a CCB% or a schooling% applicable to a person.

Under section 174 of the FA Admin Act, a person must not knowingly or recklessly make a false statement to an officer exercising powers, or performing duties or functions, under the family assistance law or present such an officer with a false document.

**Items 132 and 133** amend section 174 so that the provision also covers false statements or documents provided to an approved child care service.

**Item 134** omits the words “or recklessly” from section 175. This change brings section 175 into line with the equivalent offence provision in the Social Security Act.

**Item 135** inserts new section 175A into the FA Admin Act.

The new provision makes it an offence for an individual to knowingly obtain fee reductions if the individual has not been determined to be conditionally eligible for CCB by fee reduction or to knowingly obtain an incorrect amount of fee reductions.

It is also an offence under new section 175A for an approved child care service that is not eligible for CCB by fee reduction for care provided to a child at risk to knowingly obtain an amount of an advance or an incorrect amount of an advance to reimburse the service the amount of the fee reductions for care provided to the child.

**Item 136** recasts section 176 of the FA Admin Act to take account of payments of CCB by fee reduction and payment of advance to approved child care services.

Under the new section 176, a person must not knowingly obtain payment of family assistance, fee reductions or an advance to reimburse the amount of fee reductions for care provided to a child:

- by means of a false or misleading statement made knowingly or recklessly;
- by means of impersonation;
- by fraudulent means.

**Item 137** makes a consequential amendment to section 178 to enable a court to order a person who has been convicted of an offence under section 177 to pay the Commonwealth an amount equal to any amount paid by way of fee reductions or advance (as well as family assistance) because of the offence.

**Amendments relating to the approval of child care services and registered carers**

Section 195 of the FA Admin Act provides for the approval of child care services. Under existing subsection 195(3), if the Secretary approves a service, the Secretary must give the applicant a certificate of approval stating the kind of approved child care service.
Item 138 recasts subsection 195(3) so as to require the Secretary to also state in the certificate of approval the day from which the approval operates. Under new subsection 195(4), the day from which an approval operates may be a day before the day the Secretary approves the service.

Section 196 of the FA Admin Act sets out the conditions for continued approval of a service. Item 139 inserts an additional condition for continued approval. A service must co-operate with a person exercising powers under the FA Admin Act to enter premises to inspect records or for an occupier of premises to provide an officer access to records and assistance.

Amendments relating to other matters

Section 221 of the FA Admin Act enables the Secretary to delegate his powers under the family assistance law.

Item 140 clarifies the operation of subsection 221(3) by ensuring that it refers to the Secretary’s power under subparagraph 168(1)(b)(i) (which deals with disclosure of information from the Secretary to an agency head) rather than the broader paragraph 168(1)(b). Subparagraph 168(1)(b)(ii) deals with the situation where a person consents to disclosure.

Section 224 of the FA Admin Act provides some general rules relating to the giving of a notice of decision. As currently worded, this provision only applies to a notice of decision affecting a person’s entitlement to be paid family assistance. Item 141 extends the ambit of section 224 so that it also applies to a notice of a decision affecting a person’s conditional eligibility for CCB by fee reduction and a notice of a decision affecting a weekly limit of hours, a CCB%, a schooling% or a rate under section 81 of the Family Assistance Act applicable to a person. A consequential amendment is also made to subsection 224(2).

Item 142 recasts paragraph 226(2)(b) so that the wording in the provision reflects the terminology used in the family assistance law. The substance of the provision remains unchanged.

Item 143 repeals sections 227 and 228 of the FA Admin Act. These provisions are relocated into Part 4 of the FA Admin Act as new sections 84A and 92A respectively.

Item 144 repeals subsection 235(5) of the FA Admin Act. This is a consequential amendment necessary because of the repeal of the regulation making powers in section 49 of the FA Admin Act.
SCHEDULE 3—AMENDMENT OF THE SOCIAL SECURITY LAW

Social Security Act 1991

Overview of amendments to the Social Security Act 1991

Schedule 3 to this Bill makes a series of technical and consequential amendments to the Social Security Act.

The Social Security Act is also amended to increase the following social security payments by 4% to compensation for the effects of the goods and services tax:

- CDEP Participant Supplement;
- pensioners education supplement; and
- carer allowance.

Finally, a transitional provision, relating to the application of the seasonal work preclusion period, is inserted into Schedule 1A to the Social Security Act.

Explanation of amendments

Technical and consequential amendments to the Social Security Act

Item 1 repeals subsection 20(2) of the Social Security Act. Subsection 20(2) defines “CPC rate”, a term that is used to adjust family allowance child rates. With the repeal of family allowance, this provision becomes redundant.

Item 2 makes a technical amendment to the definition of “family assistance law” in subsection 23(1) of the Social Security Act so that the term includes the transitional and savings provisions dealt with in Schedules 5 and 6 to this Bill.

Item 3 amends the definition of “payday” in subsection 23(1) of the Social Security Act so that the definition no longer refers to non-benefit PP (partnered), family allowance or family tax payment.

Item 4 amends subsection 999(1) of the Social Security Act so that a person is required to satisfy a residence test in order to qualify for double orphan pension (DOP). The requirement in new paragraph 999(1)(d) mirrors the residence requirement for FTB.

This amendment is consistent with the existing qualification rules for DOP. To qualify for DOP, family allowance must be payable to the person for the young person in respect of whom DOP is claimed. It follows that the residence requirements for family allowance must also be satisfied for family allowance to be payable.

Items 6 to 8 make technical changes to the parenting payment rate calculator.
Module A in section 1068B of the Social Security Act outlines the overall rate calculation process for PP (partnered) including non-benefit PP (partnered). Item 51 of Schedule 7 of the A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999 (the CA No 1 Act) repeals Module A and substitutes a new Module A that does not provide for the payment of non-benefit PP (partnered). Item 54 makes a consequential amendment to point 1068B-C2.


The 20 March 2000 changes are not reflected in new Module A in section 1068B as inserted by item 51 of Schedule 7 to the CA No 1 Act.

**Items 6, 7 and 8** amend section 1068B of the Social Security Act to reflect the 20 March 2000 changes.

Increase the rate of certain social security payments by 4%

Section 1061PZG provides for the payment of the pensioner education supplement. There are two rates of payment, $60 and $30 per fortnight.

The $60 amount is increased by 4% to $62.40 by the A New Tax System (Compensation Measures Legislation Amendment) Act 1999.

The $30 amount (a new amount introduced from 1 March 2000) is increased by 4% to $31.20 by **item 5**.

**Items 9 and 10** increase the $20 CDEP Participant Supplement by 4% to $20.80.

Schedule 1 to the A New Tax System (Compensation Measures Legislation Amendment) Act 1998 inserts a new section 1206GA into the Social Security Act. This new provision operates to increase certain social security rates by 4% on 1 July 2000. One such rate is child disability allowance (see item 1 in Table A in section 1206GA).

From 1 July 1999, child disability allowance was replaced by carer allowance. Subsection 974(2) sets the rate of carer allowance.

**Items 11 and 12** amend item 1 in the Table in section 1206GA of the Social Security Act to provide a 4% increase in the rate of carer allowance specified in subsection 974(2) instead of child disability allowance.

**Transitional provisions relating to the application of the seasonal work preclusion period**

**Item 13** inserts a new transitional provision into Schedule 1A to the Social Security Act.
New clause 127 deals with the situation where a person is subject to a seasonal work non-benefit period that starts before 1 July 2000 and would, but for the repeal of non-benefit PP (partnered) and the associated concept of a seasonal work non-benefit period, have continued after that date. In this situation, the period of the seasonal work non-benefit period that would have occurred on and after 1 July 2000 (the residual period) is deemed to be a seasonal worker preclusion period.

Without this transitional provision, parenting payment customers who are being paid non-benefit PP (partnered) because of the application of the seasonal work preclusion rules may, on 1 July 2000, may be entitled to be paid the higher rate of pension PP (single) or benefit PP (partnered), thereby defeating the purpose of those rules. While parenting payment would not be payable to these customers for the residual period, they would probably be entitled to payment of FTB Part B (which replaces non-benefit PP (partnered)).

**Social Security (Administration) Act 1999**

**Overview of amendments to the Social Security (Administration) Act 1999**

Schedule 3 to this Bill makes numerous consequential amendments to the Social Security Act (Administration) 1999 (the Social Security Admin Act). These changes are necessary because of the repeal of family related payments from the social security law and the repeal of the Child Care Payments Act 1997.

Amendments are also made to ensure decisions under subsection 91A(3) of the Child Support (Assessment) Act 1989 (the CSA Act) are no longer reviewable under the social security law. These decisions will be reviewable under the family assistance law from 1 July 2000.

**Explanation of amendments**

Items 14 to 32, 39 and 48 to 51 make minor consequential amendments to the Social Security Admin Act because of the repeal of family allowance, family tax payment and non-benefit PP (partnered) and the relocation of maternity allowance and maternity immunisation allowance into the family assistance law.

Amendments are made to repeal provisions that are specific to one or more of the repealed payment types. For example, item 22 repeals section 71 of the Social Security Admin Act (section 71 allows the Secretary to give a person who is receiving family allowance or family tax payment a notice that requires the person to notify of a change of address).

Other amendments omit references to repealed payment types or modify existing provisions so that they no longer apply to these payment types. For example, item 14 recasts subsection 3(5) of the Social Security Admin Act so that it no longer refers to family allowance.
Items 46, 47, 52 and 53 make some minor technical changes to specified provisions in the Social Security Admin Act. Remaining references to the Child Care Payments Act 1997 are omitted. Where relevant, they are replaced with references to the family assistance law. Existing incorrect references to the Student and Youth Assistance Act 1973 are also replaced by references to the Student Assistance Act Act 1973.

Items 33 to 38 and 40 to 45 amend various provisions in the Social Security Admin Act that relate to the review of decisions under subsection 91A(3) of the CSA Act. The effect of these amendments is that decisions under subsection 91A(3) of the CSA Act are no longer reviewable under the social security law.

These decisions are currently reviewable under the Social Security Admin Act because of the connection between the reasonable maintenance action test (applicable for family allowance) and subsection 91A(3). From 1 July 2000, family allowance will be replaced by FTB. The reasonable maintenance action test will, from that date, be relevant for FTB. Subsection 91A(3) will retain its connection to the reasonable maintenance action test applicable to FTB and will therefore be reviewable under the family assistance law. Various amendments are made to the FA Admin Act in Part 3 of Schedule 2 to this Bill to achieve this outcome.

Social Security (International Agreements) Act 1999

Overview of amendments to the Social Security (International Agreements) Act 1999

Schedule 3 to this Bill makes some technical changes to the portability rate calculation provisions in the Social Security (International Agreements) Act 1999 (the International Agreements Act).

Explanation of amendments

Items 139 and 140 of the A New Tax System (Family Assistance) (Consequential and Relates Measures) Act (No. 2) Act 1999 (CA No. 2 Act) amend the method statement in point 1210 - A1 of the Social Security Act and insert a new point 1210-A1A. These amendments are consequential upon the repeal of family allowance and the introduction of the new family assistance regime.

Schedule 2 to the Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999 repeals Part 4.1 of the Social Security Act, including point 1210-A1, with effect from 20 March 2000. Part 4.1 of the Social Security Act is replaced by section 13 of Division 1 of Part 3 of the International Agreements Bill. Section 13 does not reflect the amendments made by items 139 and 140 of the CA No. 2 Act to its predecessor, point 1210-A1 of the Social Security Act.

Items 54 and 55 make the relevant technical amendments that are equivalent to those made by items 139 and 140 of the CA No. 2 Act.
SCHEDULE 4—AMENDMENT OF OTHER ACTS

A New Tax System (Bonuses for Older Australians) Act 1999

Overview of amendments to the A New Tax System (Bonuses for Older Australians) Act 1999

Schedule 4 to this Bill makes minor technical changes to the A New Tax System (Bonuses for Older Australians) Act 1999 (the Pension Bonus Act) to take account of the subsequent enactment of the Social Security (Administration) Act 1999.

Explanation of amendments

Section 19 of the Pension Bonus Act provides for the application of the Social Security Act to the making of determinations about, and payment of, pension bonus. As suggested in the note at the end of section 19, this means that provisions in the Social Security Act dealing with review of determinations, recovery of overpayments etc also apply to the pension bonus.

Item 1 recasts section 19 of the Pension Bonus Act so that it refers to the social security law instead of the Social Security Act. This change takes into account the introduction of the social security law comprising the Social Security Act, the Social Security (Administration) Act 1999 and the Social Security (International Agreements) Act 1999 that commences on 20 March 2000. From the date matters such as review of decisions will be dealt with under the Social Security (Administration) Act 1999 while matter such as recovery of overpayments remain in the Social Security Act.

Child Support (Assessment) Act 1989

Overview of amendments to the Child Support (Assessment) Act 1989

Schedule 4 to this Bill makes minor technical and consequential changes to the Child Support (Assessment) Act 1989 (the CSA Act).

Explanation of amendments

Schedule 4 to the A New Tax System (Family Assistance)(Consequential and Related Measures) Act (No. 2) 1999 (CA No 2 Act) amendments various provisions in the CSA Act as a result of the repeal of family related payments from the Social Security Act and the introduction of the new family assistance regime.

Part 5 of the CSA Act provides for the calculation of a person’s child support liability. In broad terms, this liability will be a percentage of the person’s taxable income less any exempted amounts. An exempted income amount includes an amount, worked out under subsection 39(2) of the CSA Act, for any relevant dependent child or children of the person.
Paragraph 39(2)(b), as amended by item 5 of Schedule 4 to the CA No. 2 Act, provides a formula by which an exempted amount for a child under 16 can be calculated. This formula draws on various FTB child rates in the Family Assistance Act through the definitions of “base FTB rate” and “standard FTB rate”. These definitions are further refined by items 2 and 3 so that it is clear that the base FTB rate and standard FTB rate relates to the child in question.

The amendments made by items 6, 8 and 11 of Schedule 4 to the CA No 2 Act should focus on a Part A rate that is higher than the base rate for the party/eligible person. Items 4, 5 and 7 achieve this outcome.

Division 4 of the CSA Act deals with child support agreements. Before the child support registrar can accept such an agreement, it must satisfy the reasonable maintenance action test. This test is in clause 10 of Schedule 1 to the Family Assistance Act. The relevant rule is contained in subsection 91A(3) of CSA Act, which requires the Secretary to decide whether an eligible person, or his or her partner, has taken reasonable maintenance action.

As currently drafted, the consequences of not satisfying the maintenance action test is an adverse decision by the Secretary that the eligible person would only be entitled to be paid FTB at the base rate. Under clause 10 of Schedule 1 to the Family Assistance Act, however, the consequence of failing to take reasonable maintenance action is payment of FTB at the base FTB child rate (see clause 8 of Schedule 1).

The consequence for failing to take reasonable maintenance action should be the same in both subsection 91A(3) of the CSA Act and clause 10 of Schedule 1 to the Family Assistance Act. Item 6 amends subsection 91A(3) to reflect this outcome.

Subsection 151(4) of the CSA Act provides that an election to end an administrative assessment in the case of a carer who is receiving family allowance at the more than minimum rate can only be effective if approved by the Secretary under section 151A. Consequential amendments are also required to subsection 151(4) to take account of the repeal of family allowance and the introduction of FTB.

Item 8 amends subsection 151(4) so that it applies to a carer who is entitled to be paid, or is a claimant for, FTB for the child at a Part A rate higher than the base rate for the carer under clause 4 of Schedule 1 to the Family Assistance Act. If such a carer elects to end an administrative assessment, then the election has no effect unless and until the Secretary approves the election under section 151A.

Item 9 repeals existing subsections 151A(2), (3) and (4) and inserts new provisions.

Existing subsection 151A(2) of the CSA Act has the effect of preventing a carer from electing to end an administrative assessment if, as a result of the election, the carer fails the reasonable maintenance action test applicable to family allowance. Subsection 151A(2) is recast so that it takes account of the new FTB rules. New subsection 151A(2) requires the Secretary to decide if the carer has taken reasonable action to obtain maintenance for the child by applying clause 10 of Schedule 1 to the Family Assistance Act if it were assumed that:
• the election were to take effect; and

• if the carer is a claimant for FTB for the child – the carer was entitled to be paid the benefit.

New subsection 151A(3) provides that the Secretary is taken to approve the election if the Secretary decides that the carer has taken reasonable action to obtain maintenance for the child.

New subsection 151A(4) provides the converse rule that the Secretary is taken not to approve the election if the Secretary decides that the carer has not taken reasonable action to obtain maintenance for the child.

Health Insurance Act 1973

Overview of amendments to the Health Insurance Act 1973

Schedule 4 to this Bill makes a technical amendment to the Health Insurance Act 1973 (the HI Act).

Explanation of amendments

The various categories of “disadvantaged person” specified in the HI Act are eligible for health care cards (HCCs). HCCs entitle the holder to a range of Commonwealth benefits under the HIA and other legislation and some state concessions (eg, travel concessions).

Under current arrangements, a HCC is available to family allowance recipients who receive the maximum rate of family allowance after the application of the income test. An application of the maintenance income test does not affect eligibility for a HCC.

New section 5EAA of the HI Act, inserted by item 16 of Schedule 8 to the A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999, is intended to provide similar eligibility to FTB customers who are entitled to be paid FTB by instalment. The amendment does not achieve this outcome.

Accordingly, item 10 further amends section 5EAA of the HI Act to ensure that a person who is entitled to be paid FTB by instalment is a disadvantaged person within the meaning of that provision if:

• the person’s daily rate of FTB consists of, or includes, a Part A rate that is calculated using Part 2 of Schedule 1 to the Family Assistance Act; and

• the person’s income excess under Division 4 of Part 2 of that Schedule is nil.
Overview of amendments to the *Income Tax Assessment Act 1936* and the *Medicare Levy Act 1986*

The amendments contained in this Schedule also amend the *Income Tax Assessment Act 1936* (the ITAA) as a result of amendments contained in Schedule 1 to the “pattern of care eligibility rules” for FTB. The proposed amendments ensure that where a taxpayer is entitled to claim a dependent spouse, child-housekeeper or housekeeper rebate and either they or their spouse are eligible to FTB Part B for a period where there is a pattern of care for an FTB child (a shared care period), the taxpayer will be entitled to claim the rebate for that portion of the shared care period for which their claim for FTB Part B was reduced. Similarly, the amendments ensure that a child will not be regarded as a dependant of a taxpayer who is a prescribed person for Medicare levy exemption purposes, for that percentage of the shared care period for which the taxpayer’s or their spouse’s entitlement to FTB Part A was reduced.

The ITAA and the *Medicare Levy Act 1986* are being amended to make technical corrections resulting from amendments of the Family Assistance Act prior to its enactment in relation to the age qualification rules for FTB. The proposed amendments will ensure that a taxpayer’s eligibility to FTB Part A will have no effect on a taxpayer’s entitlement to a dependent spouse, child-housekeeper or housekeeper rebate.

**Explanation of amendments**

By way of background, the amendments made to the ITAA are necessary because of the changes made in this Bill to pattern of care eligibility. Technical amendments are also made to the ITAA and the *Medicare Levy Act 1986* to take account of age qualification rules in the family assistance law.

**Changes to the pattern of care eligibility rules**

The *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No.1) of 1999* abolished the dependent spouse with child rebate and the sole parent rebate following their replacement by the FTB. This Act also amended the dependent spouse, child-housekeeper and housekeeper rebates to provide that a taxpayer will not be entitled to a rebate during that part of the year where they or their spouse were eligible for FTB.

The *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No.2) of 1999* amended the Medicare levy provisions in the ITAA to provide that where the parents of a child lived separately and apart from each other during any part of the year of income, the child will be regarded as a dependant of a taxpayer who is a prescribed person for Medicare levy exemption purposes, for any period where the taxpayer was eligible to receive FTB.
The proposed amendments to the pattern of care eligibility rules in Schedule 1 to this Bill adverse impact on a taxpayer’s entitlement to a dependent spouse, child-housekeeper and housekeeper rebates and to a prescribed person’s eligibility to an exemption from the Medicare levy. This adverse impact will occur as a result of the taxpayer being entitled to FTB for the entire period where there is a pattern of care for an FTB child (a shared care period) instead of just the actual days the care is provided.

The proposed amendments to the ITAA will ensure that where a taxpayer is entitled to claim a dependent spouse, child-housekeeper or housekeeper rebate and either they or their spouse are eligible to claim FTB Part B for a shared care period, the taxpayer will be entitled to claim the rebate for that portion of the shared care period for which their claim for FTB Part B was reduced.

The proposed amendments to the Medicare levy provisions will ensure that where a taxpayer shares the care of a child with a former spouse and the taxpayer’s or their spouse’s eligibility to FTB Part A for that child is reduced during any part of the year of income as a result of the application of the pattern of care eligibility rules, the child will be regarded as a dependant of the taxpayer for Medicare levy exemption purposes for that percentage of the period that has been determined by the Secretary of the Department of Family and Community Services (the Secretary) under subsection 59(1) of the Family Assistance Act. The Secretary when making the determination will have regard to the living circumstances of the FTB child. The amendments ensure that the taxpayer still qualifies for an exemption from the Medicare levy for the remaining percentage of the year of income.

Changes to the age qualification rules

Technical amendments are required to the ITAA and the Medicare Levy Act 1986 to change the references to FTB with FTB Part A and FTB Part B where appropriate, due to the age qualification rules being different for the two payments. The proposed amendments will ensure that a taxpayer’s eligibility to FTB Part A will have no effect on a taxpayer’s entitlement to a dependent spouse, child-housekeeper and housekeeper rebates.

Amendments to the Income Tax Assessment Act 1936—Zone and overseas forces rebates

Items 11 to 22 make consequential and minor technical amendments to the zone rebate under section 79A and the overseas forces rebates under sections 23AB and 79B of the ITAA. The amendments ensure that despite the changes proposed by items 23, 24, 25, 26 and 27 to sections 159J and 159L of the ITAA, a taxpayer’s entitlement to the dependent spouse, child-housekeeper and housekeeper rebates will be notionally retained for the purposes of working out zone or overseas forces rebates, despite the repeal of the dependent spouse (with child) rebate and any eligibility to FTB Part B.
Amendments to the Income Tax Assessment Act 1936—Dependent spouse and child-housekeeper rebates

**Items 23 to 25**, which are explained in more detail in the following paragraphs, contain references to a taxpayer’s spouse’s eligibility to FTB Part B. This is because the spouse’s entitlement to FTB Part B can affect the taxpayer’s entitlement to a rebate. Since a taxpayer can have more than one spouse for tax purposes, i.e. a separated legally married spouse and a person who is living with the taxpayer on a bona fide domestic basis it has been necessary to specify which spouse’s FTB entitlement can affect a taxpayer’s rebates. A spouse for these purposes is the taxpayer’s partner as defined in the Family Assistance Act. A “partner” in relation to a person who is a member of a couple, means the other member of the couple. This will ensure that a spouse’s eligibility to FTB Part B will not be taken into account where the taxpayer and their spouse were living separately and apart during the year of income.

**Item 23** replaces subsection 159J(1AA) of the ITAA as a result of the amendments to the pattern of care eligibility rules contained in Schedule 1. Proposed new subsection 159J(1AA) removes an entitlement to the dependent spouse or child-housekeeper rebate where a taxpayer or the taxpayer’s spouse, was eligible to FTB Part B for an FTB child for the whole year of income and no other person, for example a former spouse, was eligible to FTB Part B for that child.

The proposed amendment also makes a technical correction by replacing the current reference to “family tax benefit” with “family tax benefit at the Part B rate”. The amendment ensures that a taxpayer will be entitled to a dependent spouse or child-housekeeper rebate where the taxpayer or the taxpayer’s spouse was only eligible to FTB Part A.

**Item 25** proposes to insert new subsections 159J(3AA) and 159J(3AB) to replace paragraph 159J(3)(f) which is being repealed by **item 24**. The amendments are required as a result of the changes to the pattern of care eligibility rules in **Schedule 1** to this Bill.

New subsection 159J(3AA) provides that where a taxpayer or the taxpayer’s spouse was eligible to FTB Part B for an FTB child for part of the year of income and no other person was eligible to FTB Part B for that child during that period, the taxpayer will not be entitled to claim the dependent spouse or child-housekeeper rebate for that part of the year.

New subsection 159J(3AB) reduces a taxpayer’s entitlement to a dependent spouse or child-housekeeper rebate where the taxpayer or the taxpayer’s spouse was eligible to FTB Part B for an FTB child for either the whole or part of the year of income and another person, generally a former spouse, who shares the care of the child was also eligible to FTB Part B for the shared care period.
The amount of a taxpayer’s entitlement to the dependent spouse or child-housekeeper rebate for a shared care period is calculated using the formula in new subsection 159J(3AB). A person may have more than one shared care period in a year of income because the pattern of care has changed and the Secretary has made more than one determination under subsection 59(1) of the Family Assistance Act. The formula is applied to each shared care period and then aggregated to determine the total rebate entitlement.

The effect of the formula is to allow the dependent spouse or housekeeper rebate to which the taxpayer would have otherwise been entitled, to the extent that their eligibility to FTB Part B was reduced following the application of the new pattern of care eligibility rules in the Family Assistance Act.

The application of new subsection 159J(3AB) is illustrated in the following examples:

Example 1

Alfonso and Erica are married and care for Alfonso’s 10 year old son Len from a previous marriage. They do not have any other children. Erica has no separate net income.

Alfonso shares the care of Len with his ex-wife. The Secretary, after having regard to Len’s living arrangements, determines under subsection 59(1) of the Family Assistance Act that Alfonso’s and Erica’s percentage of FTB is 30%. Alfonso or Erica is therefore entitled to FTB Part B at the rate of $534.36 under clause 31 of Schedule 1 to the Family Assistance Act. This rate is 30% of the standard rate of $1781.20 for an FTB child over 5 years of age, as specified in clause 30 of Schedule 1 to the Act.

The pattern of care arrangements change on 1 February 2001 when the Secretary determines that Alfonso’s and Erica’s percentage of FTB is 50%. Alfonso or Erica is therefore entitled to FTB Part B at the rate of $890.60 under clause 31 of Schedule 1 to the Family Assistance Act. This rate is 50% of the standard rate of $1781.20 for an FTB child over 5 years of age, as specified in clause 30 of Schedule 1 to the Act.

Alfonso’s entitlement to the dependent spouse rebate is calculated under new subsection 159J(3AB) as follows:
Shared care period 1/7/2000 – 31/1/2001 (215 days):

\[
\left(1 - \frac{534.36}{1781.20}\right) \times \left[\frac{215 \times 1324^*}{365}\right]
\]

\[
= 0.7 \times 779.89
\]

\[
= \$545.92 \text{ dependent spouse rebate}
\]

Shared care period 1/2/2001 – 30/6/2001 (150 days):

\[
\left(1 - \frac{890.60}{1781.20}\right) \times \left[\frac{150 \times 1324^*}{365}\right]
\]

\[
= 0.5 \times 544.11
\]

\[
= \$272.05 \text{ dependent spouse rebate}
\]

Alfonso will be entitled to a dependent spouse rebate for Erica totalling \$818 for the 2000-2001 year of income, being the aggregate amount of dependent spouse rebate for the two shared care periods rounded up to the nearest dollar.

\* The dependent spouse rebate figures for the 1999-2000 year of income have been used for the purposes of this example as the 2000-2001 figures are not available.

Example 2

Carlos and Maria are married and care for 2 children from Maria’s previous relationship. Maria’s son, Bruno, is 10 years old and her daughter, Sylvia, is 4. Maria has a separate net income (SNI) of \$550.

The Secretary, after having regard to Bruno’s and Sylvia’s living arrangements, determines under subsection 59(1) of the Family Assistance Act that Carlos’ and Maria’s percentage of FTB for Bruno is 100% and Sylvia is 70%. The pattern of care remains the same for the whole of the 2000-2001 year of income.

Carlos or Maria is therefore entitled to FTB Part B, at the rate of \$1798.72 under clause 31 of Schedule 1 to the Family Assistance Act. This rate is the higher of the standard rate applicable under clause 30 of Schedule 1 of the Act for Bruno [100% of \$1781.20 = \$1781.20] and the rate for Sylvia [70% of \$2569.60 = \$1798.72].
Carlos’ entitlement to the dependent spouse rebate is calculated under section 159J as follows:

**STEP 1:** apply new subsection 159J(3AB)

**Shared care period 1/7/2000 – 30/6/2001 (365 days):**

\[
\left[1 - \frac{\$1798.72}{\$2569.6}\right] \times \$1324^* \\
= 0.3 \times \$1324 \\
= \$397.20
\]

**STEP 2:** apply the “SNI test” in subsection 159J(4)

\[
\left[\frac{\text{SNI} - \$282}{4}\right] \\
= \left[\frac{\$550 - \$282}{4}\right] \\
= \$67
\]

**STEP 3:** \$397.20 - \$67.00 = \$330.20

Carlos will be entitled to a dependent spouse rebate of \$331 for Maria for the 2000-2001 year of income being the reduced amount of dependent spouse rebate after the application of the SNI test, rounded up to the nearest dollar.

* The dependent spouse rebate figures for the 1999-2000 year of income have been used for the purposes of this example as the 2000-2001 figures are not available.

**Amendments to the Income Tax Assessment Act 1936—Housekeeper rebate**

**Items 26 and 27**, which are explained in more detail in the following paragraphs, contain references to a taxpayer’s spouse’s eligibility to FTB Part B. This is because the spouse’s entitlement to FTB Part B can affect the taxpayer’s entitlement to a rebate. Since a taxpayer can have more than one spouse for tax purposes, i.e. a separated legally married spouse and a person who is living with the taxpayer on a bona fide domestic basis it has been necessary to specify which spouse’s FTB entitlement can affect a taxpayer’s rebate. A spouse for these purposes is the taxpayer’s partner as defined in the Family Assistance Act. A “partner” in relation to a person who is a member of a couple, means the other member of the couple. This will ensure that a spouse's eligibility to FTB Part B will not be taken into account where the taxpayer and their spouse were living separately and apart during the year of income.
Item 26 replaces subsection 159L(3A) of the ITAA as a result of the amendments to the pattern of care eligibility rules contained in Schedule 1. Proposed new subsection 159L(3A) removes an entitlement to the housekeeper rebate where the taxpayer or the taxpayer’s spouse was eligible to FTB Part B for an FTB child for the whole year of income and no other person, for example a former spouse, was eligible to FTB Part B for that child.

The proposed amendment also makes a technical correction by replacing the current reference to “family tax benefit” with “family tax benefit at the Part B rate”. The amendment ensures that a taxpayer will be entitled to a housekeeper rebate where the taxpayer was only eligible to FTB Part A.

Item 27 inserts new subsections 159L(5A) and (5B).

New subsection 159L(5A) provides that where a taxpayer or the taxpayer’s spouse was eligible to FTB Part B for an FTB child for part of the year of income and no other person was eligible to FTB Part B for that child during that period, the taxpayer will not be entitled to the housekeeper rebate for that part of the year.

New subsection 159L(5B) applies to a taxpayer’s entitlement to the housekeeper rebate where the taxpayer or the taxpayer’s spouse was eligible to FTB Part B for an FTB child for either the whole or part of the year of income and another person, generally a former spouse, who shares the care of the child was also eligible to FTB Part B for the shared care period.

New subsections 159L(3A), (5A) and (5B) do not apply where the taxpayer also contributes to the maintenance of a dependent spouse in receipt of a disability support pension. This ensures that the taxpayer remains entitled to a housekeeper rebate where the housekeeper was engaged in caring for the spouse regardless of any entitlement to FTB Part B.

The amount of a taxpayer’s entitlement to the housekeeper rebate for a shared care period is calculated using the formula in new subsection 159L(5B). A person may have more than one shared care period in a year of income because the pattern of care has changed and the Secretary has made more than one determination under subsection 59(1) of the Family Assistance Act. The formula is applied to each shared care period and then aggregated to determine the total rebate entitlement.

The effect of the formula is to allow the housekeeper rebate to which the taxpayer would have otherwise been entitled, to the extent that their eligibility to FTB Part B was reduced following the application of the new pattern of care eligibility rules in the Family Assistance Act.

The application of new subsection 159L(5B) is illustrated in the following example:
Example 3

Lam is separated from his spouse with whom he shares the care of his 4 year old daughter Susan. Lam also looks after his older brother Ken who is in receipt of a disability support pension. Lam employs a housekeeper on a full time basis to look after Ken and Susan.

The Secretary, after having regard to Susan’s living arrangements, determines under subsection 59(1) of the Family Assistance Act that Lam’s percentage of FTB is 45%. Lam is therefore entitled to FTB Part B at the rate of $1156.32 under clause 31 of Schedule 1 to the Family Assistance Act. This rate is 45% of the standard rate of $2569.60 for an FTB child under 5 years of age, as specified in clause 30 of Schedule 1 to the Act.

The pattern of care arrangements change on 1 December 2000 when the Secretary determines that Lam’s percentage of FTB is 75%. Lam is therefore entitled to FTB Part B at the rate of $1927.20 under clause 31 of Schedule 1 to the Family Assistance Act. This rate is 75% of the standard rate of $2569.60 for an FTB child under 5 years of age, as specified in clause 30 of Schedule 1 to the Act.

Lam’s entitlement to the housekeeper rebate in respect of Ken is calculated under new subsection 159L(5B) as follows:


\[
\left(1 - \frac{1156.32}{2569.60}\right) \times \frac{153}{365} \times 1606^* \\
= 0.55 \times 673.20 \\
= 370.26 \text{ housekeeper rebate}
\]

Shared care period 1/12/2000 – 30/6/2001 (212 days):

\[
\left(1 - \frac{1927.20}{2569.60}\right) \times \frac{212}{365} \times 1606^* \\
= 0.25 \times 932.80 \\
= 233.20 \text{ housekeeper rebate}
\]

Lam will be entitled to a housekeeper rebate of $604 for the 2000-2001 year of income, being the aggregate amount of housekeeper rebate for the two shared care periods rounded up to the nearest dollar.

* The housekeeper rebate figures for the 1999-2000 year of income have been used for the purposes of this example as the 2000-2001 figures are not available.
Amendments to the Income Tax Assessment Act 1936—Medicare levy exemption

**Item 28** replaces subsection 251R(5) and applies where two parents live separately and apart from each other and are both eligible to FTB Part A for an FTB child who would be regarded as a dependant of both parents during a period for Medicare levy exemption purposes. The subsection also applies where the taxpayer’s spouse, being the taxpayer’s partner as defined in the Family Assistance Act, is eligible to claim FTB Part A for the FTB child instead of the parent taxpayer. This could happen if a separated taxpayer was living with a new spouse and passed on the entitlement to FTB to the new spouse.

New subsection 251R(5) provides that where the Secretary has determined under subsection 59(1) of the Family Assistance Act that each parent is entitled to a specified percentage of FTB, the child will be a dependant of each parent for Medicare levy exemption purposes for so much only of that shared care period as represents that percentage of the period.

The effect of the application of new subsection 251R(5) upon a prescribed person’s eligibility for exemption from the Medicare levy is illustrated in the following example:

**Example 4**

Justine, who is separated from her husband, was a member of the defence forces for the whole year of income. Justine cares for their 10 year old son Daniel every second weekend. The Secretary, after having regard to Daniel’s living arrangements, makes a determination under subsection 59(1) that Justine’s percentage of FTB is 14%.

Daniel will be regarded as Justines’s dependent for 51 days under subsection 251R(5), being 14% of the days in the period. Justine will therefore be liable to the Medicare levy for half of the 51 days following the application of subsections 251U(2) and (3). She will be exempt from the levy for the balance of 314 days following the application of sections 251T and 251U.

Amendments to the Medicare Levy Act 1986

**Item 30** corrects a technical error in paragraph (b) of Note 1 in subsection 8H(2) by replacing the reference to “family tax benefit” with “family tax benefit Part B”.

**Application**

**Items 29 and 31** provide that the amendments to the ITAA and the MLA apply to assessments in relation to the 2000-2001 year of income and all later years of income.
Overview of Schedule 5

Schedule 5 to the Bill contains provisions that deal with the transition from the existing family assistance regime in the Social Security Act to the new family assistance regime contained in the family assistance law.

Schedule 5 also contains a saving provision for certain family allowance customers with a child attracting payment of double orphan pension or carer allowance.

Explanation of amendments

Item 1 defines terms and concepts used in Schedule 5. These definitions are explained in the context in which they appear.

Item 1 also ensures that any organisation that was an approved care organisation (ACO) under the Social Security Act immediately before 1 July 2000 is taken to be approved under section 20 of the Family Assistance Act. This provision avoids the need to re-approve organisations on 1 July 2000 to enable them to continue being paid family assistance in respect of children in their care.

Item 2 provides for the “transfer” of individuals receiving family benefit immediately before 1 July 2000 to FTB without the need to claim FTB. These individuals are taken to have lodged an effective claim for FTB by instalment under subsection 7(2) of the FA Admin Act.

For the purpose of this rule, “family benefit” is defined in item 1 as meaning family allowance, family tax payment or parenting payment in the nature of non-benefit PP (partnered).

To facilitate continuity of payments, item 2 also provides that if an individual was receiving family benefit into a bank account immediately before 1 July 2000, that bank account is taken to have been nominated by the individual as the account into which payments of FTB are to be paid.

Customers currently receiving assistance through the tax system will need to claim FTB in accordance with the rules in the FA Admin Act.

Item 3 provides for the “transfer” of ACOs receiving family allowance immediately before 1 July 2000 to FTB without the need to claim FTB. These ACOs are taken to have lodged an effective claim for FTB by instalment under subsection 7(2) of the FA Admin Act.
To facilitate continuity of payments, item 2 also provides that if an ACO was receiving family allowance into a bank account immediately before 1 July 2000, that bank account is taken to have been nominated by the ACO as the account into which payments of FTB are to be paid.

**Item 4** provides special transitional rules relating to outstanding TFN requirements.

Under section 75 of the *Social Security (Administration) Act 1999* (the Social Security Admin Act), the Secretary may request a person to provide his or her TFN and, if relevant, the TFN of the person’s partner. The person then has 28 days within which to comply with the request. A failure to comply results in loss of payability.

Section 26 of the FA Admin Act allows the Secretary to make a similar TFN request. If an individual fails to comply with such a request within 28 days of its making, then the consequence in section 27 may apply, that is, the individual’s entitlement determination may be varied with the effect that the individual is no longer entitled to be paid FTB from a prescribed day.

Situations will arise where,

- the Secretary has requested the individual to provide a TFN under section 75 of the Social Security Admin Act; and

- immediately before 1 July 2000, the individual has not provided the TFN; and

- as at 1 July 2000, the 28 day period within which to comply with the request has not ended.

Where this happens, the request under section 75 of the Social Security Admin Act is taken to be a request under section 26 of the FA Admin Act at the time it was made. While the individual will be transferred to FTB by instalment on 1 July 2000, if the individual does not provide the relevant TFN details within 28 days of the request being made, then payment of FTB may cease in accordance with section 27.

**Item 5** provides special transitional rules relating to outstanding bank account requirements.

Under section 55 of the Social Security Admin Act, the Secretary may request a person (an individual or ACO) to nominate an account into which social security payments are to be paid. If, after 28 days, the person has not nominated an account, then the payment ceases to be payable to the person. The person then has 13 more weeks in which to provide the account to have payment reinstated from the day that payment ceased.

Section 26A of the FA Admin Act allows the Secretary to request the provision of a bank account into which payments of FTB by instalment are to be paid. The consequences of failing to comply with this requirement are set out in section 27A. Sections 26A and 27A are inserted into the FA Admin Act by **Part 1 of Schedule 2** to this Bill.
Situations will arise where:

- the Secretary has requested an individual or ACO to provide bank account details under section 55 of the Social Security Admin Act; and

- immediately before 1 July 2000, the individual or ACO has not provided those details; and

- as at 1 July 2000, the 28 day period in which the individual or ACO was required to provide those details has not ended.

Where this happens, the request under section 55 of the Social Security Admin Act is taken to be a request under section 26A of the FA Admin Act at the time it was made. While the individual will be transferred to FTB by instalment on 1 July 2000, if the individual does not provide bank account details within 28 days of the request being made, then payment of FTB may cease in accordance with section 27A.

**Item 6** provides for the making of determinations.

Customers who are transferred to FTB on 1 July 2000 will need to have their entitlement to FTB by instalment assessed by the Secretary so that payment of FTB can commence. If the Secretary is satisfied that the transferee is eligible for FTB, then an entitlement determination, specifying a daily rate at which the Secretary considers the transferee is eligible, will be made under section 16 of the FA Admin Act. Otherwise, a no entitlement determination will be made in respect of the transferee under section 19 of the FA Admin Act.

As a general rule, the Secretary will have most of the information required about an individual or ACO to make a determination concerning their entitlement. Under the confidentiality rules in Division 2 of Part 6 of the FA Admin Act, information held in the records of the Department or Centrelink can be accessed and used for the purposes of the family assistance law. This includes the personal information about transferred customers and information about ACOs that is required to make an entitlement determination under the family assistance law.

However, the Secretary may not have all the information necessary to determine entitlement (for example, an estimate of adjusted taxable income for the 2000-2001 income year). In these cases, transferees will be requested to provide the relevant information before 1 July 2000. **Subitem 6(2)** makes it clear that if such information is not forthcoming, the Secretary may make a “no entitlement” determination under section 19 of the FA Admin Act.

Such a determination does not prevent a person from claiming FTB by instalment at a later time (and claiming for the past period going back to 1 July 2000) or from claiming FTB after the end of the 2000-2001 income year in respect of that year. As part of the claim process, the person would be required to provide the Secretary with all the relevant information needed by the Secretary to determine such a claim.

**Item 7** provides for the continuation of payments to third parties on behalf of a transferee.
Under subsection 23(4) of the FA Admin Act, the Secretary has the discretion to pay a claimant’s FTB to a third person on behalf of the claimant. This provision mirrors subsection 44(3) of the Social Security Admin Bill that provides a similar power in relation to social security periodic payments (including family allowance, family tax payment and parenting payment in the nature of non-benefit PP (partnered)).

The effect of item 7 is to continue nominee arrangements in place on 30 June 2000 into the new regime. This is done by deeming any direction by the Secretary under subsection 44(3) of the Social Security Admin Act relating to the payment of family benefit that is in force immediately before 1 July 2000 to be a decision by the Secretary under subsection 23(4) of the FA Admin Act in relation to the payment of FTB on or after 1 July 2000.

The Secretary would have the discretion to change this nominee arrangement at a later time.

Item 8 provides for the continuation of instalment periods in the transition from social security family payments to the new family assistance regime.

By way of example, a person’s family allowance instalment period commences on 22 June 2000 and would end (but for the repeal of family allowance) on 5 July 2000. Because of the repeal of family allowance, the person can only be paid family allowance up to and including 30 June. Item 8 then provides that the person’s first FTB instalment period runs from 1 July to 5 July.

The effect is that the person would receive a payment on their usual payday in respect of the fortnight commencing 22 June 2000. The payment would comprise an amount of family allowance for that part of the fortnightly period falling before 1 July and an amount of FTB for the period 1 to 5 July.

This ensures minimum disruption to customer payments.

Item 9 provides a series of rules that apply to claims for family benefit that are undetermined as at 1 July 2000.

Subitems 9(1) and 9(2) deal with claims for family allowance and family tax payment that are lodged before 1 July 2000 but are undetermined as at 1 July 2000.

If the claimant was qualified for the payment at the time of claim, or becomes qualified for payment before 1 July 2000, then the claim is to be considered under the Social Security Act as in force before 1 July 2000 as if it related only to the period preceding 1 July 2000.

If the claimant does not become qualified for the payment before 1 July 2000, then the claim is taken to have lapsed on that day.

Subitems 9(3) and 9(4) deal with claims for parenting payment that are lodged before 1 July 2000 but are undetermined as at 1 July 2000.
If the claimant was qualified for payment at the time of claim, or becomes qualified for payment before 1 July 2000, then the claim is to be considered under the Social Security Act as in force before 1 July 2000. If parenting payment would be paid under the Social Security Act at the rate applicable to non-benefit PP (partnered), then the claim is to be determined as if it only relates to the period preceding 1 July 2000.

If the claimant does not become qualified for the payment before 1 July 2000 and, if the claimant were to become qualified for the payment on or after 1 July, it would be parenting payment in the nature of non-benefit PP (partnered), then the claim is taken to have lapsed on that day.

**Item 10** allows certain claims for family benefit lodged on or after 1 July 2000 to be considered. This transitional provision takes account of the backdating rules that apply in relation to family benefits under the social security law.

**Item 10** operates where a person did not make a claim for family benefit before 1 July 2000 but, were it not for the repeal of family benefit from the social security law, could have made such a claim after 1 July 2000, backdated to the date of a particular event that occurred before 1 July. In this situation, the claim is to be dealt with as if family benefits were not repealed and on the basis that the claim relates to a period before 1 July 2000.

**Item 11** deals with the transfer of claims for maternity allowance and maternity immunisation allowance from the social security law to the family assistance law

From 1 July 2000, maternity allowance and maternity immunisation allowance will be paid under the family assistance law rather than the social security law. These payments are being relocated with very few substantive changes.

**Subitem 11(1)** deals with the situation where a person claims maternity allowance or maternity immunisation allowance under the social security law and the claim is undetermined as at 1 July 2000. In this situation, the claim is to be treated as a claim for MAT or MIA (as defined in **item 1**) under Division 3 of Part 3 of the FA Admin Act.

**Subitem 11(2)** addresses the situation where a person claims maternity allowance or maternity immunisation allowance under the social security law after 1 July 2000 (this might happen where the person has an old claim form and lodges it after 1 July 2000). In this situation also, the claim is to be treated as a claim for MAT/MIA under the Division 3 of Part 3 of the FA Admin Act.

**Subitem 11(3)** ensures that person who has been paid maternity allowance or maternity immunisation allowance for a particular child under the social security law cannot be paid MAT or MIA again for the same child under the family assistance law.

**Item 12** deals with applications for family benefit made after 1 July 2000 in respect of a deceased person.
Under section 58 of the Social Security Admin Act, if a person to whom a social security payment is payable dies before receiving their entitlement, another person can apply for the outstanding amount if the application is made within 26 weeks after the death or such further period allowed by the Secretary.

From 1 July 2000, a “social security payment” as defined in subsection 23(1) of the Social Security Act will not include family benefit, maternity allowance or maternity immunisation allowance. Section 58 will therefore not apply to claims for any of these payments made on or after 1 July 2000.

There will be situations, however, where such an application is made on or after 1 July 2000 in respect of an unpaid amount of family benefit, maternity allowance or maternity immunisation allowance. Subitems 12(1) and (2) allow such an application to be made on or after 1 July 2000 provided it is made within the same time limits as apply under the social security law and enable the Secretary to pay the unpaid amount to the person who, in the Secretary’s opinion, is best entitled to receive it.

Subitems 12(3) and (4) ensure that if an amount is paid under subitems 12(1) or (2), the Commonwealth has no further liability to pay any person that payment.

As a decision under subitems 12(1) and 12(2) involve the exercise of a discretion by the Secretary, subitem 12(5) ensures that such a decision is reviewable under the family assistance law.

Item 13 deals with requests for family allowance advance payments made under the social security law.

Section 864A of the Social Security Act provides for the payment of an advance to certain family allowance customers who request such a payment. Under subsection 864A(3), a person may request an advance for a particular advance period or for a particular advance period and all subsequent advance periods.

Item 13 operates where a person has requested an advance for a particular advance period and all subsequent advance periods under section 864A of the Social Security Act and the request has been granted. Where this happens, item 13 provides that the request is to be taken to be a request for an FTB advance under section 33 of the FA Admin Act.

The individual would then have the right to withdraw the request under subsection 33(4) of the FA Admin Act.

Item 14 is a saving provision relating to information collection. It allows the Secretary to require the provision of information relating to the payment of family benefit, maternity allowance or maternity immunisation allowance on or after 1 July 2000 as if these payments continued to be social security payments for the purposes of the Social Security Admin Act.

Item 15 outlines the transitional arrangements that apply in relation to payment portability.
Section 24 of the Family Assistance Act contains the portability rules for FTB. These rules impact on an individual’s eligibility for FTB and the “FTB child” status of a child. In broad terms, an individual and/or FTB child can be absent from Australia for up to 3 years without eligibility for FTB being affected. However, absence of more than 26 weeks has an impact on the rate of FTB to which an individual is eligible. The effect of an absence from Australia on an individual’s rate of FTB is covered in sections 62 and 63 of the Family Assistance Act.

The portability rules that apply in relation to family allowance and family tax payment are similar to those that operate in relation to FTB. The exception is that, for FTB, an individual’s rate is limited after 26 weeks overseas while family allowance customers are limited to the minimum rate of family allowance after an absence of 13 weeks. Parenting payment has a 26 week portability rule.

Sections 24, 62 and 63 of the Family Assistance Act focus on when an individual or FTB child leaves Australia and periods of absence from Australia.

If an individual leaves Australia before the commencement of the new family assistance regime (ie, before 1 July 2000) and remains overseas for longer than 3 years, section 24 can be invoked with the effect that the individual is not eligible for FTB after the expiration of the 3 year period. Similarly, if the individual has been overseas longer than 26 weeks (irrespective of whether the individual left Australia before or after 1 July), section 62 can be invoked to reduce the individual’s rate of FTB.

This is not the case where an FTB child is absent from Australia. Sections 24 and 63 operate where an FTB child leaves Australia or where a child born outside Australia is an FTB child at birth. The concept of a FTB child is a creation of the family assistance law that commences on 1 July 2000. A child cannot be an FTB child before that date. Accordingly, sections 24 and 63 can only operate where a child leaves Australia or is born outside Australia on or after 1 July 2000.

Item 15 therefore provides rules similar to those in sections 24 and 63 of the Family Assistance Act except that they apply to an individual (child) who attracts payment of family allowance or family tax payment or who is a PP child and operate where the child leaves Australia before 1 July 2000.

Items 16, 17 and 18 provide for the payment of lump sum bereavement payments because of the death of a child.

For parenting payment, bereavement payments are available under Division 9 of Part 2.10 of the Social Security Act. However, only section 514A is relevant for non-benefit PP (partnered). For a person who is receiving non-benefit PP (partnered) and whose only PP child dies, there is a bereavement period of 4 weeks, during which time the person continues to qualify for parenting payment as if the child had not died.
Item 16 applies where the person’s only PP child dies and the 4 week bereavement period in respect of the child’s death has not ended by 1 July 2000. In this situation, so much of the parenting payment as would have been payable in respect of each day in the 4 week bereavement period that occurs after 30 June 2000 continues to be payable as if section 514A of the Social Security Act were in force until the end of the bereavement period. However, the amount payable for that period is payable as a lump sum as soon as practicable after 1 July 2000.

A decision made under section 514A as continued in force is a decision that can be reviewed under the social security law.

Where a dependent child in respect of whom family tax payment (FTP) is being paid dies, sections 900AZZC and 900AZZD of the Social Security Act ensure that qualification for FTP continues for 4 weeks as if the child has not died.

Item 17 applies where a child in respect of whom FTP is being paid dies and the 4 week bereavement period in respect of the child’s death has not ended by 1 July 2000. In this situation, so much of the FTP as would have been payable in respect of each day in the 4 week bereavement period that occurs after 30 June 2000, and that is attributable to the deceased child, continues to be payable as if section 900AZZC of the Social Security Act were in force until the end of the bereavement period. However, the amount payable for that period is payable as a lump sum as soon as practicable after 1 July 2000.

A decision made under section 900AZZC as continued in force is a decision that can be reviewed under the social security law.

The bereavement provisions for family allowance (FA) where an FA child dies are contained in Division 10 of Part 2.17 of the Social Security Act. These provisions can be summarised as follows.

Where, immediately before the death of the FA child, a person was entitled to more than the minimum rate of FA, then the person continues to be qualified for FA for up to 14 weeks after the child’s death as if the child had not died. Of relevance here are the definitions of “bereavement period” (relevant where the deceased child is not the person’s only FA child) and “bereavement rate continuation period” (relevant where the deceased child is the person’s only FA child). These terms are defined in subsection 21(2) of the Social Security Act.

Once the Secretary finds out about the child’s death, the deceased child’s FA component for whatever remains of the 14 week bereavement period is paid to the person as a lump sum.

In other situations where an FA child dies, a 4 week bereavement period applies. FA is then calculated for that 4 week period as if the deceased child had not died.
**Item 18** applies where a child in respect of whom FA is being paid dies and the bereavement period applicable in respect of the child’s death has not ended by 1 July 2000. In this situation, so much of the FA as would have been payable in respect of each day in the bereavement period that occurs after 30 June 2000, and that is attributable to the deceased child, continues to be payable as if Subdivision A or B of Division 10 of Part 2.17 of the Social Security Act (as applicable) were in force until the end of the bereavement period. However, the amount payable for that period is payable as a lump sum as soon as practicable after 1 July 2000.

A decision made under Subdivision A or B of Division 10 of Part 2.17 of the Social Security Act as continued in force is a decision that can be reviewed under the social security law.

**Item 19** enables a family assistance debt incurred because of the death of a child before 1 July 2000 to be set off against a lump sum bereavement payment made under the transitional arrangement provided for in items 16, 17 or 18 in the following situations.

Where a child dies before 1 July 2000 and the Secretary is not notified, or does not become aware, of the death until after that date, payment of family benefit will continue until 30 June 2000 as if the child had not died and then the person receiving the family benefit will be transferred to FTB. If the Secretary has the information required to assess the person’s eligibility and the person is eligible for FTB by instalment, an entitlement determination will be made under section 16 of the FA Admin Act. At this point, the relevant transitional provision would not have been applied because the Secretary was not aware of the child’s death.

When the Secretary learns of the child’s death, the Secretary will need to review the entitlement determination using section 104 of the FA Admin Act. Where the deceased child was the person’s only child, the original determination would need to be set aside and a “no entitlement” determination substituted. Where the deceased child was not the person’s only child, the original determination would need to be varied so that the person’s rate of FTB does not take into account the deceased child. Any overpaid amount of FTB would then be a debt under Part 4 of the FA Admin Act.

The relevant transitional provision would then be invoked to provide the person with a lump sum bereavement payment for the deceased child.

**Item 19** enables the lump sum bereavement payment worked out in accordance with the relevant transitional provision to be offset against the debt incurred under the family assistance law in the situation described above.

**Item 20** provides for bereavement payments in relation to the death of a recipient.
Section 513A of the Social Security Act deals with the situation where there is an unpaid bereavement entitlement because of the death of a person who was or would have been qualified for parenting payment under the bereavement rules in Subdivision A of Division 9 of Part 2.10 of the Social Security Act in respect of a deceased child. The unpaid bereavement entitlement then becomes payable to the deceased person’s partner if the partner claims the bereavement payment within 13 weeks after the death of the child.

A similar rule applies in relation to family allowance under section 900 of the Social Security Act.

**Item 20** allows the deceased person’s partner to access such a lump sum payment after 1 July 2000 if he or she claims the lump sum within 13 weeks of the child’s death. Despite their repeals, sections 513A and 900 of the Social Security Act are taken to continue in force after 1 July 2000 to facilitate such a claim.

A decision made for the purposes of section 513A or 900 as continued in force is reviewable under the social security law.

**Item 21** is a transitional provision related to the provision of tax file numbers (TFNs). **Item 21** deems a TFN provided for the purposes of family allowance, family tax payment or parenting payment in the nature of non-benefit PP (partnered) to be a TFN provided for the purposes of new subsection 154A(1) of the FA Admin Act. New subsection 154A(1) provides for the exchange of TFNs between the Secretary and the Commissioner of Taxation for the purposes of income reconciliation.

**Item 22** is a saving provision. It applies to an individual who, immediately before 1 July 2000, was receiving family allowance free of the income test (being an individual covered under subclause 52(2) or (3) of Schedule 1A to the Social Security Act) in respect of a child that also attracts double orphan pension or carer allowance. In this situation, the Part A rate of FTB for the individual would be the higher of:

- the Part A rate applicable under the family assistance law; or
- the rate (saved rate) that would have been the individual’s minimum family allowance rate immediately before 1 July 2000 if that rate were worked out having regard to those FTB children of the individual who also attract double orphan pension or carer allowance.

If at any time the individual begins to receive the Part A rate calculated under the family assistance law, then the saved rate cannot apply again.
Overview of Schedule 6

This Schedule provides for the transition to the new child care benefit (CCB) system, particularly from the existing childcare assistance and child care rebate systems. The transitional provisions fall into the following broad groupings:

- definitions;
- the transition to CCB—claims, determinations, etc.;
- existing childcare assistance agreements; and
- the limited continuation of childcare assistance and child care rebate, etc.

Explanation of amendments

Definitions

Item 1 provides the definitions necessary for Schedule 6. Transitional arrangements for CCB are only relevant to CCB by fee reduction, which is the only ongoing type of CCB. All other types involve claims retrospectively for closed periods.

“Childcare assistance” means fee reductions made for care provided before the transition date of 1 July 2000, or for care provided after that date, in the limited circumstances in which childcare assistance will remain available after that date, as provided by this Schedule. Such fee reductions may be available either under the Child Care Act 1972, by way of the “fee relief guidelines” made under section 12A of that Act, or under a non-legislative Commonwealth program known generally as childcare assistance or fee relief.

“Childcare assistance agreement” means an agreement between the Commonwealth and another person that is made to provide grants to reimburse the costs of fee reductions. The agreement may be entered into under section 20 of the Child Care Act 1972 (such an agreement will generally cover long day care), or it may be another form of agreement (ie, without a legislative basis – such an agreement will generally cover other kinds of care, ie, occasional care, family day care and outside school hours care). The agreement may be solely for the provision of grants to reimburse the costs of fee reductions, or the provision of such a grant may be a part of the agreement.

“Childcare assistance scheme” means the Commonwealth program under which childcare assistance (whether based on legislation or not) is paid.
“Child care rebate” is the other type of current child care payment relevant to these transitional provisions. It is payable under the Childcare Rebate Act 1993.

A “data collection form” is a written request from the Secretary to an individual for information relevant to establishing the scheme to pay CCB.

“Secretary”, in relation to things that happen under particular legislation, means the Secretary to the Department administered by the Minister with portfolio responsibility for the legislation.

Other defined terms take their meanings from elsewhere in the family assistance or social security legislation, or are simply abbreviated family assistance Act names.

The transition to CCB—claims, determinations, etc.

Items 2 to 9 describe how claim, determination and certain other matters will operate in the transition to the new CCB arrangements.

Item 2 basically provides that, if an individual is formally entitled to childcare assistance (legislative or non-legislative) for a child immediately before 1 July 2000, and if the individual returns, completed and by the specified date, the data collection form given by the Secretary, then the individual is taken to be conditionally eligible for CCB by fee reduction as from the return of the form. For this to happen, the relevant Family Assistance Act provision is treated as having commenced early.

It will then be possible (on the strength of section 4 of the Acts Interpretation Act 1901) for the Secretary to make determinations, under the FA Admin Act, of conditional eligibility, the weekly limit of hours, CCB % and schooling % in relation to the individual and the child.

However, even if such determinations are made, ready to come into force on 1 July 2000, they will not come into force on that date if the individual does not remain entitled to childcare assistance right up to that date. This may apply, for example, if the parent marries someone whose income precludes them from getting childcare assistance.

If, prior to 1 July 2000, the individual has been given a 63 day period in which to meet the immunisation requirements, then the balance of that period is preserved on the transition to CCB and the requirement continues under the CCB provisions as if it had been made under them in the first place. For this to happen, the relevant family assistance provisions are treated as having commenced early.

Also, if the child is meeting the childcare assistance immunisation requirements immediately before 1 July 2000 (whether because of being immunised or because of an exemption such as conscientious objection), then this is also taken to be the case under CCB at the transition point. (Again, for this to happen, the relevant Family Assistance Act provision is treated as having commenced early.) From that point on, the Secretary will have the usual new powers to impose continuing immunisation requirements.
**Item 3** provides a special rule if an individual is both a child care rebate and a family allowance customer immediately before 1 July 2000. If the individual returns, completed and by the specified date, the data collection form given by the Secretary, then the individual is taken to have made an effective claim for CCB by fee reduction. For this to happen, the relevant FA Admin Act provision is treated as having commenced early.

Similarly to the current childcare assistance customers covered by **item 2**, if the child is meeting the child care rebate immunisation requirements immediately before 1 July 2000, then this is also taken to be the case under CCB at the transition point (the relevant FA Admin Act provision being treated as having commenced early). From that point on, the Secretary will have the usual new powers to impose continuing immunisation requirements.

**Item 4** simply allows an individual to make a claim for CCB by fee reduction before 1 July 2000. For this to happen, the relevant FA Admin Act provision is treated as having commenced early.

For the cases covered by **items 3 and 4**, section 4 of the *Acts Interpretation Act 1901* will allow the Secretary to make determinations early, ready to come into force on the commencement of the legislation on 1 July 2000.

**Item 5** provides a special rule that will apply if an individual mentioned in **item 2 or 3** objects, in the data collection form, to the use of the individual’s tax file number (TFN), that is already in the system on the basis of his or her being a childcare assistance or family allowance customer, for CCB purposes. If this is the case, then the TFN will not be used, but the consequence is that the individual’s CCB % (ie, the income tested component of CCB entitlement) must be determined at the minimum level, which applies regardless of income.

**Items 6 and 7 and subitem 9(2)** all preserve certain decisions currently in place under the childcare assistance scheme so that the individual concerned is treated as if the decision had been made under the new CCB provisions. For these purposes, the relevant provisions are treated as having commenced early.

The first situation (**item 6**) relates to a decision that a child be treated as a dependent child of the individual under childcare assistance – the child will now be treated as an FTB child of the individual under CCB.

The second (**item 7**) relates to a decision that an individual is a resident for childcare assistance – the individual will now be treated as an Australian resident for CCB.

The third (**subitem 9(2)**) relates to an individual being exempted from having to provide a TFN (eg, of a violent former partner) for childcare assistance—the exemption will be preserved for CCB.
Item 8 provides a general rule that a TFN of an individual already provided and in the system, because of the individual being a childcare assistance or family allowance customer, is taken to have been provided for CCB. However, this will not apply if the individual objects, in the data collection form, to the use of the TFN in this way. If that is the case, however, item 5 requires that the individual’s CCB % be set at the minimum.

Subitem 9(1) preserves a 28 day period imposed under the childcare assistance scheme (during which the individual must meet the TFN requirements). If such a period is still being served immediately before 1 July 2000, then the balance of that period must be served under the CCB provisions.

Existing childcare assistance agreements

As a result of the fact that from 1 July 2000 all the matters that are currently dealt with under childcare assistance agreements will be included in the legislation relating to new CCB scheme, the following transitional arrangements will operate from 1 July 2000, as provided for by item 10, in respect of a child care assistance agreement that was in force immediately before 1 July 2000:

Cessation of childcare assistance agreements

- all the terms of an agreement will cease to operate in respect of a grant to reimburse the costs of fee reduction, in relation to care provided on or after 1 July 2000 that is not the care provided for a session of care that started before 1 July 2000 and continues on the 1 July and is not the care provided by an outside school hours care service during the period of a school vacation that started before 1 July 2000 and continues on or after the 1 July (subitem 10(2) refers);

- consequently, the obligations imposed on a service who is the party to an agreement will no longer operate after 1 July 2000 in relation to the care to which the agreement does not apply;

- from 1 July 2000, the Commonwealth will not make further grants under the agreement to reimburse the costs of fee reductions (subitem 10(7) refers).

Continuation of childcare assistance agreements

- all the terms of an agreement will continue to operate in respect of a grant to reimburse the costs of fee reduction, in relation to care provided before 1 July 2000 and in respect of care provided after 1 July 2000 if it is the care provided for a session of care that started before 1 July 2000 and continues on the 1 July or it is the care provided by an outside school hours care service during the period of a school vacation that started before 1 July 2000 and continues on or after the 1 July (subitems 10(5), (3) and (4) respectively refer);
• consequently, all the obligations and responsibilities imposed on a service who is the party to an agreement will continue to operate after 1 July 2000 in relation to the care to which the agreement continues to apply (eg the service, after 1 July 2000, will continue to be under obligation to reduce fees in relation to care to which the agreement continues to operate, to provide accountability statement in respect of that care, etc);

• as all the terms of the agreement will continue to be in force in so far as they relate to the care to which the agreement continues to apply, a further example of the consequence of the continuation of the agreement may be that after 1 July 2000 a debt may be raised, or money may become repayable by the service, or may become payable by the Commonwealth to the service, in respect of the relevant care;

• if a childcare assistance agreement in force immediately before 1 July 2000 provides for grants other than the grants to reimburse the cost of fee reductions, after 1 July 2000 the agreement continues in force in respect of the other grants (subitem 10(6) refers);

• for the purposes of an agreement that continues to operate after 1 July 2000 in relation to a grant to reimburse the costs of fee reductions, subitem 10(8) provides that the Acts, documents, handbooks etc that were in operation on 30 June 2000 for the purposes of the agreement at the time are treated as operating on and after 1 July 2000.

Transfer of services to the CCB scheme

Item 11, (subitems (1), (2), (3) and (4)), provides for transfer of long day care, family day care, occasional care and outside school hours care services in respect of whom a childcare assistance agreement was in force on 30 June 2000 to a new CCB scheme. Those services will be treated as being approved as a service of a comparable kind under section 195 of the Family Assistance Admin Act that provides for the approval of services as an approved child care service of a particular kind.

The services taken to be so approved will not be issued with a certificate of approval (subitem 11(5) refers).

If on 30 June 2000 a long day care service was subject to a sanction (other than suspension), the sanction continues to apply under the new CCB scheme and is treated as if it was a sanction under the relevant provisions of the Family Assistance Admin Act (subitem 11(6) refers).

In a service is taken, under item 11, to be approved as an approved child care service, the service is under an obligation, as a condition of continued approval under section 195 of the Family Assistance Admin Act, to comply with the terms of the agreement that continues in force after 1 July 2000 in respect of a grant to reimburse the costs of fee reductions (item 12 refers).
Debts under childcare assistance agreements

Item 13 provides for the following debts to be recoverable under subsection 82(2) of the Family Assistance Admin Act that provides for setting off the amount of a service’s debt against amount of advances paid to the service under section 219R of that Act, legal proceedings and garnishee notice. This is in effect the same procedure that now applies.

- a child care service’s debt arising under a childcare assistance agreement in respect of a grant to reimburse the costs of fee reductions for care before 1 July 2000 or for the care after 1 July 2000 for which the agreement continues in operation (whether the debt arises before or after 1 July 2000); or

- money repayable by a child care service under the agreements in respect of a grant to reimburse the costs of fee reductions for care before 1 July 2000 or for the care after 1 July 2000 for which the agreement continues in operation; or

- a child care service’s debt under section 20B of the Child Care Act 1972 as far as it relates to debts relevant to grants to reimburse the costs of fee reductions (whether the debt arises before or after 1 July 2000).

Termination of the agreements that continue after 1 July 2000

Item 14 provides that the agreements relating to grants to reimburse the costs of fee reduction may be terminated after 1 July 2000 by the ministerial direction made in writing. This will occur after the matters relating to childcare assistance have all been dealt with.

Old sanctions taken into account for the purposes of approval under section 194

Item 15 modifies subsection 195(2) of the Family Assistance Admin Act that specifies when the Secretary may refuse to approve a child care service for CCB purposes. As a result of the modification, the Secretary will be able to refuse to approve a service applying for approval under section 194 of that Act if the person operating the service was subject to a sanction while operating a child care service under the childcare assistance scheme.

The limited continuation of childcare assistance and child care rebate, etc.

Items 16 to 22 generally allow for the winding up of outstanding entitlements, etc., under the current child care payments.

Item 16 continues in force the childcare assistance scheme for the purpose of dealing with claims that were undetermined immediately before 1 July 2000 and for dealing with claims lodged on or after that date in respect of care provided during a particular period before that date.

Item 17 provides a special rule so that, if one session of care falls on both 30 June and 1 July 2000, ie, crossing midnight (some sessions, especially those falling within 24 hour care may be in this situation), then the childcare assistance scheme continues in force to deal with claims in respect of the session.
Similarly, **item 18** provides a special rule so that, if a period of vacation care under the childcare assistance scheme falls both before, and on and after, 1 July 2000, then the childcare assistance scheme continues in force to deal with claims in respect of the vacation care. This arrangement is to avoid disruption to services providing vacation care, and only applies to the one vacation that spans the transition point. At this stage, only Victoria and the Northern Territory are likely to have vacations over this period.

**Item 19** relates to registered carers under the *Childcare Rebate Act 1993*. By and large, if an individual (not a body) is currently a registered carer under that Act, then the individual is to be treated as being approved as a registered carer under the new CCB provisions. (Only individuals may be registered carers under the new provisions.) However, some individuals may not be so treated—those operating a child care service, either under a childcare assistance agreement, or that was receiving Commonwealth funding outside childcare assistance agreement, since they will get the additional funding directly (eg, some Aboriginal child care services), or family day care carers.

The item also continues in force the *Childcare Rebate Act 1993* for the purpose of concluding applications for registration as a carer that were undetermined immediately before 1 July 2000. It is also continued in force to deal with applications lodged on or after that date, but before 1 January 2001, for care provided either before that date, or for care provided on or after that date in the session of care or vacation care situation, as mentioned in **subitem 20(2), (3) or (4)**.

**Item 20** relates to claims by families for child care rebate that need to be resolved under the current legislation. Again, the basic principle is that claims that were undetermined immediately before 1 July 2000 are to be determined under the *Childcare Rebate Act 1993* as continued in force under these provisions. Also, claims lodged on or after that date, but before 1 January 2001, are to be determined under that Act as so in force if they relate to care provided during a period commencing 2 years before the claim was lodged and ending on 30 June 2000 (child care rebate is payable for periods up to 2 years before claim).

Furthermore, there are comparable rules to those for childcare assistance so that one session of care that falls on both 30 June and 1 July 2000, and vacation care that spans 1 July 2000, are to be dealt with under the *Childcare Rebate Act 1993* as continued in force for the purpose.

**Item 21** deals with the last scenario in which that Act must be continued in force—to deal with applications for registration of a family under section 19 of the Act. Again, applications undetermined at the transition point, together with applications lodged later, but before 1 January 2001, in respect of care mentioned in **subitem 20(2), (3) or (4)**, are to be determined under that Act as continued in force by these provisions.
**Item 22** makes sure that the Health Insurance Commission remains able, up to 31 December 2000, to deal with claims on or after 1 July 2000 for child care rebate, as envisaged by these transitional provisions. This must be done to work around the repeal of the *Childcare Rebate Act 1993* and the Commission’s child care rebate functions in the *Health Insurance Commission Act 1973* that have effect from 1 July 2000 (see the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*).

In particular, the Commission may continue to exercise the particular powers in the *Childcare Rebate Act 1993* that allow the extension of the period within which an application may be made for reconsideration of a specified decision. However, the Commission may only extend such a period until 30 June 2001.

**Item 23** provides a regulation making power to deal with any remaining transitional matters.